THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KEITH RAYMOND, et al.,	:	CASE NO. 1:15-CV-00559-MRB
Plaintiffs,	:	(Judge Michael R. Barrett)
v.	:	
AVECTUS HEALTHCARE SOLUTIONS, LLC, et al.	:	
Defendants.	:	

PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE AWARDS

Pursuant to Fed. R. Civ. P. 23(h) and 54(d)(2), the Settlement Agreement (Doc. 234-1) and the Court's Preliminary Approval dated, November 7, 2023 (Doc. 235), Class Counsel and named Plaintiffs, Keith Raymond and Timothy Strunk, ("Plaintiffs" or "Class Representatives") on behalf of themselves and the Settlement Class, respectfully move this Court for an Order approving the following payments in connection with the Settlement: (1) attorneys' fees to Class Counsel in the amount of $3,200,000.00; (2) $27,037.96 to reimburse Class Counsel for their out-of-pocket and documented expenses; and (3) Class Representative Service Awards of $25,000.00 to each named Plaintiff.

Respectfully Submitted,

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PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE AWARDS

I. INTRODUCTION

Plaintiffs and Class Counsel have litigated this action for eight plus years. Those eight plus years have involved massive Discovery, extensive Motion practice, hearings before the Court, telephone conferences with the Court, Appellate practice before the Sixth Circuit U.S. Court of Appeals, Mediations and negotiations with defense counsel. Counsel for Defendants are partners in two of the largest firms in Ohio. The litigation required eight years of unrelenting persistence to bring the case over the finish line. The result is a sea change in the responsibilities of Ohio health providers *vis a vis* Ohio health insureds who achieve tort recoveries. Prior to this case, no Court had found that Ohio law prohibits billing health insureds instead of the health insurer for money received by the health insured as a tort recovery. Healthcare providers routinely ignored the patient's health insurance in order to collect a greater amount from tort recoveries. The counterargument, successfully made to this Court by the Defendants, was that the money recovered from the tort payment to the patient was money paid by the tortfeasor, or the tortfeasor's insurer. Thus, it was argued that Defendants did not violate the "Hold Harmless" protection of O.R.C. §1751.60 et. seq. because the money was not the health insureds in the first place. It was not until Plaintiffs secured a clear rejection of that argument in the Sixth Circuit U.S. Court of Appeals that Ohio health insureds were protected from the dissipation of their tort recoveries by health providers.

However, this was but the beginning of this case. The Court may recall that upon remand from the Sixth Circuit, the Defendants expressed to the Court that despite the Appellate decision, Defendants had no exposure to liability and were not interested in

attempting to resolve the case. After thousands of hours of extremely complex labor, Plaintiffs were able to secure a Settlement which provides payment to the vast majority of Class Members of $25.00 for their receipt of a letter to which they never responded. Additionally, those Class Members who did respond will receive fifty percent (50%) of the payment made, which constitutes full recovery given the subrogation obligation they would have had to their health insurers. Finally, the general public in Ohio now have the protection of Sixth Circuit precedent should any health provider choose to ignore Ohio law. Because the requested fees and service awards are reasonable the Court should grant this Motion.

II. BACKGROUND

A. THE LITIGATION

Plaintiffs initiated this litigation on August 27, 2015, when they filed a Complaint against the Defendants. Plaintiffs alleged that Defendants sought to collect and collected payment for medical bills which were not owed by Plaintiffs. Plaintiffs alleged, *inter alia*, that Defendants acted in violation of O.R.C. §1751.60(A), et seq., and 15 U.S.C. §1692 the Fair Debt Collection Practices Act. On October 26, 2015, Defendant Mercy filed a Motion to Dismiss for Failure to State a Claim. Plaintiffs responded on November 12, 2015. On November 24, 2015, Defendant Avectus filed a Motion to Dismiss for Failure to State a Claim. On December 17, 2015, Plaintiffs responded to the Avectus Motion. Subsequent to extensive briefing, on September 30, 2016 the Court granted both Motions to Dismiss and a Judgment was entered by the Clerk concurrently.

Plaintiffs pursued an appeal in the U.S. Sixth Circuit Court of Appeals. On June 12, 2017, the Sixth Circuit reversed and remanded. On August 25, 2017, each Defendant

filed its Answer to Plaintiffs' Complaint. On September 25, 2017, Defendant Avectus filed for Judgment on the Pleadings. On October 5, 2017, Plaintiffs responded. On September 21, 2018, the Court denied the Motion.

From the inception of the litigation, through Dismissal, Appeal, Remand, Renewed Motion to Dismiss, numerous hearings and extensive briefing, the Defendants maintained that they had no exposure to liability; they expressed such to this Court. Every issue was hotly contested. Every issue necessitated extensive research and briefing. Defendants vigorously objected to Plaintiffs' Motion to Certify a Class. Plaintiffs spent an incredible amount of time developing and supporting the Motion for Certification. Numerous depositions were taken by both sides in support of and in opposition to the Motion for Certification. Counsel was compelled to resort to Motions to Compel Discovery which required more briefing and argument to the Court. On March 27, 2020, the Court granted in part and denied in part Plaintiffs' Motion for Class Certification. Defendants appealed the Court's grant to the Sixth Circuit. The Plaintiffs were again successful and the Sixth Circuit denied the appeal. Defendant Avectus thereafter repeatedly sought to amend the Class Definition resulting in yet more briefing and argument.

From March 2020 to November 2023, the parties conducted extensive discovery in preparation for trial. Tens of thousands of pages of documents were produced and analyzed by Plaintiffs' counsel. Each of those documents required specific inquiries, including:

1. Identification of the health insurer;
2. Confirmation that the identified insurer contracted with Mercy;
3. Identification of patient co-payments, which would not be recoverable;

4. Identification of patient deductibles, likewise not recoverable;
5. Amount demanded by Mercy;
6. Amount ultimately negotiated and collected by Avectus and/or Mercy;
7. Nature of the communications to the patient, letter or telephone;
8. Whether the patient was represented by counsel and what role did counsel play in the transaction.

These individual reviews were essential given Defendants' alleged defenses, including, but not limited to:

1. The Health Insuring Corporation (HIC) must be proven to have contracted with Mercy;
2. Class Members voluntarily paid and are barred by the Ohio Voluntary Payment Doctrine;
3. Class Members assigned their claims for tort damages to Mercy;
4. Class Members were bound to preexisting agreements entered into with Defendants for payment of hospital bills;
5. Class Members must prove that any payment made was not a deductible or co-payment required of them by their health insurer;
6. Class Members must prove that the services billed were covered services under the Class Members health insurance contract.

Moreover, collection sought for Medicaid and Medicare insureds triggered massive research of both federal and state law, billing statutes and published standards. Suffice it to say that the discovery in this case was exceedingly complex and time consuming. This is reflected by the Court's Docket Sheet which consists of 25 pages with 235

separate entries. Nothing was conceded by the Defendants and every available means was employed by Defendants to escape any responsibility.

B. NEGOTIATION OF THE PROPOSED SETTLEMENT

On November 11, 2020, the parties appeared before Judge Barrett for the purpose of exploring a potential settlement. Despite the direct participation of the Court, an impasse ensued. Discovery and preparation for trial resumed.

On May 11, 2023, the parties again appeared before Judge Barrett in an attempt to reach a settlement. This proceeding occurred subsequent to all parties having fully briefed and filed their respective Motions for Summary Judgment. This conference was continued in progress. Thereafter, the parties engaged in protracted negotiations with multiple intervening hearings before the Court to report progress.

After considerable wrangling, the parties came to an agreement which was memorialized in a Joint Motion for Preliminary Approval of Settlement filed with the Court on November 2, 2023. On November 7, 2023, the Court granted the Preliminary Approval Motion. The terms of the Settlement are set forth in the Settlement Agreement (Doc. 234-1). Defendants agreed to pay $3,500,000.00 to completely settle all class claims, all costs of Settlement Administration, any Service Award to Class Representatives and attorneys' fees and expenses awarded to Plaintiffs' Counsel.

C. THE SETTLEMENT AGREEMENT

The full Settlement Agreement was filed with the Joint Motion for Preliminary Approval (Doc. 234-1). The Settlement Agreement specifies that any notified Class Member who submits a claim form will receive payment of $25.00 regardless of whether or not the Class Member actually made a payment to Mercy or Avectus. Additionally, any

Class Member who did make a payment will receive fifty percent (50%) of the payment made upon receipt of the claim form by the Settlement Administrator. The 50% recovery was computed to represent a 100% reimbursement to account for subrogation obligations that would have been owed by the Class Member to his or her health insurer had Mercy billed the HIC. During a combined One Hundred Twenty Four (124) years of representing tort victims, Plaintiffs' Counsel have never encountered a single instance where the health insurance contract did not contain a subrogation clause.

Defendants have agreed that they will not object to any Service Awards or Attorneys' Fee Award, so long as the Awards are made by the Court. Plaintiffs' Counsel agrees that any attorney fee award shall not exceed the remainder of the Settlement Fund after cost of administration, satisfaction of class claims, and Service Awards, if any. The parties have also agreed that should any part of the settlement fund remain after payment of Class Members' claims, costs of administration, Service Awards to Class Representatives and fees awarded to Plaintiffs' Counsel, the remainder, if any, shall revert to the Defendants in percentages agreed upon between them.

In exchange for these valuable considerations, Plaintiffs and all Class Members who do not timely exclude themselves will release all claims against Defendants.

D. PRELIIMINARY APPROVAL AND CLASS NOTICE

On November 7, 2023, this Court granted Preliminary Approval of the proposed Class Settlement, appointed Lead Counsel and approved the appointment of the Settlement Administrator. Per the approved Notice Program, the Settlement Administrator issued direct Notice and Claim Forms to members by U.S. Mail, created a Settlement Website where the Settlement Notice (long form) and Settlement Agreement

are posted. Class Members were provided, on the website, a summary of all important dates and telephone numbers of Lead Counsel and the Settlement Administrator. Class Members were identified through the records of Defendants.

E. CLASS COUNSELS' SUBSTANTIAL EFFORTS FOR THE BENEFIT OF THE CLASS

Plaintiffs respectfully submit that Counsels' unrelenting efforts to reverse the initial dismissal in the Court of Appeals, prevail on the issue of class certification, defend the class certification before the Sixth Circuit, defend a renewed Motion to Dismiss after remand, defend the class definition, prosecute and defend numerous depositions, retrieve and review tens of thousands of Defendants' documents, create and respond to dispositive Motions for Summary Judgment and successfully obtain a fair settlement serve to convey the substantial benefit to the Class, as well as to the entire population of Ohio health insureds. Plaintiffs have also documented these efforts above.

Counsel have performed this work without compensation for their time and have paid out of pocket expenses. This case is unique. In eight plus years, no attorney outside of this action has been willing to take on a fight of this magnitude to prevent healthcare providers from evading health insurance contracts for the purpose of collecting inflated bills in violation of Ohio and Federal law. Plaintiffs' Counsel was always faced with the prospect of expending thousands of hours with no compensation for the effort. Finally, unlike garden variety consumer class actions, this case depended on the specialized knowledge and experience of counsel in matters of medical billing, hospital revenue cycle management, health insurance contracts, health insurance co-pays and deductibles, Medicaid and Medicare statutes, including CMS interpretations and case precedents. The application of that knowledge by Plaintiffs' Counsel not only benefited Class

Members, it benefited all Ohio citizens who receive medical care on account of injury caused by a third party. What counsel has achieved in this Court and the U.S. Sixth Circuit Court of Appeals applies not only to these Defendants but to every healthcare provider in the State of Ohio and those whom they choose to collect their debts.

III. ARGUMENT

Rule 23(h) of the Federal Rules of Civil Procedure expressly authorizes a court to award "reasonable attorneys' fees and nontaxable costs that are authorized by law or by the parties' agreement." Here Defendants have agreed to attorneys' fees paid by the Settlement Fund, so long as they are awarded by the Court. "When awarding attorneys' fees in a class action, a court must make sure that counsel is fairly compensated for the amount of work done as well as for the results achieved." *Rawlings v. Prudential – Bache Props., Inc.*, 9 F.3d at 515-16 (1993). Plaintiffs respectfully submit that an award of $3,200,000.00, fairly and reasonably compensates Class Counsel for their remarkable success achieved both for the Class and the Ohio patient population of health insureds. Class Members will be compensated while Ohio citizens will enjoy the protection of the relevant Ohio statutes as interpreted by the U.S. Sixth Circuit Court of Appeals. The Ohio Bar, as a result, can properly represent clients by refusing to succumb to illegal demands for payment of medical bills from tort settlements of health insured clients.

A. LODESTAR ANALYSIS CONFIRMS THE REASONABLENESS OF THE REQUESTED AWARD

Initially, Plaintiffs submit that any analysis of what constitutes a reasonable attorneys' fee herein must consider the nature of the case. The Settlement Agreement specifies that 75% of the contribution from Avectus to the settlement shall be attributed to the settlement of the FDCPA claim. The FDCPA is a fee shifting statute. The Ohio State

claims are in the nature of consumer protection statutes. The nature of the case requires a different analysis than that employed in a common fund recovery where the court looks to the ratio between the amount recovered and the fee requested. The U.S. Supreme Court, the Sixth Circuit Court of Appeals and the Ohio Supreme Court unanimously agree that a different standard is required:

> "A rule of proportionality would make it difficult, if not impossible, for individuals with meritorious claims but relatively small potential damages to obtain redress form the courts." *Riverside v. Rivera*, (1986), 477 U.S. 561, 578.
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> Class actions such as this "have a value to society more broadly, both as deterrents to unlawful behavior – particularly when the individual injuries are too small to justify the time and expense of litigation – and as private law enforcement regimes that free public sector resources." *Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269 at 287, 2016 (6th Cir.).
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> *Bittner v. Tri-County Toyota, Inc.*, 58 Ohio St. 3d, 143 (1991), "In order for private citizens to obtain redress under the Act, they must first be able to obtain adequate legal representation. Private attorneys may be unwilling to accept consumer protection cases if the dollar amount they are permitted to bill their adversary is limited by the dollar amount of the recovery, especially since monetary damages in many instances under the Act are limited to $200.00. An attorney may expend inordinately large amounts of time and energy pursuing a claim that reaps relatively small monetary benefits for a prevailing plaintiff. We agree with the observation of the United States Supreme Court when it said 'a rule of proportionality would make it difficult, if not impossible, for individuals with meritorious claims but relatively small potential damages to obtain redress the in Courts,' *Riverside v. Rivera*, (1986) 477 U.S. 561, 578."

These three opinions are highly relevant to this Court's analysis of what constitutes a reasonable fee. The vast majority of class claims herein are for the technical violation of receiving a letter from Defendants to which Class Members did not respond. The damage wrought was exceedingly minimal thus justifying payments of $25.00 to class

claimants. Those Class Members who did respond by submitting payment did so in amounts which would never tempt an attorney to pursue an action for that single Class Member. Indeed all of the claims aggregated would not suffice to obtain competent representation if counsel was limited to a "proportion" of the fund obtained. No attorney would take on eight years of complex litigation, requiring thousands of hours of labor, defended by two large and well-known law firms with literally hundreds of lawyers, paralegals and legal assistants only to be restricted to a proportion of the Settlement Fund. In eight years, no attorney sought to join this case, nor did one file a similar case. It is no stretch to claim that this case was deemed to be undesirable by the Bar of Ohio. This undesirability is further evidenced by this Court's initial dismissal and the necessity of pursuing an appeal shortly after the inception of the case. None of the benefits achieved for Class Members and the Ohio public at large would have been achieved but for counsels' willingness to pursue and endure, all without any guarantee of being compensated. Respectfully the Court should hew to the opinions expressed by the U.S. Supreme Court, the Sixth Circuit Court of Appeals and the Ohio Supreme Court, as cited above. The Court should employ a lodestar analysis devoid of any consideration of proportionality.

Plaintiffs' fee request is reasonable and fully supported by the lodestar method of calculating attorneys' fees. The lodestar method accounts for the amount of work performed by counsel and ensures that counsel is fairly compensated. See, *Rawlings v. Prudential – Bache Props., Inc.*, 9 F.3d at 515-16 (1993). In determining an appropriate "lodestar" figure, a court multiples the number of hours reasonably expended on the litigation by a reasonable hourly rate. *Bldg. Serv. Local 47 Cleaning Contractors Pension*

Plan v. Grandview Raceway, 46 F.3d 1392, 1401 (6th Cir. 1995) quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The court may then adjust the lodestar to reflect relevant considerations peculiar to the subject litigation. *Adcock–Ladd v. Sec'y of Treasury*, 227 F.3d 343, 349 (6th Cir. 2000).

B. CLASS COUNSEL REASONABLY EXPENDED OVER 6,000 HOURS

This litigation has been handled in an efficient, streamlined manner by all involved on Plaintiffs' side. Class Counsel has kept detailed time records and a detailed description of all expenses incurred. As reflected in the attached Summaries,[1] the total hours reasonably expended by Class Counsel during the nearly nine years that this litigation has been pending is 6,009.55.

C. COUNSELS' HOURLY RATES ARE REASONABLE

Class Counsels' rates are also reasonable. Class Counsel have a combined One Hundred and Twenty Four (124) years of experience in litigation. Class Counsel have been appointed as Lead Class Counsel by Ohio State Judges (Judge Kessler, Montgomery Co., *In Re: Miamisburg Derailment*)(Judge Ruehlman, Hamilton Co., *J.P. Morgan Robo Signing*)(Judge Sage, Butler Co., *Purdue Pharma – Oxycontin*). Likewise counsel has been appointed Lead Counsel in Federal Class Actions (Judge Walter Rice,

[1] Because the billing records contain significant and repeated references to attorney work product which would need to be aggressively redacted to account for the possibility that the court declines to grant final approval to the Settlement and the case returns to active litigation, Plaintiffs have not publicly filed their detailed time and expense entries. Notably courts do not require counsel to submit detailed time records in support of a lodestar fee application. *Rawlings v. Prudential – Bache Props., Inc.*, 9 F.3d at 515-16 (1993). See *City of Plantation Police Officers Employees' Ret. Sys. v. Jeffries*, No. 2014-CV-1380, 2014 WL7404000, at *13 (S.D. Ohio Dec. 30, 2014)(concluding the number of hours expended on the litigation were reasonable based on summary charts provided by plaintiffs' counsel and the court's knowledge of "the complexity of the case, the use of experts the nature and quality of the filings, the time constraints..., and the results ultimately achieved"); *In re: Ford Motor Co. Spark Plug & Three Valve Engine Products Liab. Litig.*, No. 1:12-MD-2316, 2016 WL 6909078, at *10 (N.D. Ohio Jan. 1, 2016)(approving fee based upon summaries). However, in case the Court believes review of these records would be useful, Plaintiffs will provide them to the Court for *in camera* review. For reference, summary charts of Class Counsel's lodestar and expenses are attached as Exhibits to this Motion.

S.D Ohio, *In Re: Cordis Pacemakers – National Class*)(Judge Barrett, S.D. Ohio, *Jackson v. PRI*)(Judge Barrett, S.D. Ohio, *Raymond v. Avectus*). Counsel has also been appointed to serve as an Executive Committee Member in a National Class Action (Judge Berman, S.D.N.Y., *In Re: UPS Package Insurance*). Counsel has litigated Federal MDL actions including, *Vioxx*, *Prempro*, *Valsartan, Stryker, Biomet, Zantac, 3-M Earplugs and Roundup*. Counsel has represented the Central States Teamsters Health and Welfare Pension Fund to recover money paid by the Teamsters for pharmaceuticals. Counsel have extensive experience in highly complex litigation outside the Class Action arena. Counsel litigated the largest residential fire loss case known in Ohio (*Decker v. Chubb*), a case which this Court actually mediated successfully. Finally, in addition to decades of medical litigation, counsel has served multiple Ohio Attorneys General to pursue recovery of money expended by the State of Ohio for pharmaceuticals. Counsel, on the AG's behalf, litigated cases involving Abbot, Merck, Medco, DePuy, Lilly, etc. Moreover, the degree of skill attained by virtue of all of the litigation above was essential to the successful pursuit of this case.

The rates requested by counsel are below those which have been awarded in the Southern District of Ohio. See *Gilbert v. Abercrombie and Fitch Co.*, No. 2:15-cv-2854, 2016 WL 4449709 (S.D. Ohio Aug. 24, 2016)(report and recommendation approving hourly rates up to $850.00 per hour for counsel experienced in class action litigation), adopted and affirmed, *Gilbert v. Abercrombie and Fitch Co.*, No. 2:15-cv-2854, 2016 WL 449709 (S.D. Ohio Aug. 24, 2016). See also, *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 793-94 (N.D. Ohio, 2010)(approving hourly rates up to $825.00 as

reasonable "based on this Court's knowledge of attorneys' fees in complex civil litigation and multidistrict litigation").

The rates requested herein are also consistent with the Rubin Committee Rates routinely consulted in the Southern District of Ohio. (See Exhibit 1, the Declaration of W.B. Markovits.) Parenthetically, the rates of $850.00 and $825.00 cited above are clearly departures from the Rubin rates, apparently in recognition of the complexity and quality of the representation.

From 2015 to roughly the present, Class Counsel have spent roughly 6,009.55 hours for a lodestar of $3,640,768.00. A summary of Class Counsels' time and hourly billable rates is attached as Exhibit 2, to the Declaration of Gary F. Franke in Support of Plaintiffs' Motion for Attorney Fees. The reasonableness of the fee requested is rendered all the more so because counsel is entitled to a lodestar multiplier. Trial Judges are permitted to adjust the "lodestar" to reflect relevant considerations peculiar to the subject litigation. *Adcock v. Ladd,* 227 F.3d at 349. Plaintiffs submit that given the complexity, duration and specialized knowledge required of counsel, a multiplier of 2.9 would be eminently reasonable. See, *Dillow v. Home Care Network, Inc.*, No. 2:16-cv-612, 2018 WL 4776977, at 7 (S.D. Ohio Oct. 3, 2018)(approving a fee award that was "approximately 2.9 times the lodestar" and noting that the multiplier "is well within the acceptable range of multipliers for a wage and hour action."). Also, *Feirtag v. DDP Holdings, LLC*, No. 2:14-cv-2643, 2016 WL 4721208 at 7 (S.D. Ohio Sept. 9, 2016)("Awards of common fund attorney fees in amounts two to three times greater than the lodestar have been found reasonable.") Finally, Plaintiffs direct the Court to *Lowther v. AK Steel Corp.*, No. 1:11-cv-

877, 2013 WL 6676131 at 5 (S.D. Ohio Dec. 21, 2012) (approving a "very acceptable 3.06 multiplier and citing cases finding multipliers ranging from 4.3 to 8.74 to be reasonable.")

Plaintiffs are mindful that the Settlement Fund will not be adequate to support a lodestar multiplier; however, the mere entitlement to a multiplier, if the Court so finds, amply illustrates the reasonableness of the fee request. Assuming the Court was inclined to award the "lodestar" plus a 2.9 multiplier, counsels' remuneration will be reduced to less than one third of the total fee which counsel would otherwise be entitled to. Moreover, the U.S. Supreme Court in *Perdue* states that the lodestar calculation "presumptively" yields a reasonable fees award. *Perdue vs. Kenny A.*, 559 U.S. 542 (2010). The Sixth Circuit has cautioned that downward adjustments should be used with care. *Waldo v. Consumers Energy Company*, 726 F.3d 802 (2013).

D. THE REQUIRED *RAMEY* FACTOR ANALYSIS SUPPORTS THE REASONABLENESS OF PLAINTIFFS' FEE REQUEST

In reviewing the reasonableness of the requested fee award, the Sixth Circuit requires District Courts to consider six factors known as the *Ramey* factors. *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188 at 1196 (1974).

1) The value of the benefit rendered to the Class;

   a) Plaintiffs have stated above , in detail, the benefits to Class Members and the public at large. Those benefits to Class Members consist of more than mere compensation for past infractions. Class Members and the health insured population of the State of Ohio will reap those benefits into the future. While it is difficult to place a dollar amount on the future benefit, it is considerable and literally invaluable.

2) Society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others.

   a) Plaintiffs have provided a comprehensive discussion of this factor in "*A*" above, "*LODESTAR ANALYSIS CONFIRMS THE REASONABLENESS OF THE REQUESTED AWARD.*" Unless attorneys are willing to prosecute statutory rights, such as O.R.C. §1751.60(A) et seq., despite *de minimis* monetary recoveries, the rights will lay dormant as though they were non-existent. Corporate defendants who routinely violate such statutes know full well that no individual alone has the financial capacity to enforce his or her rights. It is only when an attorney can rely on being fairly compensated that enforcement occurs. *Raymond* clearly illustrates such.

3) Whether the services were undertaken on a contingent basis.

   a) Yes, 100% so.

4) The value of the services on an hourly basis (the lodestar crosscheck).

   a) The time and effort expended by Plaintiffs' Counsel is reflected in the documented billing statements of counsel. That "lodestar" when accompanied by a multiplier, clearly demonstrates the significant value of the services rendered to the Class.

5) The complexity of the litigation.

   a) Throughout this Motion Plaintiffs have attempted to convey the extremely complex nature of this case. Many novel issues were addressed in regard to statutory construction, contract interpretation, state and federal precedent and multiple asserted defenses. Additionally, Plaintiffs were

required to assimilate, understand and react to the arcane universe of hospital billing, Medicaid and Medicare rules and regulations, and the highly complex field of revenue cycle management. Suffice it to say that the litigation was not only "complex" it was highly complex.

6) The professional skill and standing of counsel for both sides.

a) As for Plaintiffs' Counsel, the Court is referred to "*C*" above, "*COUNSELS' HOURLY RATES ARE REASONABLE.*" Plaintiffs' Counsel have had the privilege of appearing before the Court over many years. The Court is somewhat uniquely positioned to judge the quality of Plaintiffs' Counsel.

As for defense counsel, no law firms could have fought harder to protect the interests of their clients. Defense counsel did not yield an inch in defense of this case. Plaintiffs were required to fight on every issue that arose. Defense counsel were able to hold off any recovery by Plaintiffs for almost nine years; that bespeaks professional skill. Furthermore, the two law firms defending the case are highly regarded by the Federal and State Courts, as well as the Ohio Bar.

E. PLAINTIFFS REQUESTED EXPENSES ARE REASONABLE AND SHOULD BE GRANTED

The Settlement Agreement provides that Defendants' payment of $3,500,000.00 shall extinguish all Class claims, costs of administration, attorneys' fees and case expenses. Plaintiffs request the Court to award the submitted expenses, which, considering the duration and nature of this case, are extremely reasonable.

F. THE COURT SHOULD APPROVE THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARDS

The Settlement Agreement also provides, subject to Court approval, that each named Plaintiff will receive $25,000.00 as a Service Award solely for their time and effort associated with participation in the lawsuit. These awards are clearly justified. Plaintiffs Raymond and Strunk were always available for consultation with counsel. Both were subjected to lengthy depositions and vigorous cross examination. Both have remained steadfast through eight years of litigation. Clearly, this case could not have been brought to fruition without them. Accordingly, the Court should approve the requested Service Awards as commensurate with the Plaintiffs' roles in the case.

IV. CONCLUSION

Plaintiffs respectfully request that the Court grant Plaintiffs' request for an attorney fee award of $3,200,000.00, expense reimbursement of $27,037.96, and Service Awards to Class Representatives of $25,000.00 each.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed through the Court's CM/ECF filing system, which shall serve a copy of the document upon all registered counsel of record.

Respectfully Submitted,

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THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KEITH RAYMOND, et al.,	:	CASE NO. 1:15-CV-00559-MRB
Plaintiffs,	:	(Judge Michael R. Barrett)
v.	:	
AVECTUS HEALTHCARE SOLUTIONS, LLC, et al.	:	
Defendants.	:	

DECLARATION OF W. B. MARKOVITS

I, W. B. Markovits, declare as follows:

1. I received my Juris Doctorate degree from Harvard Law School in 1981 and have practiced complex civil litigation, including class action litigation, for over 40 years, with all but the first two of those years in Cincinnati, Ohio. I am a member in good standing with the Ohio Supreme Court and have never been the subject of any disciplinary proceedings.

2. I am a partner in the law firm of Markovits, Stock & DeMarco, LLC ("MSD") in Cincinnati, Ohio. I graduated from Harvard Law School in 1981, worked as an attorney with the Department of Justice in Washington, D.C. until 1983, and have practiced in Cincinnati, Ohio since that time.

3. My practice, and the practice of MSD, focuses on complex litigation, including federal and state class actions. For example, I was a lead counsel in *Williams v. Duke Energy*, Case No. 1:08-cv-0046, United States District Court, Southern District of Ohio – a case before this Court that resulted in a court-approved $80.875 million settlement in 2016. I am currently a lead counsel in the pending matter of *Ohio Public Employee Retirement Systems v. Federal Home Loan*

Mortgage ("Freddie Mac"), Case No. 4:08-cv-0160, United States District Court, Northern District of Ohio.

4. In connection with MSD's class action practice, I have submitted numerous fee requests in federal district courts in Ohio and elsewhere. I am very familiar with the criteria set forth by the 6th Circuit U.S. Court of Appeals for determining reasonable Class Action Fee Awards, and I am familiar with the prevailing market rates for fee awards in the Cincinnati, Ohio area.

5. I have reviewed the application for fees in the above-captioned case which, based upon my review, is a complex class action case that required eight years of effort in a contentious litigation defended by prominent Ohio law firms. As I understand it, Class Counsel achieved a result that will serve to protect the property interests of both class members and Ohio citizens as a whole.

6. The hourly rates requested by Class Counsel – up to $610 per hour - are less than some that have been awarded in this district, which include awards up to and exceeding $800 per hour. The rates are, in my opinion, reasonable given Class Counsel's expertise, longevity of practice, the complex nature of the litigation, and the difficulties they faced.

7. The rates sought also appear to be within the Rubin Committee Hourly Rates, frequently consulted by judges in the Southern District of Ohio, as demonstrated by the following chart:

ATTORNEY	YEARS OF PRACTICE	HOURLY RATE	RUBIN RATE
Gary F. Franke	38	$610	$616.16
C. David Ewing	43	$610	$616.16
Michael D. O'Neill	21	$600	$616.16
William M. Bristol	22	$600	$616.16

8. For the reasons set forth above, in my opinion the fee request is reasonable and should be granted.

I declare under the penalty of perjury under the laws of the State of Ohio that the foregoing is true and correct to the best of my knowledge.

Executed this 22nd day of January 2024 in Cincinnati, Ohio.

/s/ W.B. Markovits
W.B. Markovits, Esq.

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KEITH RAYMOND, et al.,	:	CASE NO. 1:15-CV-00559-MRB
Plaintiffs,	:	(Judge Michael R. Barrett)
v.	:	
AVECTUS HEALTHCARE SOLUTIONS, LLC, et al.	:	
Defendants.	:	

DECLARATION OF GARY F. FRANKE, ESQ. IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEY FEES, REIMBURSEMENT OF EXPENSES AND CLASS REPRESENTATIVE SETTLEMENT AWARD

I, Gary F. Franke, hereby state that the following is true and accurate and based on my personal knowledge:

1) I am the Managing Member of Gary F. Franke Co. LPA and am a member of Class Counsel representing Keith Raymond, Timothy Strunk and the preliminarily approved Class. I have personally participated in and have monitored the participation of other Class Counsel in the litigation of this matter from 2015 to the present. The contents of this Declaration are based upon my own personal knowledge, my prior experience in handling Class Actions and the history of this litigation.

2) As appointed Lead Class Counsel, my firm has been centrally involved in all aspects of this litigation from the initial investigation to the present. My co-lead counsel, C. David Ewing and Michael D. O'Neill, and I have been the primary points of contact for Plaintiffs.

3) Under the proposed Settlement Agreement and Release, (Doc. 234-1), Class Counsel may seek an award of reasonable attorney fees, reimbursement of case expenses and Class Representative Service Awards from the capped settlement fund of $3,500,000.00.

4) Class Counsel have undertaken this case on a contingency fee basis and have not received any payment for their work in this case to date and have not been reimbursed for any of their litigation expenses.

5) Courts within the Sixth Circuit routinely award attorneys' fees in class action settlements based upon "the prevailing market rates in the relevant community." *Blum v. Stenson*, 465 U.S. 886, 895 (1984). Judges in the Southern District of Ohio often refer to the Rubin Committee rates and apply a 4% annual cost-of-living allowance to measure their reasonableness. *Planned Parenthood Sw. Ohio Region v. Ohio Dep't of Health*, No. 1:21-cv-00189 (S.D. Ohio Apr. 8, 2021) (Doc. 22)[16]; *Ball v. Kasich*, No. 2:16-cv-282, 2020 WL 3050241, at *2 (S.D. Ohio June 8, 2020); *Doe v. Ohio*, No. 2:91-cv-00464, 2020 WL 728276, at *10 (S.D. Ohio Feb. 12, 2020); *Gibson v. Forest Hills School Dist. Bd. of Educ.*, No. 1:11-cv-329, 2014 WL 3530708, at *6 (S.D. Ohio July 15, 2014); *Hunter v. Hamilton Cty. Bd. of Elections*, No. 1:10-cv-820, 2013 WL 5467751, at *17 (S.D. Ohio Sept. 30, 2013); *Georgia-Pacific LLC v. Am. Int'l Specialty Lines Ins. Co.*, 278 F.R.D. 187, 192 (S.D. Ohio 2010) (citing *West v. AK Steel Corp. Retirement Accumulation Pension Plan*, 657 F. Supp. 2d 914, 932 n.4 (S.D. Ohio 2009)). The Rubin Committee rates are "a list of pre-calculated

billing rates tiered by years of experience" to determine a reasonable rate for the area. *Linneman*, 970 F.3d at 630.

6) Class Counsel have a combined One Hundred and Twenty Four (124) years of experience. I have Thirty Eight (38) years of experience. C. David Ewing has Forty Three (43) years of experience. Michael D. O'Neill has Twenty One (21) years of experience. Class Counsel have been appointed as Lead Class Counsel by Ohio State Judges (Judge Kessler, Montgomery Co., *In Re: Miamisburg Derailment*) (Judge Ruehlman, Hamilton Co., *J.P. Morgan Robo Signing*) (Judge Sage, Butler Co., *Purdue Pharma – Oxycontin*). Likewise counsel has been appointed Lead Counsel in Federal Class Actions (Judge Walter Rice, S.D Ohio, *In Re: Cordis Pacemakers – National Class*) (Judge Barrett, S.D. Ohio, *Jackson v. PRI*) (Judge Barrett, S.D. Ohio, *Raymond v. Avectus*). Counsel has also been appointed to serve on the Executive Committee Member in a National Class Action (Judge Berman, S.D.N.Y., *In Re: UPS Package Insurance*). Counsel has litigated Federal MDL actions including, *Vioxx*, *Prempro*, *Valsartan, Stryker, Biomet, Zantac, 3-M Earplugs* and *Roundup*. Counsel has represented the Central States Teamsters Health and Welfare Pension Fund to recover money paid by the Teamsters for pharmaceuticals. Counsel have extensive experience in highly complex litigation outside the Class Action arena. Counsel litigated the largest residential fire loss case known in Ohio (*Decker v. Chubb*), a case which this Court actually mediated successfully. Finally, in addition to decades of medical litigation, counsel has served multiple Ohio Attorneys General to pursue recovery of money expended by the State of

Ohio for pharmaceuticals. Counsel, on the AG's behalf, litigated cases involving Abbot, Merck, Medco, DePuy, Lilly, etc. Moreover, the degree of skill attained by virtue of all of the litigation above was essential to the successful pursuit of this case.

7) My calculated billable hourly rate of $610.00 is based upon the Rubin Committee rates and the prevailing market rates of Cincinnati, Ohio. A detailed itemization of my billable hours is complete and will be made available for *in camera* review.

8) C. David Ewing's calculated billable hourly rate of $610.00 is in accordance with the Rubin Committee rates and the prevailing market rates of Cincinnati, Ohio. A detailed itemization of Mr. Ewing's billable hours is complete and will be made available for *in camera* review.

9) Michael D. O'Neill's calculated billable hourly rate of $600.00 is in accordance with the Rubin Committee rates and the prevailing market rates of Cincinnati, Ohio. A detailed itemization of Mr. O'Neill's billable hours is complete and will be made available for *in camera* review.

10) William M. Bristol is an attorney in my firm and has Twenty Two (22) years of experience. Mr. Bristol performed work on this matter, including highly technical computer analysis during discovery that related to identification of class members and damages. Mr. Bristol's calculated billable hourly rate of $600.00 is in accordance with the Rubin Committee rates and the prevailing market rates of Cincinnati, Ohio. A detailed itemization of Mr. Bristol's billable hours is complete and will be made available for *in camera* review.

11) Class Counsel have spent significant time and expenses pursuing this matter on behalf of the Class. From 2015 to roughly the present, Class Counsel have spent roughly 6,009.55 hours for a lodestar of $3,640,768.00, and incurred expenses of $27,037.96 directly related to this litigation. A summary of Class Counsel's time and hourly billable rates is attached as Exhibit 1. An itemization of Class Counsel's expenses is attached hereto as Exhibit 2.

12) Class Counsel was cognizant that any expenses would be reimbursed from any settlement or verdict (or not at all) and sought to minimize expenses wherever possible. Accordingly, Class Counsel's expenses of $27,037.96 are entirely reasonable and warrant reimbursement.

13) Class Counsel will continue to expend substantial additional time and minimal expense continuing to protect the Class interests through the Final Approval Hearing and throughout settlement administration. Class Counsel will not seek reimbursement of any additional expenses above and beyond the $27,037.96. Class Counsel hold the informed opinion that the fee request of $3,200.000.00 and expenses of $27,037.96 are reasonable and justified in this case; the same being presumed reasonable given that the request is for considerably less than Counsel's Lodestar. Parenthetically, Counsel is making no claim for ancillary staff, including hundreds of hours of paralegal time.

14) The Lead Plaintiffs were continuously engaged in this litigation. They reviewed and approved the settlement demand, settlement offers and ultimate Settlement Agreement. They spent substantial time and effort protecting the interests of the Class. Plaintiffs Raymond and Strunk were always available for consultation with

counsel. Both were subjected to lengthy and difficult cross-examinations in their depositions. Both have remained steadfast through eight years of litigation. Clearly, this case could not have been brought to fruition without them. Accordingly, the $25,000.00 Service Award to each Class Representative is reasonable given those efforts on behalf of the Class in this matter. Furthermore, Class Representative Service Awards of $25,000.00 are commonly approved as reasonable within this District. *See Jackson vs. Professional Radiology,* (Judge Barrett, S.D. Ohio)

I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

/ s / Gary F. Franke
Date: January 22, 2024

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served upon counsel of record via the Court's CM/ECF System.

/ s / Gary F. Franke
Gary F. Franke
Attorney at Law

RAYMOND ET AL. V. AVECTUS HEALTHCARE SOLUTIONS ET AL.
CASE NO. 1:15-CV-00559-MRB

ATTORNEY	EXPERIENCE	HOURS	HOURLY RATE	FEES
GARY F. FRANKE	38	1691.8	610	$ 1,031,998.00
C. DAVID EWING	43	1812	610	$ 1,105,320.00
MICHAEL D. O'NEILL	21	2308.75	600	$ 1,385,250.00
WILLIAM M. BRISTOL	22	197	600	$ 118,200.00
			TOTAL FEES	**$ 3,640,768.00**

GARY F. FRANKE CO., L.P.A.

EXPENSES FOR AVECTUS/MERCY CLASS ACTION CASE

Summary of Total Expenses

Travel to Louisville, KY	$	3,388.00
Travel to Orange Cty, CA	$	1,007.86
Travel to Dayton, OH	$	62.91
Travel to Corinth, MS	$	1,749.91
Travel to Mason, OH	$	66.72
Travel to Columbus, OH	$	483.64
Travel to Cincinnati, OH	$	1,487.00
Travel to Atlanta, GA	$	1,115.16
Depositions	$	7,911.65
General Office Expenses	$	9,765.11
Total:	**$**	**27,037.96**

GARY F. FRANKE CO., L.P.A.
EXPENSES FOR AVECTUS/MERCY CLASS ACTION CASE

Travel to Louisville, Kentucky

Date	Mileage	Amount
06/15/17	200x53.5¢	$ 107.00
07/28/17	200x53.5¢	$ 107.00
10/11/17	200x53.5¢	$ 107.00
02/02/18	200x54.5¢	$ 109.00
03/14/18	200x54.5¢	$ 109.00
04/12/18	200x54.5¢	$ 109.00
08/28/18	200x54.5¢	$ 109.00
10/29/18	200x54.5¢	$ 109.00
11/28/18	200x54.5¢	$ 109.00
02/22/19	200x58¢	$ 116.00
04/01/20	200x57.5¢	$ 115.00
04/15/20	200x57.5¢	$ 115.00
01/18/21	200x56¢	$ 112.00
02/03/21	200x56¢	$ 112.00
03/24/21	200x56¢	$ 112.00
04/27/21	200x56¢	$ 112.00
09/08/21	200x56¢	$ 112.00
02/24/21	200x56¢	$ 112.00
04/06/22	200x58.5¢	$ 117.00
04/28/22	200x58.5¢	$ 117.00
10/12/22	200x62.5¢	$ 125.00
10/25/22	200x62.5¢	$ 125.00
12/28/22	200x62.5¢	$ 125.00
01/30/23	200x65.5¢	$ 131.00
02/02/23	200x65.5¢	$ 131.00
04/20/23	200x65.5¢	$ 131.00
05/04/23	200x65.5¢	$ 131.00
08/29/23	200x65.5¢	$ 131.00
12/28/23	200x65.5¢	$ 131.00
Misc. Travel		$ 41.03
Total:		**$ 3,429.03**

Travel to Orange County, California

Date	Expense	Amount
09/12/18	Airfare	$ 803.20
	Parking	$ 25.00
	Food	$ 179.66
Total:		**$ 1,007.86**

Travel to Dayton, Ohio

Date	Mileage	Amount
10/30/15	109.4	$ 62.91
Total:		**$ 62.91**

Travel to Corinth, Mississippi

Date	Expense	Amount
6/18-6/19/18	Hotel	$ 267.16
	Mileage	$ 479.60
	Food	$ 73.83
07/13-07/14/22	Hotel	$ 379.32
	Mileage	$ 550.00
Total:		**$ 1,749.91**

Travel to Columbus, Ohio

Date	Mileage	Amount
12/08/17	214x53.5¢	$ 114.49
05/10/19	214x58¢	$ 124.12
02/08/21	214x56¢	$ 119.84
04/08/22	214x58.5¢	$ 125.19
Total:		**$ 483.64**

Travel to Atlanta, Georgia

Date	Expense	Amount
06/29-06/30/22	Hotel	$ 397.64
	Food	$ 146.56
	Mileage	$ 570.96
Total:		**$ 1,115.16**

Travel to Mason, Ohio

Date	Mileage	Amount
06/08/18	40.8x54.5¢	$ 22.24
09/16/18	40.8x54.5¢	$ 22.24
10/05/18	40.8x54.5¢	$ 22.24
Total:		**$ 66.72**

GARY F. FRANKE CO., L.P.A.
EXPENSES FOR AVECTUS/MERCY CLASS ACTION CASE

Travel to Cincinnati, Ohio

Date	Mileage	Amount
01/20/16	200x54¢	$ 108.00
04/27/17	200x53.5¢	$ 107.00
06/08/18	200x54.5¢	$ 109.00
06/21/18	200x54.5¢	$ 109.00
06/22/18	200x54.5¢	$ 109.00
09/26/18	200x54.5¢	$ 109.00
10/04/18	200x54.5¢	$ 109.00
02/26/19	200x58¢	$ 116.00
07/15/20	200x57.5¢	$ 115.00
11/12/20	200x57.5¢	$ 115.00
08/12/22	200x62.5¢	$ 125.00
10/13/22	200x62.5¢	$ 125.00
05/11/23	200x65.5¢	$ 131.00
Total:		**$ 1,487.00**

Depositons

Date	Person Deposed	Amount
06/08/18	E. Patrick Flynn	$ 1,465.45
06/09/18	Austin Gray	$ 1,168.90
06/21/18	Timothy Strunk	$ 545.15
06/22/18	Keith Raymond	$ 950.45
09/26/18	Richard L. Schuster	$ 600.50
10/04/18	David Hitzel	$ 901.25
10/24/18	Michelle Napier	$ 236.60
07/24/22	Brandi Williams	$ 648.80
08/30/22	James Statzer	$ 576.20
10/13/22	William Leichman	$ 818.35
Total Deposition Charges:		**$ 7,911.65**

General Office Expenses

Transcript Charges	$ 34.20
Salix Charges	$ 1,678.39
Copy Charges (36,542 copies)	$ 7,308.40
Pacer Research Charges	$ 488.40
Office Suppy Charges	$ 255.72
Total Office Expenses:	**$ 9,765.11**