

**IN THE CIRCUIT COURT FOR DAVIDSON COUNTY  
STATE OF TENNESSEE, TWENTIETH JUDICIAL DISTRICT**

KAREN LYTLE, individually and on behalf of	)	
all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	Class Action
v.	)	
	)	Case No. 23C1987
REVANCE THERAPEUTICS, INC.,	)	
	)	
Defendant.	)	
	)	
	)	

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’ UNOPPOSED  
MOTION FOR FINAL APPROVAL**

Plaintiffs Karen Lytle and Cameron Crisler (Plaintiffs or “Class Representatives”) respectfully move the Court for an order granting final approval to the Class Settlement, affirming the appointment of Class Counsel, affirming the appointment of Class Representatives, and affirming the certification of the Class for the purposes of the Class Settlement.

**I. Background**

This matter arises out of a cyberattack on Defendant Revance Therapeutics’ (“Defendant” or “Revance”) information systems between March 15, 2023, and April 10, 2023 (“Data Incident”). According to Defendant’s notification letters, the Data Incident included Plaintiffs’ and the putative Class Members’ PII and PHI, including Social Security numbers and health or health insurance information. Compl. ¶ 44. Karen Lytle brought this action on August 15, 2023, alleging that her injuries occurred because of Defendant’s alleged failure to implement reasonable, industry standard cybersecurity standards. Around the same time, Plaintiff Cameron Crisler filed a proposed class action in the Davidson County Chancery, case number 23-1146-II, alleging the same. Together, Plaintiffs asserted claims for negligence, negligence per se, breach of implied

contract, unjust enrichment, and invasion of privacy. Settlement Agreement, § I.

Though Defendant denies liability, the Parties agreed to pursue early resolution.

## **II. The Settlement Class**

Pursuant to the Settlement Agreement, the Settlement Class is defined as: “All persons who were sent written notification by Revance that their PII was potentially compromised as a result of the unauthorized access to Revance’s network that Revance discovered on or about April 27, 2023.” Settlement Agreement, ¶¶ IV, 1.24, 2.7. Excluded from the Settlement Class are: “(i) Revance, the Related Entities, and their officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) any judges assigned to this case and their staff and family; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads nolo contendere to any such charge.” *Id.* ¶ IV, 1.24.

## **III. Benefits of the Settlement**

The Settlement provides generous benefits that participating Class Members may apply for, including reimbursement for out-of-pocket expenses, reimbursement for lost time, additional credit monitoring and identity theft protection services, and improvement to Defendant’s information security posture.

Class Members may seek reimbursement for documented out-of-pocket expenses that were incurred because of the Data Breach. Settlement Agreement, ¶ IV 2.1.1–2.1.2. For ordinary expenses (e.g., unreimbursed bank fees, phone charges, postage and travel costs, etc.), participating Class Members are eligible to apply for reimbursement of all such expenses up to \$1,000 per Class Member. Settlement Agreement, ¶ IV 2.1.1(a). For extraordinary expenses (e.g., expenses from documented monetary losses incurred because of the Data Incident), Class

Members may seek reimbursement up to \$2,500. Settlement Agreement, ¶ IV 2.1.2. Participating Class Members may also seek reimbursement for the lost time they spend responding to the Data Incident up to three hours at twenty-five dollars per hour, subject to the \$1,000 cap on ordinary expenses. Settlement Agreement, ¶ IV 2.1.1(b). Moreover, to empower Class Members to combat the threat of future identity theft and fraud, Class Members may sign up for one year of credit monitoring from all three credit bureaus, with an additional \$1,000,000 in identity theft insurance. Settlement Agreement, ¶ IV 2.3. Finally, Defendant has also agreed to implement various cybersecurity improvements to its information systems, which will help prevent similar such data incidents from recurring. Settlement Agreement, ¶ IV 2.4.

#### **IV. The Court Should Affirm its Appointment of Class Representatives**

The Parties' Settlement Agreement provides for the appointment of Plaintiffs Karen Lytle and Cameron Crisler as Class Representatives. Settlement Agreement, ¶ IV 1.17. The Court then provisionally appointed them as Class Representatives in its order granting preliminary approval. Moreover, Plaintiffs have served the Class admirably. They have vigorously prosecuted this matter, they have provided documents and other evidence, reviewed filings, and have otherwise been available to Counsel whenever needed. Decl. of J. Gerard Stranch, IV, ¶ 10. Thus, the Court should affirm its appointment of Plaintiffs as Class Representatives.

#### **V. The Court Should Affirm its Appointment of Class Counsel**

The Parties' Settlement Agreement provides for the appointment of J. Gerard Stranch, IV of Stranch, Jennings & Garvey, PLLC as Class Counsel. Settlement Agreement, ¶ IV 1.19. The Court then provisionally appointed the same as Class Counsel in its order granting preliminary approval. Indeed, Class Counsel has dedicated significant time and resources to this matter, has negotiated a settlement on behalf of the Class, and has substantial experience in data breach class

action litigation. Decl. of J. Gerard Stranch, IV, ¶¶ 2–4. Thus, the Court should affirm its appointment of J. Gerard Stranch, IV of Stranch, Jennings & Garvey, PLLC as Class Counsel.

#### **VI. The Court Should Affirm Class Certification for the Purpose of Settlement**

In the Court's order granting preliminary approval, the Court conditionally held that the Class met the requirements of Tennessee Rule of Civil Procedure 23.01. The Court should now affirm its certification of the Class for the purposes of settlement. Tennessee Rule of Civil Procedure 23.01 provides the prerequisites for certification as a class:

One or more members of a class may sue or be sued as representative parties on behalf of all only if: (1) the class is so numerous that joinder of all members is impractical; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Tenn. R. Civ. P. 23.01. All these requirements are met here.

Here, the putative class here is made up of 2,636 individuals, which undoubtedly meets the requirement that the class be so numerous that joinder is impractical. Decl. of Naira Karina M. Delli-Bovi, ¶¶ 4–5. “There is no specific number below which class action relief is automatically precluded. Impracticability of joinder is not determined according to a strict numerical test but upon the circumstances surrounding the case.” *Senter v. Gen. Motors Corp.*, 532 F.2d 511, 523 n.24 (6th Cir. 1976); *see also In re Am. Med. Sys. Inc.*, 75 F.3d 1069, 1076 (6th Cir. 1996) (“[T]he Sixth Circuit has previously held that a class of 35 was sufficient to meet the numerosity requirement” (internal quotation marks omitted)). “Generally, the numerosity requirement is fulfilled when the number of class members exceeds forty.” *Isabel v. Velsicol Chem. Corp.*, No. 04-2297 DV, 2006 WL 1745053, at \*4 (W.D. Tenn. June 20, 2006).

Moreover, Plaintiffs' claims present common questions of law and fact and are typical of the class. This is because Plaintiffs' Claims, as well as those of the putative Class Members, arise

under the same data breach on the same defendant's information systems. Moreover, all such claims ask the same question: whether Defendant violated its obligations to implement reasonable, industry standard cybersecurity safeguards and whether that alleged failure proximately caused Plaintiffs' and Class Members' injuries. Thus, common questions of law and fact exist in Plaintiffs' claims, which are typical of the Class. *Freeman v. Blue Ridge Papers Prods., Inc.*, 229 S.W.3d 694, 704 (Tenn. Ct. App. 2007) (holding that the requirement is met when the allegations challenge the same course of conduct and raise the same legal issue).

Lastly, Plaintiffs adequately represent the Class because they have no adverse interests, have represented the Class well, and have vigorously prosecuted their Claims on behalf of the Class. *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 543 (6th Cir. 2012). All these requirements are met here. Decl. of J. Gerard Stranch, IV, ¶¶ 8, 10. Because Plaintiffs have proven themselves adequate representatives of the Class and there are no conflicts of interest, the adequacy requirement is met.

Thus, the Court should affirm its conditional certification of the Class for the purpose of the Class Settlement.

## **VII. The Court Should Grant Final Approval to the Class Settlement**

The Court should grant final approval to the Class Settlement as fair, reasonable, and adequate because the Settlement provides Class Members with access to remedy their risk of future harm associated with the subject Data Breach.

Rule 23.05 requires Court approval for any settlement of a class action. Tenn. R. Civ. P. 23.05. In determining whether the Settlement should be approved, the Court should determine whether it is fair, reasonable, adequate, and in compliance with due process, bearing in mind that Tennessee law favors settlement. *In re Pacer Int'l, Inc.*, No. M2015-00356-COA-R3-CV, 2017

WL 2829856, at \* 6–7 (Tenn. Ct. App. June 30, 2017). Though the Tennessee Rules of Procedure do not provide any specific legal standard to guide the Court’s determination, the courts have directed trial judges to several factors that should be considered, including risk and reward of continuing the litigation, the range of possible outcomes, and whether class counsel’s fees are proportional to the benefits of the settlement. *Id.* at \*5. The most important consideration is the strength of the plaintiffs’ case on the merits weighed against the benefits of the settlement. *Id.* Moreover, although Tennessee’s version of Rule 23 is “markedly different” than its federal counterpart and Tennessee law controls, courts may consider federal law as persuasive authority. *Id.* at \*6. Thus, the Court may also consider some additional factors commonly considered by Sixth Circuit federal courts, including (1) the risk of collusion; (2) the complexity, expense, and duration of the litigation; (3) the amount of discovery engaged in by the parties, (4) the reaction of class members; (5) the opinion of counsel; and (6) any public interest considerations. *Does 1–2 v. Déjà vu Servs., Inc.*, 925 F.3d 886, 894–95 (6th Cir. 2019).

*Risk and Reward of Continued Litigation*

Although Plaintiffs and Class Counsel strongly believe in the merits of this action, they recognize the inherent risk and delays associated with prolonged litigation. Decl. of J. Gerard Stranch, IV, ¶ 11. Data breach class action litigation is inherently complex and risky because of the technical nature of the claims and defenses and because of the inconsistency of court decisions. Thus, the nature of data breach class actions weighs strongly in favor of settlement notwithstanding Plaintiffs’ opinion that the case is strong. *In re Wawa, Inc. Data Sec. Litig.*, No. 19-6019, 2024 WL 1557366, at \*20 (E.D. Pa. April 9, 2024) (“Data breach litigation is inherently complex.”); *Beasley v. TTEC Servs. Corp.*, Nos. 22-cv-97 & 22-cv-347, 2024 WL 710411, at \*5 (D. Colo. Feb. 21, 2024) (“Given the uncertainty of class members’ likelihood of success on the merits and the

prospects of prolonged litigation, the Court finds that immediate recovery outweighs the time and costs inherent in complex data breach litigation.”).

Moreover, Plaintiffs understand that continued litigation means that Class Members would have to wait years before they saw any benefits from this action, including through trial and probable appeals. Class Counsel believes the best outcome is for Plaintiffs and Class Members to receive access to the Settlement Benefits now, including credit monitoring, so that they can protect themselves from further identity theft without further delay. Decl. of J. Gerard Stranch, IV, ¶ 11. This factor weighs in favor of final approval.

*Proportionality of Class Counsel’s Fees in Relation to the Benefits Achieved*

As noted in the Court’s order granting Plaintiffs’ Motion for Fees, Class Counsel’s fee request is only 4.66% of the benefits made available to Class Members. Order Granting Fees, at 3. The benefits here are in the form of credit monitoring services, reimbursement for expenses, and reimbursement for lost time, as well as improvements to Defendant’s cybersecurity program that are designed to prevent future harm that Plaintiffs and Class Members allege they are at significant risk of facing because of Defendant’s Data Breach. All Class Members are equally eligible to sign up for these benefits to further protect themselves. Decl. of J. Gerard Stranch, IV, ¶ 5. This factor weighs in favor of final approval.

*Risk of Collusion*

The settlement negotiations here were hard fought, and no one has presented any evidence of collusion or alleged any such collusion to Class Counsel’s knowledge. Decl. of J. Gerard Stranch, IV, ¶ 8. This factor weighs in favor of final approval.

*The Complexity, Expense, and Duration of Litigation*

This factor is mostly subsumed under the first factor, but nevertheless weighs in favor of

final approval. As noted above, data breach litigation is significantly complex. These matters require expensive expert testimony from damages and liability experts that often charge around \$600 per hour. Decl. of J. Gerard Stranch, IV, ¶ 12. Moreover, the questions presented are not well-suited for summary judgment disposition, so a trial would be likely. *Id.* ¶ 13. And if Plaintiffs prevail, Defendant will almost certainly appeal, further delaying Class Members' access to relief. Thus, Class Counsel believes an early resolution in this case is far superior.

*Amount of Discovery Engaged In*

Plaintiffs' Counsel in this case negotiated a settlement of this matter so that Plaintiffs and Class Members have access to benefits now, including credit monitoring and identity theft protection services and various reimbursements, instead of having to wait for prolonged litigation to unfold, which could take years. Although the Parties exchanged informal discovery necessary to be informed in negotiations, the early resolution mitigated the need for the time and expense of extensive discovery proceedings. Although the discovery was thus limited, the value to Class Members in obtaining protections now rather than waiting years weighs in favor of final approval of the settlement. Decl. of J. Gerard Stranch, ¶ 11.

*The Reaction of the Class*

The reaction of the Class has been overwhelmingly positive, which weighs strongly in favor of final approval. No Class Members have objected to the Settlement, and only one Class Member has requested to be excluded. Decl. of Naira Karina M. Delli-Bovi, ¶¶ 15–18; *Fusion Elite All Stars v. Varsity Brands, LLC*, No. 2:20-cv-02600, 2023 WL 6466398, at \*5 (W.D. Tenn. Oct. 4, 2023) (holding that the reaction of the class weighed in favor of final approval because no class member objected and only one opted out).



The Opinion of Counsel

The opinion of competent counsel also weighs in favor of final approval. Class Counsel is deeply experienced in these matters and has negotiated data breach settlements across the country. Decl. of J. Gerard Stranch, IV, ¶ 4. Due to the nature of the harm alleged in this case, Class Counsel believes that access to reimbursement for Class Members' expenses and time, as well as credit monitoring and identity theft protection, is exactly the type of benefits that Class Members need in this case because they provide a remedy for money and time already lost while providing Class Members with the means to reasonably protect themselves from the threat of future harm. *Id.* ¶¶ 5, 11; *Leonhardt v. ArvinMeritor, Inc.*, 581 F. Supp. 2d 818, 837 (E.D. Mich. 2008) (holding that the opinion of class counsel in final approval proceedings "is entitled to significant weight"); *Fusion Elite*, 2023 WL 64466398, at \*5.

Public Interest

Public interest considerations further weigh in favor of granting final approval to the Settlement. The Class Settlement here provides participating Class Members with the means to protect themselves against the increased risk of future identity theft and fraud inherent in having their personally identifiable information fall into the hands of cybercriminals as well as reimbursement for the time and expenses already incurred. The public is best served by empowering Class Members to so defend themselves and by providing them the means to be reimbursed for their existing losses. Moreover, a strong public interest exists "in encouraging settlement of complex litigation and class action suits because they are 'notoriously difficult and unpredictable' and settlement conserves judicial resources." *In re Family Dollar Stores, Inc. Pest Infestation Litig.*, No. No. 2:22-md-03032, 2023 WL 7112838, at \*12–13 (W.D. Tenn. Oct. 27, 2023) (quoting *Does 1–2*, 925 F.3d at 899). This factor thus further weighs in favor of final

approval.

Because the relevant factors all weigh in favor of final approval, the Court should grant Plaintiffs' motion and finally approval the Settlement as fair, reasonable, and adequate.

### **VIII. The Notice Program Afforded Absent Class Members Ample Due Process**

In the Court's order granting preliminary approval, the Court ordered the Settlement Administrator to provide notice to Class Members pursuant to the Court's order and the Parties' Settlement Agreement. The Settlement Administrator has now performed its assigned tasks and noticed the Class. Decl. of Naira Karina M. Delli-Bovi, ¶¶ 6–14.

Pursuant to its assigned duties, the Settlement Administrator received a class list from Defendant and provided notice to those individuals. *Id.* ¶ 4–7. Notice was given via postcard, which was mailed to them through USPS First-Class Mail. *Id.* at 6. The Settlement Administrator then tracked undeliverable responses, attempted to identify updated addresses through advanced research, and then mailed postcards to the new addresses learned. *Id.* ¶ 7. For Class Members for whom Defendant had email addresses, the Settlement Administrator sent the postcard to that email address. *Id.* ¶ 8. Through these methods, the Settlement Administrator reached 98.4% of the Class. *Id.* ¶ 10.

Moreover, the Settlement Administrator established a website wherein Class Members could file claims and download copies of all important documents, including the notices, the Settlement Agreement, and a claim form. The Settlement Website also provided Class Members with all important dates, including the deadlines to object or opt-out and the date of the Final Approval Hearing. Moreover, the Settlement Website provided Class Members with important details, which included information on how Class Members could object or opt-out.<sup>1</sup> *Id.* ¶ 11–12.

---

<sup>1</sup> The website is available at <https://www.revancesettlement.com>.

Furthermore, the Settlement Administrator established a toll-free information line that Class Members could use to gain additional information twenty-four hours a day. *Id.* ¶ 13.

Thus, the Court should further grant final approval to the Settlement because the Notice program supplied absent Class Members with sufficient due process.

### **IX. Conclusion**

For the foregoing reasons, the Court should grant Plaintiffs' motion and enter an order affirming its appointment of Class Counsel and Class Representatives, affirming certification of the Class for the purposes of settlement, and granting final approval to the Class Settlement as fair, reasonable, and adequate and because it affords Class Members the appropriate due process.

Dated: October 10, 2024

Respectfully submitted,

/s/ Grayson Wells

J. Gerard Stranch, IV (BPR 23045)  
Grayson Wells (BPR 039658)  
**STRANCH, JENNINGS & GARVEY, PLLC**  
223 Rosa L. Parks Avenue, Suite 200  
Nashville, TN 37203  
Tel: 615-254-8801  
gstranch@stranchlaw.com  
gwells@stranchlaw.com

Samuel J. Strauss  
Raina Borrelli  
**STRAUSS BORRELLI PLLC**  
One Magnificent Mile  
980 N. Michigan Avenue, Suite 1610  
Chicago, IL 60611  
Tel: (872) 263-1100  
sam@straussborrelli.com  
raina@straussborrelli.com

*Attorneys for Plaintiffs and the Class*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10th day of October 2024, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system and/or U.S. Mail to:

Kathryn H. Walker (#020794)  
Taylor M. Sample (#034430)  
**BASS, BERRY & SIMS PLC**  
150 Third Avenue South, Suite 2800  
Nashville, TN 37201  
Tel: (615) 742-6200  
kwalker@bassberry.com  
taylor.sample@bassberry.com

Casie D. Collignon  
**BAKER & HOSTETLER LLP**  
1801 California Street, Suite 4400  
Denver, CO 80202  
Tel: (303) 861-0600  
ccollignon@bakerlaw.com

*Attorneys for Defendant*

/s/ Grayson Wells  
Grayson Wells