

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

IN RE: MOVEIT CUSTOMER DATA
SECURITY BREACH LITIGATION

This Document Relates To:

All Cases

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MDL No. 1:23-md-03083-ADB-PGL

MDL Order No. 11

**(Regarding the Efficient and Cost-Effective Management for Plaintiffs’ Staffing,
Timekeeping, Costs, and Compensation)**

I. SCOPE OF ORDER

This Order is entered to provide standards and procedures governing the efficient and cost-effective management for Plaintiffs’ staffing, timekeeping, costs and compensation for attorneys acting for plaintiffs (“Plaintiffs’ Counsel”). These guidelines may not be exhaustive, and the Court may issue additional procedures, limitations, and guidelines in the future, if appropriate.

This Order applies to all cases now pending in MDL 3083 as well as to any cases later filed in, transferred to, or removed to this Court and included as part of MDL 3083, and to all Plaintiffs’ Counsel as further described herein. The following protocols must be utilized by any Plaintiffs’ Counsel seeking fees and/or expense reimbursement.

II. GENERAL STANDARDS

A. All submitted time must be incurred only for work either (1) performed by an attorney appointed to a leadership position in MDL Order No. 8, or their firm, in carrying out their court-appointed duties or (2) authorized in advance, and in writing, by one of the five (5) appointed

Lead Counsel. Any time not authorized in advance, and in writing, by one of the five (5) Lead Counsel may not be eligible for consideration of a common benefit fee award or reimbursement pursuant to this Order.

B. All submitted expenses must (1) comply with the parameters below, (2) be adequately documented, and (3) if the expense is in excess of \$2,000, be approved in advance by one of the five (5) Lead Counsel.

C. These Time and Expense Protocols are intended for all activities performed and expenses incurred by Plaintiffs' Counsel that relate to matters common to all of the claimants in MDL 3083, including *inter alia* pre-trial matters, discovery, trial preparation, potential settlement process, obtaining and interfacing with class representatives and representing them in connection with the putative class actions, vetting and interfacing with potential plaintiffs for consolidated complaints, and all other work that advances this litigation to conclusion. Any Plaintiffs' Counsel who may, at a later date, seek reimbursement or compensation for time and expenses shall comply with these guidelines, and their submissions shall be in accordance with this Order.

D. This Order applies to all Plaintiffs' Counsel. Plaintiffs' Counsel includes the following: (1) all attorneys appointed by this Court to leadership positions in MDL Order No. 8; and (2) all attorneys with a fee interest in any cases pending, later filed in, transferred to, or removed to this Court as part of MDL 3083 who may later seek reimbursement of fees or expenses.

E. **Retention of Accountant and Electronic Platform Vendor.** The Time, Fee and Expense Counsel will, with assistance from Liaison and Coordinating Counsel, solicit requests for proposals and, with input from Lead Counsel, retain an Accountant, either a Certified Public Accountant or other qualified accountant, to provide accounting services regarding time and expense submissions. The scope of those services will be set out separately in an agreement approved by the Time, Fee and Expense Counsel and Lead Counsel. Generally, the accountant will

assist the Time, Fee and Expense Counsel in compiling submissions, making submissions accessible to the Time, Fee and Expense Counsel, Lead Counsel, and by creating reports. Similarly, The Time, Fee and Expense Counsel will, with assistance from Liaison and Coordinating Counsel, solicit requests for proposals and, with input from Lead Counsel, retain a vendor to host an electronic platform for the submission, recording, and evaluation of time and expense recording. The scope of those services will be set out separately in an agreement approved by the Time, Fee and Expense Counsel and Lead Counsel. Generally, the platform will assist the Time, Fee and Expense Counsel in compiling submissions, making submissions accessible to the Time, Fee and Expense Counsel, Lead Counsel, Liaison and Coordinating Counsel and this Court.

F. **Quarterly Report to the Court.** On a quarterly basis, the Time, Fee and Expense Counsel shall provide to the Court, for *in camera* review, summary reports detailing the expenditures of Shared and Held Costs and the total time and expenses approved by the Time, Fee and Expense Counsel for each firm for the previous quarter, and other information as the Court may direct, and report any concerns regarding the same to the Court. This provision may take place more frequently, as needed. Such reports will include information related to both time and expenses and will summarize, with back-up detail, the submissions of all firms that have been accepted by the Time, Fee and Expense Counsel, as requested by the Time, Fee and Expense Counsel. The reports may also include time rejected by the Time, Fee and Expense Counsel for noncompliance with this Order or which otherwise appear not to be reasonable.

G. **Monthly Review of Submitted Time and Expenses.** The Time, Fee and Expense Counsel shall review all time and expenses submitted, on a monthly basis. Lead Counsel shall ensure that Time, Fee and Expense Counsel is apprised of the general status of the litigation and

has been reasonably informed by Lead Counsel as to what work is ongoing and has been authorized by Lead Counsel. Time, Fee and Expense Counsel shall also determine if the entries and expenses are in compliance with the terms below. Time, Fee and Expense Counsel shall also evaluate the submitted time to ensure it is of a reasonable duration in light of the task performed/assigned; that the task performed was performed by a person of an appropriate experience and skill level; and that the hourly rate claimed is reasonable in light of that experience and skill level. Lawyers should not do work that could be performed by paralegals, and senior partners should not do work that could be performed by junior associates. In the event time entries are determined not to be in compliance with the terms contained herein due to an insufficiency in the information provided in connection with the submission, Time, Fee and Expense Counsel shall notify the firm/person who submitted the time/expense of their determination and will allow the firm/person an opportunity to correct the problem within two weeks of the review, if appropriate. After the time period for cure has passed, Time, Fee and Expense Counsel shall notify any firm whose time or expenses were not fully allowed of any disallowances. This will ensure that certain issues regarding the compensability of time/expenses and compliance with this Order can be dealt with in a timely manner as opposed to at the conclusion of the litigation, and thus endeavor to avoid disputes regarding attorney fees and expenses.

Lead Counsel shall designate one lead counsel to aid Time, Fee and Expense Counsel in the review set forth above. The designated lead counsel shall be responsible for reviewing Time, Fee, and Expense Counsel's time/expense in the same manner as Time, Fee and Expense Counsel reviews entries. Designated lead counsel shall also work as an interface between Time, Fee and Expense Counsel and Lead Counsel regarding the status of litigation, staffing, and work assignments as set forth above.

H. **Submission of Time and Expense Information Monthly.** Time and expense submissions must be submitted timely as set forth herein, and on a monthly basis, directly into a centralized system for an initial review by the Time, Fee and Expense Counsel, with specific instructions about the manner of submission to be provided to Plaintiffs' Counsel. No other form of submission for time and expenses will be accepted. It is essential that each firm, on a monthly basis, submit its records for the preceding month. All submissions must be certified by a partner in the submitting law firm attesting to the accuracy and correctness of the submission.

I. Each firm must submit a report including each lawyer or staff member's working time, regular hourly rate, and expense records every month. Report periods close on the last day of each month, and records for time worked or expenses incurred during that period must be submitted by the 20th day of the following month regardless of whether the 20th day falls on a holiday or weekend. Forms and instructions regarding submission of time and expenses pursuant to this Order shall be distributed by Time, Fee and Expense Counsel to Liaison and Coordinating Counsel for distribution to known Plaintiffs' Counsel before the first submission is due. The first submission is due on April 20, 2024, and shall include all time and expenses from the date the Court appointed Plaintiffs' Leadership Counsel in Pretrial Order No. 8 on January 19, 2024, through March 31, 2024. Thereafter, time and expense records shall be submitted on the 20th day of each month and shall cover the time period through the end of the preceding month. For example, all time and expense entries for work performed in April, 2024 will be due May 20, 2024. Failure to provide time and expense records as set forth herein will result in a waiver of the same unless, due to extenuating circumstances, a specific extension is granted in writing by the Time, Fee and Expense Counsel.

J. All time and expenses incurred prior to January 19, 2024, shall be provided to the Time, Fee and Expense Counsel in the form and manner set forth in this Order in a separate submission on or before April 20, 2024. The mere submission and cataloging of such time and expenses as a result of this Order is not a guarantee that any such time will be compensable or that any such expenses will be reimbursed.

III. TIME REPORTING

A. **Time Kept Contemporaneously.** All time must be accurately and contemporaneously maintained. Time shall be kept according to these guidelines and specifically in accordance with the Task Definitions attached hereto as **Exhibit A**. All Plaintiffs' Counsel shall keep a daily record of their time spent in connection with this litigation, indicating with specificity the date, hours, rate, name of Lead Counsel who authorized the task, and particular activity. The failure to maintain such records, as well as insufficient description of the activity may result in disallowance of the submission.

B. All time for each firm shall be maintained in 1/10 of an hour increment (6 minutes), and individual entries should have a specific ABA task code as set forth in the Task Definitions (attached as **Exhibit A**) associated with the time as well as a narrative description of what the biller was doing and the name of at least one Lead Counsel who authorized the time. Block billing is not allowed. Failure to comply with these requirements may result in time being disallowed.

C. All time records shall be submitted as set forth above, together with a summarization by each firm of the total time reported by the firm for the particular reporting period, as well as the total time reported by each timekeeper broken down by Task Definitions set forth in **Exhibit A**. A template and/or further instructions will be provided directly to Plaintiffs' Counsel in advance of the first submission deadline.

IV. EXPENSE REPORTING

A. The Time, Fee and Expense Counsel is authorized to establish one or more bank accounts for the collection and deposit of assessments to create a Litigation Fund for the payment of Shared Costs as defined herein, as well as for any other such functions as may be necessary and appropriate (the “Account(s)”). The Account(s) shall be made available for review by Liaison and Coordinating Counsel, Lead Counsel, the Accountant, and any other person/entity as approved by Lead Counsel, subject to Court approval; otherwise, the Account(s) are confidential.

B. The Accountant will ensure proper compliance by the parties with this Order and work with the Time, Fee and Expense Counsel to manage the Litigation Fund and administer the payment and reimbursement of Shared Costs approved by Time, Fee and Expense Counsel from the Litigation Fund.

Advanced costs will be deemed as either “Shared” or “Held”.

V. SHARED COSTS

A. Shared Costs are costs incurred for the common benefit of the claimants as a whole. No individual claimant-related costs will be considered as Shared Costs and must not be submitted, except in connection with individual claimant-related costs incurred as a result of looking for, obtaining and representing an individual claimant representing a Class or Subclass as authorized by Lead Counsel, or the case is determined by the Leadership or the Court to be a “common benefit case” (*e.g.*, “test case” or “Bellwether” case), which, in such circumstances, shall be noted in the expense submission. All costs of a substantial nature that meet these requirements and fall under the following categories shall be considered Shared Costs and qualify to be submitted and paid directly from the Shared Cost Fund Account(s). All Shared Costs must be approved by Lead Counsel prior to being incurred and prior to payment. Shared Costs include:

1. Court filing and service costs;

2. Depositions and court reporter costs;
3. Document Depository – creation, operation, staffing, equipment and administration;
4. Costs to acquire, store, and test evidence;
5. Costs for administrative matters (*e.g.*, expenses for equipment, technology, courier services, long distance, conference calls, telecopier, electronic service, postage, meeting expenses, travel for administrative matters, photocopy and printing, etc.);
6. Leadership administration matters such as meetings and conference calls;
7. Legal fees not associated with the prosecution of the case and accountant fees;
8. Expert witness and consultant fees and expenses;
9. Printing, copying, coding, shipping, scanning (both in and out of house or extraordinary firm cost);
10. Research by outside third-party vendors/consultants/attorneys;
11. Common witness expenses, including travel;
12. Translation and interpreter costs;
13. Bank or financial institution charges;
14. Investigative services;
15. Claims Administrator charges;
16. Special Master charges;
17. Settlement Mediator charges; and
18. Accountant fees.

VI. HELD COSTS

Held Costs are those expenses that will be carried by each attorney in MDL 3083 and reimbursed if and when approved by the Court.

A. Only costs incurred by Plaintiffs' Counsel in connection with the representation of a Class or Subclass in this matter should be submitted. All costs that meet these requirements and fall under the following categories shall be considered Held Costs and qualify to be submitted for consideration by the Time, Fee and Expense Counsel for future reimbursement by the Court.

1. Postage, shipping, courier, certified mail;
2. Printing and photocopying (in-house);
3. Computer research – Lexis/Westlaw;¹
4. Travel – pursuant to Travel Limitations set forth below, including travel for attorney to attend depositions, court or legislative or administrative matters:
 - a) Airfare;
 - b) Reasonable ground transportation;
 - c) Hotel;
 - d) Reasonable meals and entertainment;
 - e) Reasonable other (parking); and
 - f) Car rental, cabs, etc.

General overhead costs of the firm do not qualify as Held Costs.

¹ Time, Fee and Expense Counsel recognizes that some billing plans do not permit disaggregating by actual cost incurred to a given case; Plaintiffs' Counsel shall address any such issue with Time, Fee and Expense Counsel and Lead Counsel and agree on how to address in advance of the first submission reporting Lexis/Westlaw expenses.

VII. TRAVEL LIMITATIONS

A. Airfare. Only the value of coach airfare at the time of booking (either at restricted coach rates or rates which allow the reservation to be rebooked without surcharge and other agency fees) will be reimbursed. Notwithstanding the foregoing, first-class airfare shall be allowed for cross-country flights that are in excess of four (4) hours non-stop flight time or international flights. Airfare expense submissions must be supported by invoice(s) or receipt(s) for airfare that shows class of airfare purchased, name of traveler, and destination. If first-class is flown and only coach fare is reimbursable, proof of applicable coach fare must be provided. Private flights will only be reimbursed at the applicable coach fare, as set forth herein.

B. Hotel. Hotel room charges will be reimbursed at actual cost up to the greater of (a) \$350 per night excluding taxes, or (b) the average available room rate of the Westin, Hyatt, Hilton and Marriott hotels (or comparable) in that city. Hotel expense submissions must be supported by a hotel issued receipt, credit card statement, cancelled check or such other reasonable proof of payment as specified by Time, Fee and Expense Counsel.

C. Meals. Meal expenses must be reasonable and must not exceed \$100.00 per person. Meal expense submissions must be supported by receipts or credit card statements that reflect the date and identify those performing common benefit services who are partaking in the meal. Alcohol charges will not be reimbursed.

D. Cash Expense. Miscellaneous cash expenses for which receipts generally are not available (tips, luggage handling, etc.) will be reimbursed up to \$50 per trip (or \$25 per day if the trip is longer than 2 days), as long as the expenses are properly itemized.

E. Rental Automobiles. Luxury automobile rentals will not be fully reimbursed. If luxury automobiles are selected when non-luxury vehicles are available, then the difference between the luxury and non-luxury vehicle rates must be shown on the travel reimbursement form,

and only the non-luxury rate may be claimed. Rental automobile expense submissions must be supported by receipts. Such rentals shall be limited for the purposes of traveling to or from meetings, a hotel, court appearances and an airport. The use of hired limousines is considered a luxury automobile and will only be reimbursed the amount of reasonable taxi fare (if for inter-city transfer) or non-luxury auto rental rates for extended distances.

F. Private Car Transfers. May be used, however only the amount of the standard taxi fare or Uber/Lyft rate, for that destination, will be compensable.

G. Mileage. Mileage claims must be documented by stating origination point, destination, total actual miles for each trip, and the rate per mile paid by the biller's firm. The maximum allowable rate will be the maximum rate allowed by the IRS (currently 0.585 cents per mile).

H. Parking. Shall be limited to actual documented costs.

VIII. NON-TRAVEL LIMITATIONS

A. Shipping, Courier, and Delivery Charges. All claimed expenses must be documented with bills showing the sender, origin of the package, recipient, and destination of the package.

B. Postage Charges. A contemporaneous postage log or other supporting documentation must be maintained and submitted. Postage charges are to be reported at actual cost.

C. In-House Photocopy. A contemporaneous photocopy log or other supporting documentation must be maintained and submitted. The maximum copy charge is 25¢ per page.

IX. FURTHER PROCEDURES TO BE ESTABLISHED BY TIME, FEE AND EXPENSE COUNSEL AND LEAD COUNSEL

The Time, Fee and Expense Counsel may establish forms and procedures to further implement and carry out the time, fee and expense submissions required by the Court and necessary to compile and maintain the records and address compensation. These forms shall be made available by Liaison and Coordinating Counsel for distribution to Plaintiffs' Counsel. Questions regarding the guidelines or procedures or the completion of any forms should be directed to the Time, Fee and Expense Counsel.

The Court reserves the power to modify the terms of this Order.

SO ORDERED.

March 28, 2024

/s/ Allison D. Burroughs

ALLISON D. BURROUGHS

U.S. DISTRICT JUDGE

EXHIBIT A

TASK CODE DEFINITIONS

These Litigation Task Codes should be used with all submissions of Time and Expense Reports in this MDL. The following definitions elaborate on the intended scope of each phase and task and should guide attorneys and paraprofessionals in coding time.

CASE ASSESSMENT, DEVELOPMENT, AND ADMINISTRATION TASK CODES

- L110** **Fact Investigation/Development.** All actions to investigate and understand the facts of a matter. Covers interviews and vetting of Class and Subclass, potential bellwether plaintiffs, and potential witnesses, work with investigators, and all related communications and correspondence.
- L120** **Analysis/Strategy.** The thinking, strategizing, and planning for a case, including discussions, writing, and meetings on case strategy. Also includes initial legal research for case assessment purposes and legal research for developing a basic case strategy. Most legal research will be under the primary task for which the research is conducted. Once concrete trial preparation begins, use “Other Trial Preparation and Support.”
- L123** **Lead/Liaison/Time, Fee and Expense Duties.** Court-appointed counsel performing Lead, Lead/Liaison and/or Time, Fee and Expense functions not covered by another task code and includes Lead and/or Liaison calls and meetings. This code should only be used when another code is not applicable.
- L130** **Experts/Consultants.** Identifying and interviewing experts and consultants (testifying or non-testifying), working with them, and developing expert reports. Does not include preparing for expert depositions, *see* “Expert Discovery,” or time spent with experts/consultants during trial preparation and trial, *see* “Expert Witnesses.”
- L140** **Document Review/File Management.** A narrowly defined task that comprises only the processes of creating and populating document and other databases or filing systems. Includes the planning, design, and overall management of this process. Work performed by outside vendors in building litigation support databases and the associated costs of same should be submitted as an Expense. Does not include second level analysis of previously coded documents.
- L160** **Settlement/ADR.** All activities directed specifically to settlement. Encompasses planning for and participating in settlement discussions, conferences, and hearings and implementing a settlement. Covers pursuing and participating in mediation and other non-binding Alternative Dispute Resolution (ADR) procedures. Also includes pre-litigation demand letters and ensuing discussions.

PRE-TRIAL PLEADINGS AND MOTIONS TASK CODES

- L210** **Pleadings.** Developing (researching, drafting, editing, filing) and reviewing complaints, answers, counter-claims and third-party complaints. Also embraces responses to motions directed at pleadings such as motions to dismiss, motions to strike, and jurisdictional motions.
- L230** **Court-Mandated Conferences.** Preparing for and attending conferences required by court order or procedural rules (including Rule 16 sessions) other than settlement conferences.

Time entries should include whether the attorney participated in the conference.

- L240** **Dispositive and Class Certification Motions.** Developing, responding to, and arguing dispositive motions, including Rule 56 motions, and motions related to class certification and the issuance of class notice, and preparing for and attending hearings on these motions.
- L250** **Other Written Motions/Submissions.** Developing, responding to, and arguing all motions other than dispositive or class certification motions, pleadings, and discovery, such as motions to consolidate, to bifurcate, to remand, to stay, to compel arbitration, for MDL treatment and for change of venue.

DISCOVERY TASK CODES

- L310** **Written Discovery and Document Production.** Developing, responding to, objecting to, and negotiating interrogatories and requests to admit. Includes mandatory meet-and-confer sessions. Also covers mandatory written disclosures as under Rule 26(a). Developing, responding to, objecting to, and negotiating document requests, including the mandatory meet-and-confer sessions to resolve objections. Includes identifying documents for production, reviewing documents for privilege, effecting production, preparing requested privilege lists.
- L330** **Depositions.** All work concerning depositions, including determining the deponents and the timing and sequence of depositions, preparing deposition notices and subpoenas, communicating with opposing or other party's counsel on scheduling and logistics, planning for and preparing to take the depositions, discussing deposition strategy, preparing witnesses, reviewing documents for deposition preparation, attending depositions, and drafting any deposition summaries.
- L340** **Expert Discovery.** Same as "Depositions," but for expert witnesses.
- L350** **Discovery Motions.** Developing, responding to, and arguing all motions that arise out of the discovery process. Includes the protective order process.
- L390** **Other Discovery.** Less frequently used forms of discovery not fitting into any other discovery category.

TRIAL PREPARATION AND TRIAL TASK CODES

- L410** **Fact Witnesses.** Preparing for examination and cross-examination of non-expert witnesses.
- L420** **Expert Witnesses.** Preparing for examination and cross-examination of expert witnesses.
- L430** **Written Motions/Submissions.** Developing, responding to, and arguing written motions during preparation for trial and trial, such as motions *in limine*, *Daubert* motions, and motions to strike proposed evidence. Also includes developing other written pre-trial and trial findings, such as jury instructions, witness lists, proposed findings of fact and conclusions of law, and trial briefs.
- L440** **Other Trial Preparation and Support.** All other time spent in preparing for and supporting a trial, including developing overall trial strategy, preparing opening and

closing arguments, establishing an off-site support office, identifying documents for use at trial, preparing demonstrative materials, etc.

- L450** **Trial and Hearing Attendance.** Appearing at trial and hearings, including the pre-trial conferences to prepare for trial. Time entries should include whether the attorney participated in the trial/hearing. For scheduling conferences that are denominated as “Pre-Trial Conferences,” but not directed toward conduct of the trial, use “Court-Mandated Conferences.”
- L460** **Post-Trial Motions and Submissions.** Developing, responding to, and arguing all post-verdict matters in the trial court, such as motions for new trial or JNOV, for stay pending appeal, bills of costs, and requests for attorneys’ fees.
- L470** **Enforcement.** All work performed in enforcing and collecting judgments and asserting or addressing defenses thereto.

APPEAL TASK CODES

- L510** **Appellate Briefs, Motions and Submissions.** Developing, responding to, and arguing motions and other filings before a reviewing body, such as motions for stay pending appeal.
- L530** **Oral Argument.** Preparing for and arguing an appeal before a reviewing body.