

Hon. William L. Dixon
Hearing Date: September 29, 2023
Hearing Time: 10:00 a.m.
With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

AMY GARCIA, ANTHONY GIBBONS, and
TAYLOR RIELY-GIBBONS, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

WASHINGTON STATE DEPARTMENT OF
LICENSING, an agency of the State of
Washington,

Defendant.

No. 22-2-05635-5 SEA

DECLARATION OF TIMOTHY W.
EMERY IN SUPPORT OF PLAINTIFFS'
MOTION FOR ATTORNEYS' FEES,
COSTS, AND SERVICE AWARDS

I, Timothy W. Emery, make the following declaration based upon my personal knowledge, and where stated, upon information and belief. I declare:

1. I am a member in the law firm Emery Reddy, PLLC. Kim D Stephens and Kaleigh N. Boyd of Tousley Brain Stephens PLLC, M. Anderson Berry of Clayeo C. Arnold, A Professional Corp., and I (collectively, "Class Counsel") are the attorneys of record for Plaintiffs and the Settlement Class in this matter. I submit this declaration in support of Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and I could testify competently to them if called upon to do so.

2. As set forth in detail in the Declaration of Timothy W. Emery In Support of Motion for Preliminary Approval (Dkt. 57), Class Counsel all have extensive experience prosecuting

1 complex class actions, especially in the area of data breach litigation. We all believe, based upon
2 our extensive experience, that the result in this case is an outstanding result for the Class that will
3 provide them with significant and material benefits that they otherwise could not achieve.

4 **The Litigation and Settlement**

5 3. This litigation was hard-fought, difficult, contentious, and posed a series of case
6 dispositive risks for Class Counsel, including, for example, a motion to dismiss and potential
7 motions for summary judgment. In addition, Plaintiffs risked being unsuccessful on a motion for
8 class certification. Class Counsel reached a settlement only after an extensive investigation and
9 prolonged arm’s-length negotiations presided over by talented mediator Bennett G. Picker of
10 Stradley Ronon.

11 4. Even after coming to an agreement on the central terms, Class Counsel negotiated
12 for weeks over the fine points of the settlement.

13 5. Class Counsel also worked for weeks to finalize the Settlement Agreement and
14 associated exhibits pertaining to notice (such as the Class Notices and Claim Form), preliminary
15 approval, and final approval.

16 **The Settlement Agreement**

17 6. As of the date of this filing, Class Counsel are aware of only two objections to the
18 Settlement Agreement in general, both of which were connected with the amount of credit
19 monitoring provided, as detailed in Plaintiffs’ Motion for Final Approval. While the Settlement
20 Class was notified of the amount Class Counsel may seek as proposed attorneys’ fees and costs,
21 Class Counsel have thus far received no objections to that amount.

22 7. Identity Defense Total by Pango Group—the identity theft protection and credit
23 monitoring services offered to Settlement Class Members—has a retail value of \$19.99 per month
24 (\$239.88 per year) per Settlement Class Member.¹

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¹ CyEx, *Identity Defense*, <https://cyex.com/identity-defense/> (last visited July 26, 2023).

1 **The Contingent Nature of the Case**

2 8. Class Counsel prosecuted this case on a purely contingent basis. Class Counsel
3 have contingency fee agreements with the Plaintiffs and Class Representatives that provide for
4 33 to 40 percent of the gross recovery to be paid as attorneys' fees, plus costs and expenses, in
5 the event that Plaintiffs' Counsel settled or obtained a judgment for Plaintiffs on an individual
6 basis.

7 9. As detailed below, Class Counsel have devoted substantial resources to the
8 prosecution of this case with no guarantee that they would be compensated for their time or
9 reimbursed for their expenses. Class Counsel assumed a significant risk of nonpayment or
10 underpayment.

11 10. This matter has required Class Counsel, and other attorneys at their firms, to spend
12 time on this litigation that could have been spent on other matters. At various times during the
13 litigation of this class action, this lawsuit has consumed significant amounts of time and attorney
14 resources.

15 11. Such time could otherwise have been spent on other fee-generating work. Because
16 Class Counsel undertook representation of this matter on a contingency-fee basis, we shouldered
17 the risk of expending substantial costs and time in litigating the action without any monetary gain
18 in the event of an adverse judgment.

19 12. If not devoted to litigating this action, from which any remuneration is wholly
20 contingent on a successful outcome, the time Class Counsel spent working on this case could and
21 would have been spent pursuing other potentially fee generating matters.

22 13. Litigation is inherently unpredictable and therefore risky. Here, that risk was very
23 real due to the rapidly evolving nature of case law pertaining to data breach litigation and the state
24 of data privacy law. Therefore, despite Class Counsel's devotion to the case and our confidence
25 in the claims alleged against DOL, there have been many factors beyond our control that posed
26 significant risks.

27 14. Class Counsel's fees were not guaranteed—the retainer agreements Class Counsel

1 have with Plaintiffs did not provide for fees apart from those earned on a contingent basis, and,
2 in the case of class settlement, approved by the court.

3 **Class Counsel's Time and Expenses**

4 15. Due to the early stage of litigation and the efficiency by which Class Counsel was
5 able to obtain this significant settlement, costs and fees incurred by Plaintiffs are relatively low
6 for a class action of this size.

7 16. Each of Class Counsel's firms maintain contemporaneous records of time and
8 expenses. These records are prepared and maintained in the ordinary course of business through
9 software systems maintained by the firms.

10 17. This declaration was prepared with the assistance of other lawyers and staff at
11 Class Counsel's firms with knowledge of the matters reflected herein. I have personally reviewed
12 the information supporting the fee and expense requests that are the subject of this declaration.

13 18. As part of the preparation of this declaration, I reviewed the time and expenses
14 incurred by all Class Counsel in this litigation to exercise billing judgment. In reviewing the time
15 and expenses, and in exercising billing judgment, I have carefully reviewed the time entries for
16 reasonableness, and endeavored to delete any time entries that could be viewed as duplication of
17 work.

18 19. After exercising billing judgment and making billing reductions based on my
19 review of the records, the number of hours spent on this litigation by Class Counsel, the
20 reasonable hourly rates, and Class Counsel's lodestar is reflected below.

21

| TOUSLEY BRAIN STEPHENS PLLC TIME | | | | |
|---|--------------|--------------|-------------|---------------------|
| NAME | TITLE | HOURS | RATE | TOTAL |
| Stephens, Kim D. | Attorney | 68.2 | \$1,060 | \$72,292.00 |
| Dennett, Jason T. | Attorney | 3.9 | \$800 | \$3,120.00 |
| Jordan, Cecily C. | Attorney | 1.2 | \$575 | \$690.00 |
| Boyd, Kaleigh N. | Attorney | 123.9 | \$500 | \$61,950.00 |
| Rashby, Eve | Paralegal | 8.4 | \$330 | \$2,772.00 |
| TOTAL | | 205.6 | | \$140,824.00 |

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| EMERY REDDY, PLLC TIME | | | | |
|-------------------------------|-----------------|--------------|-------------|---------------------|
| NAME | TITLE | HOURS | RATE | TOTAL |
| Emery, Timothy W. | Attorney | 113.4 | \$725 | \$82,215.00 |
| Arthur, Karolina S. | Attorney | 18.2 | \$725 | \$13,195.00 |
| Ballard, Lesley | Paralegal | 113.1 | \$225 | \$25,447.50 |
| Chong, Jennifer | Legal Assistant | 22.2 | \$225 | \$4,995.00 |
| TOTAL | | 264.9 | | \$125,852.50 |

| CLAYEO C. ARNOLD, A PROFESSIONAL LAW CORP. TIME | | | | |
|--|--------------|--------------|-------------|---------------------|
| NAME | TITLE | HOURS | RATE | TOTAL |
| Berry, M. Anderson | Attorney | 102.5 | \$800 | \$82,000.00 |
| Haroutunian, Gregory | Attorney | 60.4 | \$675 | \$40,770.00 |
| Martin, Lori | Paralegal | 6.2 | \$308 | \$1,909.60 |
| Marentes, Bianca | Paralegal | 2.7 | \$308 | \$831.60 |
| Velichko, Olya | Paralegal | 26.1 | \$243 | \$6,342.30 |
| TOTAL | | 197.9 | | \$131,853.50 |

| TOTAL TIME | | |
|--|--------------|---------------------|
| FIRM | HOURS | TOTAL |
| Tousley Brain Stephens PLLC | 205.6 | \$140,824.00 |
| Emery Reddy, PLLC | 264.9 | \$125,852.50 |
| Clayeo C. Arnold, a Professional Corp. | 197.9 | \$131,853.50 |
| TOTAL | 668.2 | \$398,530.00 |

| TOTAL EXPENSES | |
|--|--------------------|
| FIRM | TOTAL |
| Tousley Brain Stephens PLLC | \$10,040.18 |
| Emery Reddy, PLLC | \$1,319.38 |
| Clayeo C. Arnold, a Professional Corp. | \$785.65 |
| TOTAL | \$12,145.21 |

20. Class Counsel will expend additional time dealing with any objections, preparing for and attend the Final Fairness Hearing, defending any appeals taken from the final judgment approving settlement, and ensuring that the claims process and distribution of settlement proceeds to class members is done in a timely manner in accordance with the terms of the settlement.

21. Class Counsel assert that the attorneys' fees sought in the motion for attorneys' fees are reasonable and constitute fair and reasonable compensation for undertaking this case on a contingency basis and for obtaining the relief for Plaintiffs and the Class. The time Class

1 Counsel devoted to this case is reasonable. Class Counsel prosecuted the claims at issue
2 efficiently and effectively, making every effort to prevent the duplication of work that might have
3 resulted from having multiple firms working on this case. As set forth in the Settlement
4 Agreement, the attorneys' fees, costs and expenses sought in this motion will not reduce the
5 benefits payable to the class.

6 22. Prior to taking on Plaintiffs' case, Class Counsel thoroughly researched DOL's
7 practices and Plaintiffs' legal claims by, among other things, conducting an independent
8 investigation and researching relevant data privacy claims. This information was critical to Class
9 Counsel's understanding of the nature of the Data Breach, the scope of potential damages and
10 remedies, and the potential risks and benefits of continued litigation.

11 23. Class Counsel devoted significant time and resources to this case, including:

- 12 a. Conferring with Plaintiffs throughout the case;
- 13 b. Conducting an investigation into the facts regarding Plaintiffs' claims and
14 Class Members' claims;
- 15 c. Researching law relevant to and preparing Plaintiffs' class action complaints;
- 16 d. Submitting public records requests to DOL and reviewing hundreds of files
17 produced in response to the requests;
- 18 e. Drafting both formal and informal discovery requests to DOL;
- 19 f. Responding to DOL's motion to dismiss;
- 20 g. Working with Plaintiffs to respond to DOL's informal discovery requests;
- 21 h. Reviewing DOL's informal discovery responses;
- 22 i. Preparing for and attending mediation with Bennett G. Picker of Stradley
23 Ronon, including researching and preparing a detailed mediation statement, as
24 well as attending pre-mediation conferences and calls with Mr. Picker;
- 25 j. Engaging in substantial post-mediation negotiations over the notice plan, and
26 negotiating a second reminder notice;
- 27 k. Negotiating and preparing the Parties' class action settlement agreement, along

1 with the proposed class notices and claim form;

- 2 l. Negotiating with settlement administration companies to secure the best notice
3 plan practicable;
- 4 m. Preparing and revising Plaintiffs' motion for preliminary approval of the class
5 action settlement;
- 6 n. Preparing and revising Plaintiffs' motion for final approval of the class action
7 settlement;
- 8 o. Working with the Settlement Administrator to ensure the timely completion of
9 Notice and processing of claims, including revising drafts of the Settlement
10 Website and deficiency notices to claimants;
- 11 p. Monitoring the claims process and corresponding with the Settlement
12 Administrator and DOL's Counsel regarding the same;
- 13 q. Closely monitoring evolving law regarding data security and its potential
14 impacts on the case; and
- 15 r. Responding to Class Member inquiries regarding the claims process.

16 24. Class Counsel carefully assigned work so as to avoid duplication of efforts and to
17 have the work completed by the appropriate level of attorney.

18 25. All books and records in this case regarding costs expended were maintained in
19 the ordinary course of business, from expense vouchers and check records. I have reviewed the
20 records of costs expended in this matter by all three Class Counsel firms.

21 26. Class Counsel incurred out-of-pocket costs totaling \$12,145.21, primarily to cover
22 expenses related to mediation fees, court filing fees, service fees, fees for use of research
23 databases, and administrative costs such as copying, mailing, and messenger expenses. These out-
24 of-pocket costs were necessary to secure the resolution of this litigation and may be recouped in
25 addition to attorneys' fees.

26 27. Class Counsel anticipates incurring additional costs and expenses before our work
27 is done in this case, as is true of the additional services which we will provide to the Class.

1 However, Class Counsel will not seek any additional payment from the common fund to cover
2 these known and predictable additional time and expenses.

3 28. In the opinion of the undersigned and other Class Counsel, the attorneys' fees and
4 costs requested are fair and reasonable under the facts and circumstances of this case.
5

6 I declare under penalty of perjury under the laws of the State of Washington that the
7 foregoing is true and correct. Executed on July 26, 2023 at Seattle, Washington.
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9 By: /s/ Timothy W. Emery
10 Timothy W. Emery, WSBA No. 34078
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