

The Honorable Marsha J. Pechman

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LEO GUY, RYAN TANNER, MAGALY
GRANADOS, KERRY LAMONS, TAMMY
RANO, VICKI WILL and JENNIFER WHITE,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

CONVERGENT OUTSOURCING, INC.,

Defendant.

NO. 2:22-cv-01558-MJP

**JOINT DECLARATION OF CLASS
COUNSEL SUPPORTING
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, COSTS, AND
SERVICE AWARDS**

We, Gary M. Klinger, Jean S. Martin, Gary E. Mason, and Cecily C. Jordan, declare as follows:

1. We are counsel for Plaintiffs in the above-captioned case. This declaration supports Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards. We have personal knowledge of the facts in this declaration and could testify to them if called on to do so.

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LITIGATION BACKGROUND AND THE WORK OF CLASS COUNSEL

2. Prior to filing their respective cases, Class Counsel conducted extensive pre-suit discovery to ascertain all publicly available details about the cause, scope, and result of the data breach, as well as about the damages suffered by the Plaintiff and the Class.

3. Additionally, Class Counsel spent time interviewing Plaintiff to determine what Private Information Plaintiffs provided to Convergent, what promises Convergent made about data security, and to determine the specific harm suffered by Plaintiffs.

4. Plaintiffs filed their Consolidated Amended Complaint on February 10, 2023. On March 13, 2023, Convergent moved to dismiss the Consolidated Amended Complaint in its entirety.

5. Over the next several months, the Parties engaged in Settlement negotiations. The Parties agreed to participate in mediation and informally exchanged discovery on a variety of topics related to the Litigation.

6. On May 11, 2023, while the Motion to Dismiss was fully briefed and pending the parties engaged in an all-day mediation with Bennett Picker Esq. of Stradley Ronon. During the course of the settlement discussions, Convergent disclosed information regarding the limited remaining insurance funds available to cover the claims of class members. While the Settling Parties made some headway in the initial mediation session, the Settling Parties were unable to reach resolution.

7. On July 20, 2023, the Court granted in part and denied in part Convergent’s motion to dismiss, dismissing with prejudice Plaintiffs’ negligence, breach of implied contract, breach of the duty of confidence, Washington Data Breach Law, and California constitutional privacy claims. The Court also dismissed without prejudice Plaintiffs’ CCPA claim for

1 statutory damages, but allowed Plaintiffs' CCPA claim for pecuniary damages and Plaintiffs'
2 claims for invasion of privacy, unjust enrichment, violations of the Washington CPA,
3 violations of the UCL, and declaratory relief to proceed. In the three months following the
4 mediation, the parties continued to engage in negotiations with the assistance of Mr. Picker.
5 Ultimately, after many sessions of additional negotiations, Mr. Picker made a mediator's
6 proposal of a common fund settlement of \$2.45 million. Both parties accepted on August 11,
7 2023.

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9 8. The parties continued negotiations to formalize the terms of the settlement set
10 forth in the present Settlement Agreement. The parties executed the Settlement Agreement and
11 Plaintiffs filed their Unopposed Motion for Preliminary Approval on October 30, 2023.

12 9. On October 30, 2023, Plaintiffs filed their Unopposed Motion for Preliminary
13 Approval of Class Action Settlement, and on December 19, 2023, the Court entered an Order
14 approving Plaintiffs' Motion as to certification of the Settlement Class but denied the request
15 for approval of the Settlement.

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17 10. To address the Court's concerns as to preliminary approval, the parties engaged
18 in further discussions with counsel for Convergent, and ultimately reached agreement on
19 amendments to the Settlement Agreement that clarify the scope of the Release, and improved
20 the Notice forms by adding a disclosure that Class Counsel's request for reasonable attorneys'
21 fees and costs will not exceed 27% of the settlement fund. The parties executed the Amended
22 Settlement Agreement on February 2, 8, and 9, 2024, and the Court granted preliminary
23 approval on February 20, 2024.

1 11. Since preliminary approval was granted, Class Counsel has worked with counsel
2 for Defendant and with the Settlement Administrator to finalize the notice documents and to
3 ensure notice was sent to the Settlement Class consistent with the Preliminary Approval Order.

4 12. We, and other attorneys at our firms, have devoted significant time and
5 resources to this case to date, including:

- 6 a. Conducting an investigation into the facts regarding Plaintiffs' claims and class
7 members' claims;
8
9 b. Researching law relevant to, and preparing Plaintiffs' class action complaint;
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11 c. Preparing for and attending mediation, including researching and preparing a
12 detailed mediation statement;
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14 d. Negotiating and preparing the Parties' class action settlement agreement, along
15 with the proposed class notice and claim form;
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17 e. Negotiating with settlement administration companies to secure the best notice
18 plan practicable;
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20 f. Preparing Plaintiff's motion for preliminary approval of the class action
21 settlement and preparing a detailed declaration in support;
22
23 g. Working with the Settlement Administrator to ensure the timely completion of
24 Notice and processing of claims;
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26 h. Closely monitoring evolving law regarding data security and its potential
impacts on the case;
i. Conferring with Plaintiffs throughout the case.

PLAINTIFF’S CONTRIBUTION

13. Plaintiffs each seek a Service Award in the amount of \$1,500 in recognition for their time and effort spent pursuing this Litigation on behalf of the Class.

14. Throughout the litigation, Plaintiffs served as representatives on behalf of the Settlement Class, including maintaining contact with counsel, assisting in the investigation of the case, remaining available for consultation throughout the mediation, reviewing pleadings and the Settlement Agreement, and answering counsel’s many questions.

CONTINGENT NATURE OF ACTION

15. Our firms took on this case on a purely contingent basis.

16. This matter has required us, and other attorneys at our firms, to spend time on this litigation that could have been spent on other matters. At various times during the litigation of this class action, this lawsuit has consumed significant amounts of our time and our firms’ time.

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

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

19. Litigation is inherently unpredictable and therefore risky. Therefore, despite our devotion to the case and our confidence in the claims alleged against Defendant, there were many factors beyond our control that posed significant risks.

1 20. Further, a successful outcome could only ensue, if at all, after prolonged and
2 arduous litigation with an attendant risk of drawn-out appeals. Among national consumer
3 protection class action litigation, data breach cases are some of the most complex and involve a
4 rapidly evolving area of law. As such, these cases are particularly risky for plaintiffs' attorneys.

5 **LODESTAR, FEES, AND EXPENSES**

6 21. The regular practice at each of our firms is to maintain contemporaneous time
7 records.
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9 22. The billable rates for our firms are consistent with rates billed for similar legal
10 services. See National Association of Legal Fee Analysis 2020 Class Action Hourly Rate
11 Survey ([https://www.thenalpa.org/blog/survey-class-action-defense-rates-keep-pace-with-
12 plaintiffs-rates-in-2020/](https://www.thenalpa.org/blog/survey-class-action-defense-rates-keep-pace-with-plaintiffs-rates-in-2020/)).

13 23. Through April 10, 2024, our firms worked a total of 602.8 hours on this case,
14 incurring fees of \$479,897.50. A lodestar breakdown by firm is provided below.
15

16 24. We estimate that we will expend an additional 50-100 hours by the close of this
17 action in connection with drafting the final approval motion, preparing for argument at the final
18 approval hearing, and miscellaneous matters, including responding to class member inquiries
19 and claims administration.

20 25. Upon request, we can provide detailed contemporaneous records to the Court for
21 review *in camera*.
22

23 26. All books and records in this case regarding costs expended were maintained in
24 the ordinary course of business, from expense vouchers and check records. We have reviewed
25 the records of costs expended in this matter.
26

27. Through April 10, 2024, we have incurred \$24,979.91 in reasonable expenses necessary to the litigation, which include filing fees, research expenses, and mediation costs. Each firm's expenses are identified below.

Milberg Coleman Phillips Sanders Grossman ("Milberg")

28. Through April 10, 2024, Milberg has worked a total of 225.2 hours on this case, incurring fees of \$173,362.20 Our lodestar was broken down as follows:

Name	Position	Hourly Rate	Number of Hours	Total
David Lietz	Senior Partner	\$997/\$1,057	41.8	\$41,491.00
Gary Klinger	Senior Partner	\$850/\$878	87.5	\$74,953.00
C.J. Cuneo	Senior Associate	\$829.00	34.3	\$28,434.70
John Nelson	Associate	\$508/\$538	24.1	\$12,230.80
Dean Meyer	Associate	\$413.00	7.7	\$3,180.10
Christian Torres	Associate	\$413.00	5.1	\$2,106.30
Sandra Passanisi	Paralegal	\$208/\$239	8.2	\$1,811.10
Heather Sheflin	Paralegal	\$225/\$239	1.4	\$ 322.00
Tiffany Kiuper	Paralegal	\$208	1.7	\$ 353.60
Ashley Tyrell	Paralegal	\$208/\$239	4.3	\$ 909.90

29. Through September April 10, 2024, Milberg has incurred \$6,203.32 in reasonable expenses necessary to the litigation.

Morgan and Morgan Complex Litigation Group ("Morgan & Morgan")

30. Through April 10, 2024, Morgan & Morgan has worked a total of 154 hours on this case, incurring fees of \$140,900. Morgan & Morgan's lodestar was broken down as follows:

Name	Position	Hourly Rate	Number of Hours	Total
Jean Martin	Partner	\$1,150	78	\$89,700
Ryan Maxey	Partner	\$800	12	\$9,600
Francesca Kester	Associate	\$650	64	\$41,600

1 31. Through April 10, 2024 Morgan & Morgan has incurred \$6,509.14 in reasonable
2 expenses necessary to the litigation.

3 **Mason LLP**

4 32. Through April 10, 2024, Mason, LLP has worked a total of 137 hours on this
5 matter, incurring fees of \$101,725.00.

6 33. Through April 10, 2024, Mason, LLP has incurred \$10,762.69 in reasonable
7 expenses necessary to the Litigation.

8 **Tousley Brain Stephens PLLC**

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10 34. Through April 10, 2024, Tousley Brain Stephens PLLC has worked a total of
11 86.6 hours on this case, incurring fees of \$63,910.50. Tousley Brain Stephens PLLC's lodestar
12 was broken down as follows:

Name	Position	Hourly Rate	Number of Hours	Total
Kim D. Stephens	Member	\$1,060.00	4.2	\$4,452.00
Jason T. Dennett	Member	\$925.00	5.5	\$5,087.50
Cecily C. Jordan	Member	\$725.00	72.8	\$52,780.00
Kaleigh N. Boyd	Member	\$500.00	1.4	\$700.00
Eve Rashby	Paralegal	\$330.00	2.7	\$891.00

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19 35. Through April 10, 2024 Tousley Brain Stephens PLLC has incurred \$1,504.76
20 in reasonable expenses necessary to the litigation.

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22 I declare under penalty of perjury that the foregoing is true of my own personal
23 knowledge. Executed this 19th day of April, 2024.

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25 By: /s/Cecily C. Jordan
Cecily C. Jordan

26 By: /s/Gary M. Klinger
Gary M. Klinger

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By: /s/Gary E. Mason
Gary E. Mason

By: /s/Jean S. Martin
Jean S. Martin