

The Honorable Ricardo S. Martinez

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

In re MCG Health Data Security Issue
Litigation

NO. 2:22-CV-00849-RSM-DWC

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

We, Jason T. Dennett, Gary M. Klinger, and Adam E. Polk 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.

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 Plaintiffs and the Class.

3. Additionally, Class Counsel spent time interviewing Plaintiffs to determine whether and how their personally identifiable information was received by MCG and to determine the specific harm suffered by Plaintiffs.

1 4. Following the filing of several complaints arising from the MCG data breach,
2 Class Counsel quickly coordinated with all Plaintiffs' filing-counsel to move for consolidation.
3 The Consolidation Order was granted on August 17, 2022 (Dkt. 31).

4 5. Pursuant to the Consolidation Order, Class Counsel coordinated with the other
5 Plaintiffs' counsel to prepare and file Plaintiffs' Consolidated Class Action Complaint on
6 September 16, 2022 (Dkt. 32).

7 6. On October 31, 2022, MCG moved to dismiss the Consolidated Class Action
8 Complaint in its entirety (Dkt. 35). Again, Class Counsel coordinated and lead the effort to
9 respond to the motion to dismiss.
10

11 7. Following this Court's adoption of Magistrate Judge David W. Christel's Report
12 and Recommendation granting in part and denying in part the motion to dismiss, which granted
13 Plaintiffs leave to replead certain claims, Plaintiffs filed their First Amended Consolidated
14 Class Action Complaint ("FAC") on July 14, 2023 (Dkt. 67).
15

16 8. On July 27, 2023, we moved for appointment as Interim Co-Lead Counsel with
17 the support of the other plaintiffs' firms. The Court granted this motion on September 5, 2023
18 (Dkt. 73).

19 9. While awaiting the Court's ruling on the motion to dismiss, the Parties engaged
20 in early Settlement discussions. The Parties agreed to participate in mediation and informally
21 exchanged discovery on a variety of topics related to the Litigation.
22

23 10. On July 26, 2023, after Magistrate Judge Christel issued his Report and
24 Recommendation and after Plaintiffs filed the FAC, Plaintiffs and MCG engaged in an all-day,
25 arms-length virtual mediation before a well-known and respected mediator, Jill R. Sperber of
26 Judicate West. During the course of the settlement discussions, MCG disclosed information

1 regarding the limited remaining insurance funds available to cover the claims of class members.
2 While the Settling Parties made some headway in the initial mediation session, the Settling
3 Parties were unable to reach resolution.

4 11. The Parties continued to negotiate with the assistance of Ms. Sperber for the
5 four and a half months, ultimately agreeing to a mediator's proposal of an \$8.8 million
6 common fund on December 8, 2023.

7
8 12. In the course of these settlement negotiations, MCG moved to dismiss the FAC
9 on September 14, 2023. This motion was fully briefed, but the Court never issued an order on
10 this motion because, on December 14, 2023, the Parties informed the Court of the settlement
11 and advised that a ruling on the motion to dismiss was no longer necessary.

12 13. The Parties then proceeded to negotiate the formal terms of the Settlement,
13 including appropriate business practice changes. The parties executed the Settlement
14 Agreement and Plaintiffs filed their Unopposed Motion for Preliminary Approval on March 1,
15 2024.

16
17 14. The Court granted the Plaintiffs' Motion for Preliminary Approval on May 1,
18 2024.

19 15. Since preliminary approval was granted, Class Counsel has worked with counsel
20 for Defendant and with the Settlement Administrator, Kroll, to finalize the notice documents
21 and to ensure notice was sent to the Settlement Class consistent with the Preliminary Approval
22 Order.

23
24 16. The Settlement has been well-received by the class. As of the date of filing,
25 Kroll has confirmed that it has received only 113 requests for exclusion and no objections.
26

1 17. We, and other attorneys at our firms, have devoted significant time and
2 resources to this case to date, including, but not limited to:

- 3 a. Conducting an investigation into the facts regarding Plaintiffs' claims and class
4 members' claims;
- 5 b. Coordinating and assigning work to other firms, when appropriate;
- 6 c. Researching law relevant to, and preparing Plaintiffs' class action complaint;
- 7 d. Researching law and drafting responses to Defendants' two motions to dismiss;
- 8 e. Preparing detailed and comprehensive discovery requests;
- 9 f. Preparing for and attending mediation, including researching and preparing a
10 detailed mediation statement;
- 11 g. Negotiating and preparing the Parties' class action settlement agreement, along
12 with the proposed class notice and claim form;
- 13 h. Negotiating with settlement administration companies to secure the best notice
14 plan practicable;
- 15 i. Preparing Plaintiff's motion for preliminary approval of the class action
16 settlement and preparing a detailed declaration in support;
- 17 j. Working with the Settlement Administrator to ensure the timely completion of
18 Notice and processing of claims;
- 19 k. Closely monitoring evolving law regarding data security and its potential
20 impacts on the case; and
- 21 l. Conferring with Plaintiffs throughout the case.
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PLAINTIFF’S CONTRIBUTION

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2 18. Plaintiffs each seek a Service Award in the amount of \$2,500 in recognition for
3 their time and effort spent pursuing this Litigation on behalf of the Class.

4 19. Throughout the litigation, each of the Plaintiffs served as representatives on
5 behalf of the Settlement Class, including maintaining contact with counsel, assisting in the
6 investigation of the case, remaining available for consultation throughout the mediation,
7 reviewing pleadings and the Settlement Agreement, and answering counsel’s many questions.
8

9 **CONTINGENT NATURE OF ACTION**

10 20. Our firms took on this case on a purely contingent basis.

11 21. This matter has required us, and other attorneys at our firms, to spend time on
12 this litigation that could have been spent on other matters. At various times during the litigation
13 of this class action, this lawsuit has consumed significant amounts of our time and our firms’
14 time.
15

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

20 23. If not devoted to litigating this action, from which any remuneration to us is
21 wholly contingent on a successful outcome, the time we spent working on this case could and
22 would have been spent pursuing other potentially fee generating matters.
23

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

1 25. 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 26. The regular practice at each of our firms is to maintain contemporaneous time
7 records. As part of the time keeping protocol implemented upon our appointment as Interim
8 Co-Lead Counsel, all other firms providing a common benefit to the class were asked to
9 maintain and submit their contemporaneously recorded time on a monthly basis.

10 27. The billable rates for our firms are consistent with rates billed for similar legal
11 services. *See* National Association of Legal Fee Analysis 2020 Class Action Hourly Rate
12 Survey ([https://www.thenalfa.org/blog/survey-class-action-defense-rates-keep-pace-with-](https://www.thenalfa.org/blog/survey-class-action-defense-rates-keep-pace-with-plaintiffs-rates-in-2020/)
13 [plaintiffs-rates-in-2020/](https://www.thenalfa.org/blog/survey-class-action-defense-rates-keep-pace-with-plaintiffs-rates-in-2020/)).

14 28. We have compiled all of the time records for all attorneys who submitted
15 common benefit time to this case. Class Counsel audited all time submissions and took several
16 measures to protect against overreporting, including removing non-common benefit time and
17 expenses based on the established protocol; removing duplicative or excessive time; and cutting
18 timekeepers who reported only de minimis hours over the life of the case. We also reviewed the
19 billing rates submitted for each timekeeper and made any necessary adjustments to ensure that
20 the rates charged are consistent with those of similar roles and years of experience. Based on
21 these efforts, the time submitted to the Court represents a conservative report of the time
22 expended on this case.
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1 29. Through August 15, 2024, Plaintiffs’ Counsel worked a total of 1,840.4 hours on
 2 this case, incurring fees of \$1,394,495.40. A lodestar breakdown by firm is provided below.

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

7 31. Upon request, we can provide detailed contemporaneous records to the Court for
 8 review *in camera*.

9 32. All books and records in this case regarding costs expended were maintained in
 10 the ordinary course of business, from expense vouchers and check records. We have reviewed
 11 the records of costs expended in this matter.

12 33. Through August 15, 2024, we and other Plaintiffs’ counsel have incurred
 13 \$45,853.52 in reasonable expenses necessary to the litigation, which include filing fees,
 14 research expenses, and mediation costs. Class Counsel reviewed the expenses incurred and
 15 have exercised discretion to remove certain internal and additional costs from the request. Each
 16 firm’s expenses are identified below.

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 18
 19 **Milberg Coleman Phillips Sanders Grossman (“Milberg”)**

20 34. Through August 15, 2024, Milberg has worked a total of 487.5 hours on this
 21 case, incurring fees of \$374,984.00. Its lodestar was broken down as follows:

22

Name	Position	Hourly Rate	Number of Hours	Total
Gary Klinger	Senior Partner	\$850/\$878	244.4	\$209,714.00
David Lietz	Partner	\$919-\$1057	85.1	\$83,171.30
John Nelson	Associate	\$468-\$538	110.1	\$54,441.80
Carolyn CJ Cuneo	Associate	\$878	14.5	\$12,731.00
Dean Meyer	Associate	\$413	10.8	\$4,460.40

1	Mariya Weekes	Associate	\$878	8	\$7,024.00
2	Sandra Passanisi	Paralegal	\$208-\$239	7.1	\$1,560.20
3	Ashley Tyrrell	Paralegal/Legal Assistant	\$208-\$239	3	\$642.60
4	Blake Yagman	Paralegal	\$350	1.6	\$560.00
5	Heather Sheflin	Paralegal	\$225-\$239	1.2	\$272.80
6	Kerry Brennan	Paralegal	\$239	1.7	\$406.30
7	Total			487.5	\$374,984.00

35. Through August 15, 2024, Milberg has incurred \$5,229.39 in reasonable expenses necessary to the litigation.

Girard Sharp LLP

36. Through August 14, 2024, Girard Sharp has worked a total of 616.4 hours on this case, incurring fees of \$471,087.00. Girard Sharps's lodestar was broken down as follows:

Name	Position	Hourly Rate	Number of Hours	Total
Adam Polk	Partner	\$975	116.6	\$113,685.00
Simon Grille	Partner	\$650-\$875	139.5	\$115,087.50
Daniel Girard	Partner	\$1,195	3.1	\$3,704.50
Jordan Elias	Partner	\$775-\$1,050	47.4	\$48,285.00
Trevor Tan	Associate	\$850	119.2	\$101,320.00
Jessica Cook	Associate	\$425-\$500	49.5	\$23,295.00
Reid Gaa	Associate	\$625	37.2	\$23,250.00
Jordan Isern	Associate	\$425-\$500	39.8	\$16,960.00
Cole Limbach	Associate	\$500	30.6	\$15,300.00
Kimberly Macey	Associate	\$425-\$500	11.4	\$4,980.00
Jack Conklin	Lit. Assistant	\$250	12.7	\$3,175.00
Marie Montoya	Lit. Assistant	\$200	7.1	\$1,420.00
Rachel Park	Lit. Assistant	\$250	2.5	\$625.00
Total			616.6	\$471,087.00

37. Through August 15, 2024, Girard Sharp has incurred \$19,418.42 in reasonable expenses necessary to the litigation.

Tousley Brain Stephens PLLC

38. Through August 15, 2024, Tousley Brain Stephens PLLC has worked a total of 297.2 hours on this case, incurring fees of \$247,347.00. Tousley Brain Stephens PLLC's lodestar was broken down as follows:

Name	Position	Hourly Rate	Number of Hours	Total
Jason T. Dennett	Member	\$1,000	119.8	\$119,800.00
Rebecca L. Solomon	Member	\$750-\$800	153.1	\$119,350.00
Eve Rashby	Paralegal	\$330	15.4	\$5,082.00
Amy Stanton	Paralegal	\$350	8.9	\$3,115.00
Total			297.2	\$247,347.00

39. Through August 15, 2024 Tousley Brain Stephens PLLC has incurred \$11,188.02 in reasonable expenses necessary to the litigation.

40. In addition to Co-Lead Counsel's fees and expenses, 12 other firms submitted common benefit fees and costs pursuant to the timekeeping protocol. Three firms did not submit common benefit time.

41. Following our review of the common benefit time submissions, and after exclusions of *de minimis* and non-compensable time and expenses, the following firms provided common benefit lodestar and costs as follows:

Firm Name	Hourly Rates	Hours	Total Lodestar	Total Expenses
Arnold Law Firm	\$308-\$850	52.2	\$43,672.40	\$15.00
Chesnut Cambronne PA	\$450-\$1,050	27.2	\$21,400.00	\$238.00
Chimicles Schwartz Kriner & Donaldson-Smith LLP	\$300-\$1100	34.7	\$26,285.00	\$707.34
Emery Reddy	\$250-\$730	7.3	\$3,794.00	\$640.00
Federman & Sherwood	\$250-\$900	81	\$52,964.00	\$2,128.61

1	Goldenberg Schneider, LPA	\$175-\$875	49.5	\$34,365.00	\$450.97
2	Levin Sedran & Berman LLP	\$650-\$1025	63.6	\$51,565.00	\$532.10
3	The Lyon Firm	\$175-\$875	15.8	\$10,207.50	\$238.00
4	Markovits Stock DeMarco LLC	\$190-\$1025	43.2	\$36,990.00	\$238.00
5	Mason LLP	\$225-\$1050	12.7	\$9,507.50	\$1,602.25
6	Terrell Marshall	\$125-\$550	19.4	\$4,222.00	\$2,389.50
7	Wilshire Law Firm, P.C.	\$425-\$500	32.5	\$16,312.50	\$837.92
8	Total		439.1	\$301,077.40	\$10,017.69

9 42. The fee requested by Class Counsel represents a 2.06 multiplier on lodestar,
10 calculated after deducting litigation costs and expenses that will be reimbursed from the total
11 fee award.

12 I declare under penalty of perjury that the foregoing is true of my own personal
13 knowledge.

14 Executed this 15th day of August, 2024.

15 By: /s/ Jason T. Denett
16 Jason T. Dennett

17 By: /s/ Gary M. Klinger
18 Gary M. Klinger

19 By: /s/ Adam E. Polk
20 Adam E. Polk