

JUDGE KRISTIN RICHARDSON
Hearing Date: May 27, 2022
Hearing Time: 9:00 A.M.

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

GARY STEVE CLOPP, SHLON SMITHSON,
and LEEANN CRAWFORD, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

PACIFIC MARKET RESEARCH LLC, a
foreign limited liability company; and DOES
1-10,

Defendants.

No. 21-2-08738-4 KNT

DECLARATION OF TIMOTHY W.
EMERY IN SUPPORT OF PLAINTIFFS'
UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS SETTLEMENT,
SERVICE AWARDS, AND
ATTORNEYS' FEES AND COSTS

I, Timothy W. Emery, declare as follows:

1. I am the attorney of record for Plaintiffs Gary Steve Clopp, Shlon Smithson, and LeeAnn Crawford (collectively, "Plaintiffs") and have been appointed Class Counsel for the Settlement Class. I have personal knowledge of the matters set forth herein and if called to do so, I could and would testify competently under oath.

2. I am an attorney licensed to practice law in the States of Washington (since 2003) and Utah (since 2009) and the founding partner of the law firm of Emery Reddy, PLLC. I have been in the active practice of law for over 16 years.

3. I have extensive experience litigating class action matters in Washington, Utah, and California, and have represented both plaintiffs and defendants in complex class action

1 litigation.

2 The Settlement Agreement

3 4. The Settlement Agreement in this case provides for both monetary and equitable
4 relief for Settlement Class Members.

5 5. First, the Settlement Agreement provides for up to \$2,750 per class member in
6 ordinary expense reimbursements, lost time reimbursements and extraordinary expense
7 reimbursements. Second, the Settlement Agreement provides for equitable relief in the form of
8 information security enhancements which have cost the Defendant \$32,646 to date and an as yet
9 undetermined amount in the future through at least 2023.

10 6. The Settlement Agreement provides for a reasonable service award to each
11 Plaintiff in the amount of \$2,333.33, subject to approval by the Court. The service awards are
12 meant to compensate Plaintiffs for their efforts on behalf of the Class, which include maintaining
13 contact with counsel, participating in client interviews, providing relevant documents, assisting
14 in the investigation of the case, remaining available for consultation throughout settlement
15 negotiations, reviewing relevant pleadings and the Settlement Agreement, and for answering
16 counsel's many questions.

17 7. The Settlement Agreement also provides for an award of combined attorneys' fees
18 and costs in an amount up to \$146,000, subject to approval by the Court.

19 8. As of the date of filing, there are no objections to either the Settlement Agreement
20 in general or to the proposed attorneys' fees and costs (the amount of which was made known to
21 the Class via the Court-approved notice program).

22 The Contingent Nature of the Case

23 9. Data privacy class actions are inherently complex and time-consuming. My
24 customary hourly rate for matters such as this is \$630 per hour. I also accept matters such as this
25 on a contingency fee basis for 1/3 of the gross recovery before trial preparations begin, or 40% of
26 the gross recovery after trial preparation has begun, with additional fees to be negotiated for any
27

1 further representation in the appeals process. These hourly rates and the contingency fees are
2 reasonable and customary in the Seattle area for complex class action matters for attorneys
3 litigated by attorneys with extensive experience. Plaintiffs are frequently unable to pay hourly
4 fees associated with litigating such matters, necessitating a contingency fee where much of the
5 risk of success is shifted onto plaintiffs' counsel, including recovering case costs advanced.

6 10. My firm took on this case on a purely contingent basis. As such, my firm assumed
7 a significant risk of nonpayment or underpayment. My firm has not received any compensation
8 for our time that firm attorneys and staff have spent on the case to date.

9 11. This matter has required me, and other attorneys and staff at my firm, to spend
10 time on this litigation that could have been spent on other matters. At various times during the
11 litigation of this class action, this lawsuit has consumed significant amounts of my time and my
12 firm's time, which is a small firm consisting of only four attorneys.

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

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

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

25 15. Class Counsels' fees were not guaranteed—the retainer agreement my firm has
26 with Plaintiffs does not provide for fees apart from those earned on a contingent basis, and, in the
27

1 case of class settlement, approved by the court.

2 The Costs and Fees Incurred

3 16. Due to the early stage of litigation and efficiency by which Class Counsel was able
4 to obtain this significant settlement, fees and costs incurred by Plaintiffs are low.

5 17. These fees and costs are the product of months of labor expended by a litigation
6 team to analyze and document its claims, engage in extensive settlement discussions with
7 Defendant's Counsel, communicate with Plaintiffs and many Class Members, and finally, to draft
8 and prepare all the necessary pleadings and notices in connection with a class-wide settlement.

9 18. Ultimately, through these extensive negotiations, the Parties reached a resolution
10 which is favorable to the Class, provides certainty, and ensures payment to the Class within a
11 reasonable time period.

12 19. After agreeing to the terms of the Settlement on behalf of the Class, Class Counsel
13 negotiated their fees and costs separate from the benefit to Class Members, in the amount of
14 \$146,000. When compared to the value of the gross settlement amount, the requested attorneys'
15 fees and costs award is far less than one-third of the gross settlement amount. Along with up to
16 \$250,000 in standard and extraordinary expense reimbursements, hard costs in connection with
17 administering the settlement will total approximately \$50,000; service awards will total \$7,000;
18 and the retail value of credit monitoring is up to a potential of \$1,973,944.08 total (12 months at
19 a retail value of \$9.99 per month for each of the 16,466 Class Members).¹ Simply put, the
20 requested attorneys' fees are a mere fraction of the gross settlement amount.

21 Class Notice

22 20. Upon information and belief, notice in this case has been provided as agreed upon
23 and as approved by the Court's Preliminary Approval Order and will be reported on more
24 extensively in Plaintiffs' Motion for Final Approval of Class Action Settlement and the
25 Declaration of the Settlement Administrator. The claims period is ongoing and will end on May
26 _____

27 ¹ Class Members who already redeemed their credit monitoring codes are not eligible for this benefit, however.

1 24, 2022.

2 21. As of May 13, 2022, the Settlement Administrator reports receiving zero
3 objections to the Settlement or to the request for fees, costs, and service awards.

4 22. As of May 13, 2022, the Settlement Administrator reports receiving zero requests
5 for exclusion.

6 23. My firm has received no objections and no requests for exclusion.

7 24. Plaintiffs will file a declaration from the Settlement Administrator certifying
8 completion of notice and detailing the status of the claims administration process.

9 25. I strongly believe that the Settlement Agreement is favorable for the Settlement
10 Class. In the opinion of Class Counsel, the settlement is fair, reasonable, and adequate, and should
11 receive final approval.

12
13 I declare under penalty of perjury under the laws of the State of Washington that the
14 foregoing is true and correct. Executed on May 13, 2022 at Seattle, WA.

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16 By: s/ Timothy W. Emery
17 Timothy W. Emery
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