

1 THE HONORABLE JASON HOLLOWAY
2 **FILED** Hearing Date: January 23, 2026 at 9:00 a.m.
2025 DEC 01 03:33 PM
3 KING COUNTY With Oral Argument
4 SUPERIOR COURT CLERK
E-FILED
CASE #: 24-2-17679-9 SEA

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

9 NICOLE KERSEY, DANA GIBSON,
10 XANDRA ABRAM, and CASEY SAPUTO, on
behalf of himself and all others similarly
11 situated,

12 Plaintiffs,

13 vs.

14 THERAPEUTIC HEALTH SERVICES,

15 Defendant.
16

No. 24-2-17679-9 SEA

DECLARATION JOHN J. NELSON IN
SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES, EXPENSES,
AND SERVICE AWARDS AND
MEMORANDUM IN SUPPORT

17 I, John J. Nelson, being competent to testify, make the following declaration:

18 1. I am currently a partner of the law firm Milberg Coleman Bryson Phillips
19 Grossman PLLC ("Milberg"). I am one of the lead attorneys for Plaintiffs and have been
20 appointed Class Counsel for the Settlement Class. I submit this declaration in support of
21 Plaintiff's Motion for Attorneys' Fees, Costs, and Service Awards. Except as otherwise noted, I
22 have personal knowledge of the facts set forth in this declaration, and could testify competently
23 to them if called upon to do so.

24 2. Attorneys appointed Class Counsel in this matter have extensive experience
25 prosecuting complex class actions, especially in the area of data breach litigation.
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The Litigation and Settlement

3. From the beginning of this case, Class Counsel expended considerable effort on behalf of Plaintiffs and the proposed Class. Class Counsel conducted their own investigations of the Data Incident, researched the legal issues implicated by the Data Incident, and drafted pleadings for the named Plaintiffs.

4. Class Counsel researched and prepared initial liability theories, damages modeling, risk assessments, and discovery planning. Class Counsel then filed the individual complaints and ultimately worked together to plan a course of action to move forward in this litigation. Class Counsel spent numerous hours in those early stages researching and coordinating efforts among the law firms.

5. The Parties began to explore the possibility of early resolution through their counsel. The Parties agreed to engage a mediator to oversee settlement negotiations in the Action. In advance of formal mediation, Defendant provided informal discovery related to the merits of Plaintiffs' claims, potential defenses thereto, and class certification, and the Parties discussed their respective positions on the merits of the claims and class certification.

6. The Parties engaged in extensive arm's length negotiations and Class Counsel only reached a settlement after an extensive investigation and prolonged arms' length negotiations presided over by an immensely talented mediator and former federal court judge, The Honorable John W. Thornton, Jr. (Ret.).

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

8. Class Counsel worked for weeks to finalize the Settlement Agreement and associated exhibits (such as the Class notices and claim form) pertaining to notice, preliminary approval, and final approval.

9. Since the Settlement, Class Counsel has worked closely with the Settlement Administrator, to ensure the settlement proceeded smoothly and according to plan. Class

1 Counsel proofread, edited, and factually checked everything that the Settlement Administrator
2 posted on the settlement website. Class Counsel responded to Class Member inquiries and
3 conferred with the Settlement Administrator, as well as Defendant's Counsel, on issues as they
4 arose during the claims administration process. They also ensured deadlines were met, and they
5 anticipate further involvement with the Settlement Administrator and Defendant's Counsel in
6 the coming months to further ensure a full settlement for the Class.

7 10. The settlement is a significant result for the Class. The Litigation was hard-
8 fought, difficult, contentious, and posed a series of case-dispositive risks for Class Counsel.

9 **The Contingent Nature of the Case**

10 11. My Firm, and each Class Counsel firm, prosecuted this case on a purely
11 contingent basis. As such, the firm assumed a significant risk of nonpayment or underpayment.

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

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

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

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

3 16. Plaintiffs' Counsel have standard fee agreements with the named Plaintiffs
4 calling for 30–40 percent of the recovery to be paid as attorneys' fees, plus costs, in the event
5 that this action settled or taken to judgment on an individual basis. Class Counsel's fees were
6 not guaranteed—the retainer agreement counsel had with Plaintiffs did not provide for fees
7 apart from those earned on a contingent basis, and, in the case of class settlement, approved by
8 the court.

9 **CLASS COUNSEL'S TIME AND EXPENSES IN THE LITIGATION**

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

12 18. Our firms maintain contemporaneous records of its time and expenses. These
13 records are prepared and maintained in the ordinary course of business through software
14 systems maintained by the firm.

15 19. I prepared my declaration with the assistance of other lawyers and staff at the
16 firm with knowledge of the matters reflected herein. I have personally reviewed the information
17 supporting the fee and expense requests that are the subject of this declaration.

18 20. As part of the preparation of my declaration, I reviewed the time and expenses
19 incurred in this litigation to exercise billing judgment. In reviewing the time and expenses, and
20 in exercising my billing judgment, I have carefully reviewed the time entries for reasonableness
21 and endeavored to delete any time entries that could be viewed as duplication of work.

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

The Costs and Fees Incurred

22. Class Counsel's lodestar of 399.8 hours as of November 25, 2025, amounts to \$289,913.80 in lodestar and a negative lodestar multiplier of .81. Additional time will be spent dealing with any objections, to prepare for and attend the Final Fairness Hearing, defending any appeals taken from the final judgment approving settlement, and ensure 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.

23. The time Class Counsel devoted to this case is reasonable. Class Counsel prosecuted the claims at issue efficiently and effectively, making every effort to prevent the duplication of work that might have resulted from having multiple firms working on this case.

24. The total lodestar of all Class Counsel and Plaintiffs' Counsel to date includes the following:

EMERY REDDY PC

Timekeeper	Rate	Hours	Total Slip Values
Anderson Berry, Attorney	950	18.9	\$17,955.00
Timothy W. Emery, Attorney	1,140	10.1	\$11,514.00
Gregory Haroutunian, Attorney	825	28.6	\$23,595.00
Brook Garberding, Attorney	825	75.3	\$62,155.50
Paul Cipriani	475	7.0	\$3,325.00
Brandon P. Jack, Attorney	625	30.7	\$19,187.50
Michelle Zhu, Attorney	475	53.7	\$25,507.50
Lori Martin, Paralegal	308	3.3	\$1,016.40
Bianca Marentes, Paralegal	308	2.8	\$862.40

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TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

Total:		230.4	\$165,085.30
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TOUSLEY BRAIN STEPHENS PLLC

TIMEKEEPER	HOURS	AMOUNT	RATE
Joan Pradhan	20.3	\$14,210.00	\$700.00
Jason T. Dennett	0.2	\$228.00	\$1,140.00
Lidiya I. Bayliyeva	25.9	\$12,950.00	\$500.00
Cecily C. Jordan	0.4	\$340.00	\$850.00
Kaleigh N. Boyd	28.1	\$22,480.00	\$800.00
Amy E. Stanton	15.4	\$5,390.00	\$350.00
TOTAL	90.30	\$55,598.00	

MILBERG PLLC

Timekeeper	Rate	Hours	Lodestar
Gary M. Klinger (Sr. Partner)	\$948.00	18.0	\$17,064.00
David K. Lietz (Sr. Partner)	\$1,141.00	7.2	\$8,215.20
John J. Nelson (Partner)	\$839.00	41.1	\$34,482.90
Carolyn Cuneo (Associate)	\$948.00	8.0	\$7,584.00
Dean Meyer (Associate)	\$581.00	2.0	\$1,162.00
Sandra Passanisi (Paralegal)	\$258.00	.6	\$154.80
Kendal McLaughlin (Paralegal)	\$258.00	1.0	\$258.00
Amanda Mkmanga (Paralegal)	\$258.00	.3	\$77.40
Ashley Tyrrell (Paralegal)	\$258.00	.9	\$232.20
TOTAL		79.1	\$69,230.50

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1 25. Class Counsel's hourly rates are reasonable and have been approved by this
2 Court and by other courts in the Ninth Circuit and throughout the country.

3 26. I assert that the attorneys' fees sought in the motion for attorneys' fees are
4 reasonable and seek fair and reasonable compensation for undertaking this case on a
5 contingency basis, and for obtaining the relief for Plaintiffs and the Class.

6 27. Prior to taking on Plaintiffs' respective cases, we thoroughly researched
7 Defendant's practices and Plaintiffs' legal claims by, among other things, conducting an
8 independent investigation and researching relevant data privacy statutes. This information was
9 critical to my understanding of the nature of the Incident, the scope of potential damages and
10 remedies, and the potential risks and benefits of continued litigation.

11 28. Class Counsel, other attorneys at our firms, and I devoted significant time and
12 resources to this case, including:

- 13 a. Conducting an investigation into the facts regarding Plaintiffs' claims
14 and class members claims;
- 15 b. Researching law relevant to and preparing Plaintiffs' class action
16 complaint
- 17 c. Preparing for and attending mediation, including researching and
18 preparing a detailed mediation statement, as well as attending pre-
19 mediation conferences and calls;
- 20 d. Engaging in substantial post-mediation negotiations over the notice plan,
21 and negotiating a second email notice;
- 22 e. Negotiating and preparing the Parties' class action settlement agreement,
23 along with the proposed class notice and claim form;
- 24 f. Negotiating with settlement administration companies to secure the best
25 notice plan practicable;
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- 1 g. Preparing and revising Plaintiffs' motion for preliminary approval of the
2 class action settlement;
- 3 h. Working with the Settlement Administrator to ensure the timely
4 completion of Notice and processing of claims;
- 5 i. Monitoring the claims process and corresponding with the Settlement
6 Administrator regarding the same;
- 7 j. Closely monitoring evolving law regarding data security and its potential
8 impacts on the case;
- 9 k. Conferring with Plaintiffs throughout the case;
- 10 l. Working with Plaintiffs to respond to Defendant's informal discovery
11 requests
- 12 m. Reviewing Defendant's information responses, and;
- 13 n. Responding to Class Member inquiries regarding the claims process.

14 29. Where possible, Class Counsel made efforts to carefully assign work so as to
15 avoid duplication of efforts and have the work completed by the appropriate level of attorney.

16 30. All books and records in this case regarding costs expended were maintained in
17 the ordinary course of business, from expense vouchers and check records. I have reviewed the
18 records of costs expended in this matter.

19 31. Class Counsel has also accrued \$5,923.28 in out-of-pocket expenses primarily to
20 cover expenses related to their investigation, mediation fees, court filing fees, service fees, fees
21 for use of research databases, and administrative costs such as copying and mailing. These
22 costs are reasonable, and necessary for the litigation.

23 32. Additional costs and expenses may be incurred before our work is done in this
24 case, as is true of the additional services which we will provide to the Class.

25 33. In the opinion of the undersigned and other Class Counsel, the attorneys' fees
26 and costs requested are fair and reasonable, under the facts and circumstances of this case.

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1 I declare under penalty of perjury of the laws of the State of Washington and the United
2 States that the foregoing is true and correct, and that this declaration was executed in San
3 Diego, California on this 1st day of December, 2025.
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5 s/John J. Nelson
6 John J. Nelson
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1 **CERTIFICATE OF SERVICE**

2 I, Madison Peterson, declare and say that I am a citizen of the United States and resident
3 of the state of Washington, over the age of 18 years, not a party to the above-entitled action,
4 and am competent to be a witness herein. My business address and telephone number are 1200
5 Fifth Avenue, Suite 1700, Seattle, Washington 98101. My telephone number is 206.682.5600.

6 On December 1, 2025, I caused to be served the foregoing document on the individual
7 named below via KC Script Portal:

8 John Mills
9 jtmills@grsm.com
10 Joseph Salvo
11 jsalvo@grsm.com
12 Alexandra Mormile
13 amormile@grsm.com
14 **GORDON REES SCULLY**
15 **MANSUKHANI, LLP**
16 1 Battery Park Plaza
17 28th Floor
18 New York, NY 10004

15 Zackary Paal, WSBA #45077
16 zpaal@grsm.com
17 **GORDON REES SCULLY**
18 **MANSUKHANI, LLP**
19 701 Fifth Avenue, Suite 2100
20 Seattle, WA 98104

19 I declare under penalty of perjury under the laws of the state of Washington and the
20 United States that the foregoing is true and correct.

21 Executed this 1st day of December, 2025, at Seattle, Washington.

22
23 
24 _____
25 Madison Peterson, Legal Assistant
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