

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

TRACY MCPHERSON, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

AMERICAN BANK SYSTEMS, INC.

Defendant.

Civil Action No. 5:20-cv-01307-G

LARRY LYLES, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

AMERICAN BANK SYSTEMS, INC.

Defendant.

Civil Action No. 5:21-cv-00023-HE

**JOINT DECLARATION OF GARY F. LYNCH AND JOSEPH P.
GUGLIELMO IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES,
COSTS, AND SERVICE AWARDS TO REPRESENTATIVE PLAINTIFFS**

We, Gary F. Lynch, and Joseph P. Guglielmo, pursuant to 28 U.S.C. § 1746, declare as follows:

1. We are Co-Lead Class Counsel for the Plaintiffs and the proposed Settlement Class in the above-captioned actions against Defendant American Bank Systems, Inc. (“ABS”). We have been involved in all aspects of this litigation since inception. We submit this Joint Declaration in support of Plaintiffs’ Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Service Awards to Representative Plaintiffs. The information set forth in this Declaration is based upon our personal knowledge and we could testify competently to such information if called upon to do so.

2. Mr. Lynch is an attorney licensed in Pennsylvania and New York, and has been admitted to practice before the Supreme Court of the United States and numerous federal appellate and district courts, including this Court. He has been practicing law for 30 years and represents plaintiffs in complex matters, including many national class actions. Mr. Lynch is a founding member of the law firm of Lynch Carpenter, LLP (formerly Carlson Lynch, LLP). Mr. Guglielmo is an attorney licensed in New York, Massachusetts and the District of Columbia and is a partner at Scott+Scott Attorneys at Law LLP (“Scott+Scott”) and has successfully prosecuted some of the country’s largest and most complex class actions. Mr. Guglielmo has been practicing for over 25 years and has been appointed to leadership positions in numerous class actions and multidistrict litigation. We were appointed Interim Co-Lead Class Counsel by the Court on March 11, 2021. (*Lyles*, Doc. 34 at 3). Our respective firm resumes are attached to the concurrently filed Declarations of Gary F. Lynch and Daryl F. Scott.

3. The statements herein are true to the best of our personal knowledge, information and belief based on our books and records, information received from our attorneys and staff, and

our review of documents submitted by our co-counsel firms also representing Plaintiffs, Federman & Sherwood and the Wood Law Firm.

4. We oversaw the prosecution of the entire Action. We undertook this action on a contingent fee basis following our customary practices for contingent matters, meaning that to date we have received no payment for our services. We also advanced all litigation expenses, and to date have not received reimbursement for these from any source. Further, our agreements with our clients provided that we would not charge them for fees or expenses in the event of an unsuccessful outcome. Our agreements with our clients indicated that in the event of a successful settlement or judgment, we would seek reimbursement of our advanced costs from the recovered funds, and a percentage of those funds as payment for our fees. Because our agreements were structured in this way, we did not charge our clients at hourly rates or agree to use anything other than our standard rates in connection with our fee request.

5. The services Class Counsel and our co-counsel performed on behalf of the putative class include, but are not limited to, the following: fully investigating the facts and legal claims; preparing the complaints; requesting, obtaining, and reviewing numerous documents from ABS regarding the incident and how it affected class members, ABS's remediation efforts, insurance coverage, and financial condition; drafting a comprehensive mediation statement assessing the legal and factual strengths and weaknesses of the case; participating in the mediation and a multi-week negotiation process to develop the proposed settlement agreement; developing the notice program and distribution plans, including soliciting bids from settlement administrators; obtaining preliminary approval; and working with Analytics to implement the notice plan. Performing these tasks necessarily limited the time we had available to work on other cases or pursue other opportunities.

6. Of particular note, our review of Defendant's financial statements and insurance agreements allowed us to form a strong belief that the benefit for the class achieved through the settlement agreement surpasses what would likely be available for recovery if the parties were to fully litigate these actions. In short, it is our conclusion that Defendant does not have sufficient financial resources or insurance coverage to sustain extensive litigation and also pay a judgment similar in size to what the settlement provides.

7. Based on the settlement administrator's latest projection of total administration costs, we estimate that even after subtracting the requested fees, expenses, and administration costs, approximately \$1 million of the settlement fund will remain for direct distribution to settlement class members who submit valid claims. The final amount to be distributed will not be ascertainable with exactitude until the claim process is complete and the fee and expense amounts have been determined by the Court.

8. During the course of this litigation, and as detailed herein, Class Counsel coordinated with one another to divide work amongst the firms in an efficient and effective manner and to avoid duplicative or unnecessary work. Class Counsel also received assistance from local and interim counsel, Federman & Sherwood throughout this litigation, and the Wood Law Firm. We have reviewed the time and expense entries submitted by each of the participating law firms, Lynch Carpenter LLP, Scott+Scott Attorneys at Law LLP, Federman & Sherwood, and the Wood Law Firm.

9. All Class Counsels' (and co-counsel's) time and expense records (including, where necessary, backup documentation) have been reviewed to confirm both the accuracy of the entries as well as the necessity for and reasonableness of the time and expenses expended in this litigation. As a result of this review, certain reductions were made to both time and expenses either in the

exercise of billing judgment or to conform to Class Counsels' firms' practice and to exclude time that was duplicative or could not be billed to a fee-paying client. As a result of this review and related reductions, the time reflected in Class Counsels' lodestar calculation and the expenses for which payment is sought are reasonable in amount and were necessary to prosecute the action and reach the settlement now before the Court.

10. Set forth below in ¶ 11 is a summary reflecting the amount of time (after any applicable reductions) plaintiffs' attorneys and professional staff worked on the Action from the inception of the case in 2020 through today's date, and the corresponding lodestar value of that work. The schedule was prepared based upon daily time records maintained by Class Counsels' attorneys and professional support staff in the ordinary course of business, and the lodestar calculations are based on the firm's current hourly billing rates, or the firm's equivalent rate for the biller as of their last date of employment.

11. Sorted by firm, plaintiffs' counsel's total reported hours and lodestar are as follows:

Firm	Attorney Rate Range	Hours	Lodestar
Scott+Scott	\$575–\$1,150	289.2	\$240,076.50
Lynch Carpenter	\$400–\$950	296.1	\$231,260.00
Federman & Sherwood	\$350–\$900	75.7	\$42,635.00
Wood Law Firm	\$450–\$850	52.6	\$41,910.00
	Totals:	713.6	\$555,881.50

Combined, the four firms representing Plaintiffs in this matter report 713.6 hours necessary for the prosecution of this action, and a total lodestar of \$555,881.50. Based on the ratio of lodestar to the \$510,000 fee request, the “multiplier” for purposes of a lodestar crosscheck is no more than 0.917.

12. More detailed summaries, including listings of each individual biller's hours and rates, are provided in the contemporaneously filed declarations for each firm. *See* Declaration of Gary F. Lynch ¶ 6; Declaration of Daryl F. Scott ¶ 6; Declaration of William Federman ¶ 6; Declaration of E. Kirk Wood ¶ III & Ex. 2. Each firm also maintains the detailed task-level billing records from which these summaries were drawn, which we have reviewed. These records can be produced to the Court or a class member upon request.

13. The hourly rates for Class Counsel's attorneys and professional support staff are the firms' current hourly rates or the firm's equivalent rate for the biller as of their last date of employment. The hourly rates for attorneys and professional support staff in these firms are the same as the regular rates charged for their services in contingent fee matters.

14. Our two firms have years of experience working on similar data breach class actions in state and federal courts around the country, including in our respective home jurisdictions, and including cases in which we similarly served as co-lead class counsel. Our fee request in this matter is comparable, in terms of the percentage requested and/or the hourly rates used, to requests that were approved in: *First Choice Federal Credit Union v. The Wendy's Company et al*, 2:16-cv-0506 (ECF No. 191) (W.D. Pa. Nov. 6, 2019) (in case with Lynch Carpenter (formerly Carlson Lynch) and Scott+Scott attorneys serving as co-lead counsel, approving fee award of 30% of common fund, with hourly attorney rates ranging from \$300 to \$950); *Arkansas Fed. Credit Union v. Hudson's Bay Co.*, No. 18-CV-8472 (PKC), 2021 WL 8445929 (S.D.N.Y. July 22, 2021) (approved fees ranging from \$500–\$950); *Veridian Credit Union v. Eddie Bauer LLC*, No. 2:17-cv-00356 (ECF No. 182) (W.D. Wash. Oct. 25, 2019) (final approval order); *Dittman et al v. UPMC d/b/a The University of Pittsburgh Medical Center and UPMC McKeesport*, No. GD-14-003285 (Pa. Ct. Comn. Pls. Alleg. Cty. Dec. 29, 2021)

(final approval order) (approving fee of 28.3% of constructive common fund of \$2.65 million, with Lynch Carpenter LLP's approved rates ranging from \$350 for associates to \$950 for senior partners).

15. Combined, the four firms representing Plaintiffs in this matter incurred \$16,946.57 in expenses necessary for the prosecution of this action. These expenses were unavoidable expenses such as filing fees, courtesy copy costs, the mediator fee, travel to the preliminary approval hearing, and an estimated \$1,500 required for travel to the final approval hearing. *See also* Declaration of Gary F. Lynch ¶ 7; Declaration of Daryl F. Scott ¶ 7; Declaration of William Federman ¶ 7; Declaration of E. Kirk Wood ¶¶ V–VI & Ex. 3.

16. The representative Plaintiffs performed valuable services for members of the class by bringing their claims to Plaintiffs' counsel for investigation, agreeing to serve as representative plaintiffs, verifying the complaint and amended complaints, remaining available to consult with Class Counsel when necessary regarding the progress of the litigation, and reviewing and signing the Settlement Agreement. For these reasons, and based on our experience in similar litigation, it is our opinion that the requested \$1,500 service awards for each representative plaintiff are reasonable and in line with awards approved by other courts in similar actions with a similar degree of involvement from representative plaintiffs.

We declare under penalty of perjury that the foregoing is true and correct.

Executed this day 15th of June 2022, in Pittsburgh, Pennsylvania.

/s/ Gary F. Lynch
Gary F. Lynch

Executed this day 15th of June 2022, in Wilton, Connecticut.

/s/ Joseph P. Guglielmo
Joseph P. Guglielmo