

**STATE OF MINNESOTA
COUNTY OF WASHINGTON**

**DISTRICT COURT
TENTH JUDICIAL DISTRICT**

ASHLEY BURGESS, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

**MINNESOTA ORTHODONTICS AND
DENTOFACIAL ORTHOPEDICS, P.A.**,

Defendant.

No. 82-cv-25-3249

Judge Douglas B. Meslow

**JOINT DECLARATION OF CLASS COUNSEL IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT,
ATTORNEYS' FEES AND COSTS AWARD, AND SERVICE AWARD**

1. We are Class Counsel for Plaintiff Ashley Burgess in the above-captioned case. This declaration supports Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Costs Award and Service Awards. We have personal knowledge of the facts in this declaration and could testify to them if called on to do so.

Rule 23.05 of the Minnesota Rules of Civil Procedure is Satisfied

2. Previously, the Court found that the Settlement Class satisfied Rule 23.01 and Rule 23.02(c). Since then, there has been no intervening change in law or fact to disturb the Court's initial finding.

3. Here, the Settlement Class still satisfies the Rule 23 requirements of numerosity, commonality, typicality, adequacy, predominance, and superiority.

4. Commonality is satisfied because there are many questions of law or fact common to the class including whether Defendant is liable for the Data Incident and whether Plaintiff and Class Members suffered cognizable damages.

5. Typicality is satisfied and the claims or defenses of the representative parties are typical of the claims or defenses of the class because all claims and defenses stem from the exact same Data Incident.

6. Predominance is satisfied and questions of law or fact common to the members of the class predominate because common questions (e.g., involving the data security of Defendant, the duties owed by Defendant, and the injuries of the Settlement Class), all predominate over individualized questions.

7. Superiority is satisfied and a class action is superior to other available methods because individualized litigation of 49,958 persons' claims would be impracticable and because the damages per individual would be small.

8. Moreover, the Settlement proposed to the Court is within the range of possible approval because there are no substantive or procedural deficiencies such as complex claim forms or preferential treatment of Plaintiff.

**LITIGATION BACKGROUND AND THE WORK OF
SETTLEMENT CLASS COUNSEL**

9. On June 2, 2025, after Class Counsel spent significant time investigating the facts surrounding the data breach, interviewing breach victims, and researching the potential legal claims, Plaintiff filed her class action complaint against Defendant in the Washington County District Court for the Tenth Judicial District of Minnesota, Case No. 82-cv-25-3249. Therein, Plaintiff brought claims for negligence, negligence per se, breach of fiduciary duty, and breach of implied contract.

10. Prior to filing these cases, Plaintiff's counsel conducted extensive pre-suit discovery to ascertain all publicly available details about the cause, scope, and result of the Data Incident, as well as about the damages suffered by the Plaintiff and the Class.

11. In July 2025, recognizing the benefits of early resolution, the parties entered into settlement discussions. Pursuant to those discussions, Plaintiff requested, and Defendant produced, informal discovery necessary to evaluate the strengths and weaknesses of Plaintiff's claims, including information related to, among other things, the nature and cause of the Data Incident, the number and geographic location of victims impacted by the Data Incident, the specific type of information potentially accessed, and the limited financial and insurance circumstances of Defendant.

12. Over the following months, Class Counsel and Defendant's counsel, both of whom are experienced in data breach class actions, conducted multiple rounds of arms'-length negotiations, spoke on the phone numerous times, and exchanged several draft term sheets. However, after unsuccessfully reaching a resolution, the Parties recognized the need for a mediator, and on September 19, 2025, the Parties filed a stipulation for a stay of all case deadlines while they engaged in a mediation with retired Judge Tom Fraser, which the Court granted on September 23, 2025. After the parties attended a full-day mediation with retired Judge Tom Fraser on October 21, 2025, they ultimately agreed on the terms of the Settlement. On November 18, 2025, the Parties filed a joint notice of settlement notifying the Court they reached an agreement on the material terms of a class settlement.

13. The parties did not discuss the payment of attorneys' fees, costs, expenses and/or service awards to Plaintiff until after the substantive terms of the settlement had been agreed upon, other than that Defendant would pay reasonable attorneys' fees, costs, expenses, and a service award to the Class Representative as may be agreed to by Defendant and Class Counsel and/or as ordered by the Court.

14. On December 18, 2025, Plaintiff moved for preliminary approval of the Settlement. On February 10, 2026, the Court granted the Parties' motion for preliminary approval and set the final approval hearing for June 5, 2026.

15. Since the preliminary approval motion was granted, Class Counsel has worked with the Settlement Administrator to effectuate class notice and facilitate the claims process. That work is ongoing and will continue through the conclusion of the case.

16. Plaintiff has been impacted the same as all Class Members and has the same interests as them. Plaintiff has assisted in the investigation of this case, reviewed and approved pleadings, stayed in contact with Class Counsel, and answered Class Counsel's many questions. Plaintiff was informed of the risks of continued litigation and the benefits of early resolution.

17. The Service Award is intended to recognize Plaintiff's efforts in the litigation and commitment to the Class in reaching and implementing this Settlement. Plaintiff stepped up and led this litigation on behalf of all Class Members, providing valuable services for the benefit of the Class.

18. We, and others at our firms, have devoted significant time and resources to this case to date, including, *inter alia*:

- i. Investigating the facts regarding Plaintiff's claims and class members' claims;
- ii. Researching law relevant to, and preparing Plaintiff's class action complaints;
- iii. Negotiating in good faith and at arm's length with defense counsel to resolve the claims at issue;
- iv. Negotiating and preparing the Parties' class action settlement agreement, along with the proposed class notice and claim form;

- v. Preparing Plaintiff's motion for preliminary approval of the class action settlement and preparing a detailed declaration in support;
- vi. Working with the Settlement Administrator to ensure the timely completion of Notice and processing of claims;
- vii. Closely monitoring evolving law regarding data security and its potential impacts on the case; and
- viii. Conferring with Plaintiff throughout the case.

CONTINGENT NATURE OF THE ACTION

19. Shamis & Gentile, P.A. ("Shamis Gentile") and Strauss Borrelli PLLC ("Strauss Borrelli") took on this case on a purely contingent basis.

20. This matter has required us, and other attorneys at Shamis Gentile and Strauss Borrelli, 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.

21. 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.

22. 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.

23. 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. Likewise, further litigation would get more expensive and complex as the Parties engage in formal discovery, commission expert reports, pursue third-party vendor information, and move towards class certification and dispositive motions.

24. Here, there is no question that settlement will save both Parties from lengthy litigation. Had this case not settled, the parties would have engaged in a motion to dismiss, motions for summary judgement, motions challenging class certification, an expensive and drawn-out discovery process, depositions, witness preparation, trial preparation, and a lengthy trial. A trial would likely require multiple experts to explain to a jury the complexities of data security breaches in general and the Data Incident that occurred.

25. Among national consumer protection class action litigation, data breach cases are some of the most complex and involve a rapidly evolving area of law. As such, these cases are particularly risky for plaintiffs' attorneys.

26. Even if Plaintiff prevailed against Defendant at trial, there is a high probability that Defendant would appeal any adverse ruling, further delaying relief to Plaintiff and the Settlement Class. Such delay could last months and years, incurring further expenses and resources, all while risking that the Class might ultimately recover nothing. As such, while Class Counsel believes in the merits of Plaintiff's claims, settlement is favorable to avoid such delay, risk, and expense.

27. Class Counsel is knowledgeable, and highly experienced in complex litigation, consumer class actions, and data breach matters in particular. Class Counsel has decades of experience and was well-equipped to evaluate the risks of continuing litigation.

28. Class Counsel worked together to advocate for the Settlement Class and acted professionally and reasonably in all respects.

29. Class Counsel believe that the Settlement Agreement is a highly favorable outcome for the Settlement Class and that it compares favorably with settlements in similar litigation. The Settlement proposed to the Court is within the range of possible approval because there are no substantive or procedural deficiencies such as complex claim forms or preferential treatment of Plaintiff.

30. Class Counsel advises that Plaintiff also approves of the Settlement.

LODESTAR, FEES, AND EXPENSES

31. The regular practice at Shamis Gentile and Strauss Borrelli is to maintain contemporaneous time records. The billable rates are consistent with rates billed for similar legal services.¹

32. Through April 27, 2026, Shamis Gentile worked a total of 46.25 hours on this case, incurring fees of \$35,362.50.

33. A summary indicating the amount of time expended by the partners, associates, and professional support staff of Shamis Gentile involved in the litigation is set forth below:

Timekeeper	Position	Hourly Rate	Hours	Lodestar
Leanna Loginov	Partner	850.00	33	\$28,050.00
Tonyia Johnson	Associate	650.00	10	\$6,500.00
Catherine Rosario	Paralegal	250.00	3.25	\$812.50
TOTAL			46.25	\$35,362.50

¹ 2020 Class Action Hourly Rate Survey, NALFA (March 4, 2020) <https://www.thenalfa.org/blog/survey-class-action-defense-rates-keep-pace-with-plaintiffs-rates-in-2020/#:~:text=The%20NALFA%20survey%20shows%20that,than%20%24200%20and%20over%20%241%2C200> (listing hourly rates up to \$1,200 per hour for class actions).

34. Upon request, Shamis Gentile can provide detailed contemporaneous records to the Court for review.

35. All books and records in this case regarding costs expended were maintained in the ordinary course of business, from expense vouchers and check records. Shamis Gentile has reviewed the records of costs expended in this matter.

36. Through April 27, 2026, we have incurred \$1,750.00 in reasonable expenses necessary to the litigation, which include fees for pro hac applications, and mediation costs.

Expense Type	Amount
Pro Hac Filing Fee	\$450.00
Mediation Costs	\$1,300.00
TOTAL	\$1,750.00

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

Executed this 27th day, of April, 2026, at Miami, Florida.

/s/ Leanna A. Loginov
Leanna A. Loginov

37. Through April 27, 2026, Strauss Borrelli worked a total of 54.30 hours on this case, incurring fees of \$37,670.00.

38. A summary indicating the amount of time expended by the partners, associates, and professional support staff of Strauss Borrelli involved in the litigation is set forth below:

Timekeeper	Position	Hourly Rate	Hours	Lodestar
Raina C. Borrelli	Partner	800.00	2.40	1,920.00

Samuel J. Strauss	Partner	800.00	12.20	9,760.00
Brittany Resch	Partner	675.00	38.00	25,650.00
Megan Wang	Paralegal	200.00	1.70	340.00
TOTAL			54.30	\$37,670.00

39. Upon request, Strauss Borrelli can provide detailed contemporaneous records to the Court for review.

40. All books and records in this case regarding costs expended were maintained in the ordinary course of business, from expense vouchers and check records. Strauss Borrelli has reviewed the records of costs expended in this matter.

41. Through April 27, 2026, we have incurred \$2,028.00 in reasonable expenses necessary to the litigation, which include advertisement costs and filings fees.

Expense Type	Amount
Filing Fees	728.00
Mediation Fees	1,300.00
TOTAL	\$2,028.00

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

Executed this 27th day, of April, 2026, at Minneapolis Minnesota.

/s/ Brittany Resch
Brittany Resch

42. The total lodestar for Class Counsel is 100.55 hours for a total of \$73,032.50.

43. Here, Class Counsel requests \$135,000.00 in attorneys' fees, inclusive of \$3,778.00 in costs—which equates to a modest lodestar multiplier of 1.8.

44. We estimate that Class Counsel will spend approximately 15 more hours by the close of this action in connection with drafting the final approval motion, preparing for argument at the final approval hearing, and miscellaneous matters, including responding to class member inquiries and claims administration. To date, there have been no objections and zero opt-outs filed to date. Class Counsel's time expended on this case diverted, and will continue to divert, substantial time and resources that would otherwise have been spent on other cases.

Dated: April 27, 2026

Respectfully submitted,

By: /s/ Brittany Resch
Brittany Resch (MN No: 0397656)
STRAUSS BORRELLI PLLC
One Magnificent Mile
980 N. Michigan Ave., Suite 1610
Chicago, IL 60611
Telephone: (872) 263-1100
Facsimile: (872) 263-1109
bresch@straussborrelli.com

Leanna Loginov (*Pro Hac Vice*)
SHAMIS & GENTILE, P.A.
14 NE First Ave., Suite 705
Miami, FL 33132
Telephone: (305) 479-2299
lloginov@shamisgentile.com

Attorneys for Plaintiff and the Proposed Class

CERTIFICATE OF SERVICE

I, Brittany Resch, hereby certify that on April 27, 2026, I electronically filed the foregoing with the Clerk of the Court using the Odyssey E-Filing system, which will send notification of such filing to counsel of record, via the Odyssey E-Filing system.

DATED this 27th day of April, 2026.

STRAUSS BORRELLI PLLC

By: /s/ Brittany Resch

Brittany Resch
STRAUSS BORRELLI PLLC
One Magnificent Mile
980 N. Michigan Ave., Suite 1610
Chicago, IL 60611
Telephone: (872) 263-1100
Facsimile: (872) 263-1109
bresch@straussborrelli.com

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