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*Attorneys for Plaintiffs and the Proposed Class*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JUAN ROMERO, FRANK  
TISCARENO, and KENNETH  
ELLIOTT, on behalf of themselves, and  
all others similarly situated,

Plaintiffs,

v.

SECURUS TECHNOLOGIES, INC,  
  
Defendant.

Case No.: 16-cv-1283-JM-MDD

CLASS ACTION

**DECLARATION OF  
KENNETH R. ELLIOTT IN  
SUPPORT OF PLAINTIFFS'  
MOTION FOR LITIGATION  
COSTS, INCENTIVE AWARDS,  
AND ATTORNEYS' FEES**

Date: September 28, 2020

Time: 10:00 a.m.

Ctrm: 5D

Judge: Hon. Jeffrey T. Miller

1 Pursuant to 28 U.S.C. § 1746, I, Kenneth R. Elliott, hereby declare and state  
2 as follows:

3 1. I, along with plaintiffs Juan Romero and Frank Tiscareno (collectively  
4 myself and Messrs. Romero and Tiscareno are referred to herein as “Plaintiffs”),  
5 serve as class representatives pursuant to the Court’s Order granting in part  
6 Plaintiffs’ motion for class certification (D.E. 141) in the above-captioned matter.  
7 I make this declaration in support of Plaintiffs’ Motion for Litigation Costs,  
8 Incentive Awards, and Attorneys’ Fees. This declaration is based on my own  
9 personal knowledge, and if called to testify, I could and would do so competently  
10 on the matters stated herein.

11 2. I have been a member in good standing of the State Bar of California  
12 practicing law as a criminal defense attorney since 1988. While my office is located  
13 in Vista, California, I represent defendants who have been detained in all the San  
14 Diego County detention facilities, including the George Bailey Detention Facility  
15 in Otay Mesa, the South Bay Detention Facility, and the San Diego Central Jail.

16 3. As set forth in my October 3, 2017 declaration in support of Plaintiffs’  
17 motion for class certification, on or about June 1, 2016 I discovered as a result of  
18 this lawsuit that my main office telephone number had been identified as having  
19 been recorded. (D.E. 62-38.) I thereafter stopped using the Defendant’s telephone  
20 system for substantive conversations with my clients who were detained in law  
21 enforcement facilities. This includes even the most seemingly innocuous exchange  
22 of information because in my experience, the disclosure of information such as the  
23 date and time when I would be visiting my clients can result in adverse  
24 consequences such as coincidentally unusually long delays in meeting with my  
25 client, or the detainee’s purported total unavailability to meet at all at the appointed  
26 time.

27 4. Since I learned of the recording of my telephone calls, my  
28 conversations with my detained clients on the phone have been guarded, limited,

1 closed, and brief. In lieu of substantive phone conversations, I have made it my  
2 practice to travel to the detention facilities to meet in person with my clients in order  
3 to minimize the risks and the harm to the reputation of my practice from unlawful  
4 recordings.

5 5. From the time I learned of the recording of my phone number in  
6 mid-2016 until late February 2020 when the COVID-19 pandemic struck, I  
7 conducted the bulk of my substantive communications with my clients in person.<sup>1</sup>  
8 In order to do this, I had to commute from my office in Vista, California to at least  
9 five different San Diego County jails, including the George Bailey Detention Facility  
10 in Otay Mesa, California which is approximately 57 miles away from my office.

11 6. Most of my work is done on a flat fee basis, and I was unable to charge  
12 for the additional time required to travel to and from the detention facilities.  
13 However, on the few occasions when I do charge a client an hourly rate, it varies  
14 from \$350 to \$500 per hour. I estimate the change in my practice regarding how I  
15 communicated with my clients since joining the case has consumed at least an  
16 additional 50 hours of my time valued at my hourly rate between \$17,500 and  
17 \$25,000.

18 7. In addition, I estimate I have spent over 10 hours reviewing my case  
19 files to evaluate the potential of any unlawful recordings on the outcome of those  
20 cases. If I did not take these steps to protect the confidentiality of my  
21 communications with my clients and evaluate my case files, the effectiveness of my  
22 legal representation would be compromised, arguably falling below the professional  
23 standard of care, and my professional reputation would be at further risk of being  
24

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25 <sup>1</sup> Since the beginning of the COVID-19 pandemic in late February, in person visits  
26 to San Diego County detention facilities have been restricted, and the method for my  
27 communications with detained clients is now limited to video conferences. The  
28 video conferencing system used by San Diego County law enforcement is not hosted  
or provided by the Defendant, and I would be extremely cautious and reluctant to  
use such a system if it were.

1 potentially tarnished.

2 8. Although I have not kept time entries in connection with this matter, I  
3 have read Mr. Teel's declaration filed concurrently herewith and agree with his time  
4 entries reflecting approximately 10.4 hours of telephone conferences between us  
5 and 6.1 hours exchanging correspondence in the last four years in the course of this  
6 litigation. In addition, I estimate spending six hours locating, reviewing, and  
7 providing documents in order to respond to the Defendant's discovery requests.

8 9. I also attended two mediations in person with the Honorable Leo S.  
9 Papas (Retired), one on October 3, 2018 and one on August 16, 2019, for  
10 approximately eight hours each. Travel time from my office in Vista to downtown  
11 San Diego is approximately one hour each way. The two mediations accordingly  
12 consumed roughly 20 hours of my time.

13 10. Based on the foregoing, the direct amount of time I have spent on this  
14 case, including continuing telephone conferences and correspondence with  
15 Mr. Teel and communications with the other Class Counsel; reviewing pleadings,  
16 documents, and material filings and orders entered by the Court; producing  
17 documents and responding to interrogatories and discovery requests; providing  
18 input regarding litigation and settlement strategy; attending the mediations;  
19 discussing the parameters for an appropriate resolution of the case; and ultimately  
20 reviewing, approving, and agreeing to the terms and conditions of the settlement  
21 agreement equals or exceeds 42.5 hours. In addition, as set forth above, I have lost  
22 well over 60 hours of time mitigating the potential harm to my professional  
23 reputation from this case.

24 11. I made the decision to become involved in this action because I believe  
25 the confidentiality of attorney-client communications is of paramount importance  
26 to our justice system. Attorneys like myself must be afforded the confidentiality  
27 and privacy required to have difficult conversations with our clients. The  
28 confidentiality of communications afforded by the attorney-client privilege is a

1 fundamental right which flows from both the federal and state Constitutions, and  
2 recording critical conversations - intentionally or unintentionally - creates  
3 challenges to the provision of the effective assistance of legal counsel. As an  
4 attorney, I felt compelled, if not obligated, to address this problem in order to serve  
5 the best interests of the Class and the public as a whole. I believe I fulfilled that  
6 obligation.

7 12. I authorized my attorneys to settle this action after considering the  
8 substantial benefits to the Class when weighed against the significant risks and  
9 uncertainties of continued litigation. I discussed those issues with my attorneys,  
10 and I believe the settlement represents a highly favorable outcome and is clearly in  
11 the best interest of the Class and the public at large. I feel certain the settlement  
12 would not have been achieved without the diligent efforts of my attorneys, who  
13 aggressively and successfully litigated this case for years and I believe it is  
14 ultimately fair, reasonable, and adequate, and should be approved by the Court.  
15 While I recognize that any determination of costs, incentive awards, and attorneys'  
16 fees is ultimately left to the Court, I approve the request for recovery of these  
17 amounts for litigating this case up to a total of \$900,000.

18 13. As set forth above, I estimate that over 100 hours of my time has been  
19 consumed as a result of this case comprised of at least 42.5 hours directly expended  
20 in prosecuting the litigation, and 60 hours spent mitigating the financial,  
21 reputational, and malpractice risk to my law practice. In order to settle this case,  
22 each Plaintiff was required to release his claim to statutory damages under the  
23 California Invasion of Privacy Act ("CIPA") and to give a general release of all  
24 other claims against the Defendant. While I and the other Plaintiffs agreed to give  
25 the required releases, I would not have approved and entered into the settlement on  
26 behalf of the 142,314 similarly situated individual attorneys and detainees involved  
27 in this case if their releases had also been required.



1           14. Based on the 60 hours of time I have spent to mitigate the financial and  
2 reputational malpractice risks associated with using the Defendant's phone system,  
3 including the time required to make in person consultations and the additional hours  
4 I have spent reviewing my case files, I value the general release of my claims over  
5 and above the statutory \$5,000 per phone call CIPA damages to be in excess of  
6 \$21,000 (60 hours at \$350 per hour).

7           15. Accordingly, based on the amount of time directly spent on prosecuting  
8 this litigation, on mitigating the financial and reputational risks associated with this  
9 case, and on the value of the general release which the Class is not required to give,  
10 I respectfully request reimbursement in the amount of \$20,000 as an incentive  
11 award for serving as the Class representative in the prosecution of this case.

12           16. I did not become involved in this action to obtain any special benefit,  
13 nor has any such benefit ever been promised to me. I have not received, been  
14 promised nor offered, nor will I accept, any form of compensation, directly or  
15 indirectly, for prosecuting or for serving as a party and class representative in this  
16 action except for such fees, costs, or other payments as the Court expressly approves  
17 to be paid or reimbursed to me or on my behalf.

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

19  
20 DATED: August 13, 2020

  
Kenneth R. Elliott