



San Diego City Attorney Mara W. Elliott



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City Attorney Wins Appeal in Data Breach Case

Unanimous decision allows use of contingency fee counsel

San Diego City Attorney Mara W. Elliott announced today that her office has won a precedent-setting court decision enabling prosecutors to better protect consumers from unfair business practices.

In 2018, Elliott filed a [consumer-protection lawsuit](#) against consumer credit reporting agency Experian Data Corp. under the state's Unfair Competition law (UCL), after the company failed to notify victims of a security lapse that exposed the personal information of millions of people to identity thieves and other criminals working on the dark web.

Experian challenged the Office's use of outside counsel in the case. A unanimous panel of the Court of Appeal, Fourth Appellate District, Division Three, on Tuesday found no ethical or legal problem with the use of outside counsel paid on contingency because the City Attorney actively manages the litigation.

Elliott said the published decision ensures public prosecutors can use outside counsel to enforce the UCL, thereby expanding the resources and expertise available to protect the public.

"Californians are the beneficiaries of this solid decision because public prosecutors have more resources available to protect the public from unfair business practices," City Attorney Mara W. Elliott said. **"Now, we and other city attorney's offices will have the ability to team up with private firms at no cost to the taxpayers when it's in the public's interest."**

The City Attorney hired three private legal firms to represent it in the litigation against Experian on a contingency fee basis. The trial court previously sided with the City Attorney and denied Experian's motion to disqualify the private firms.

Appellate Court Judge Laurie D. Zelon, writing for the three-member panel, found, "the contingency fee agreements between the City and the Private Firms do not violate the duty of neutrality" and "Experian has failed to establish the contingency fee agreements violate Business and Professions Code section 17206."

The San Diego City Attorney sued Experian and two related companies on behalf of the People of the State of California after the defendants, between July 2010 and February 2013, sold access to their

databases containing personal information on hundreds of millions of Americans to a teenager living in Vietnam. That teenager, Hieu Mingh Ngo, has admitted to reselling the information to more than 1,300 criminals, making more than \$1.9 million in profits through those sales.

The records of at least 30 million people were known to have been sold to these criminals. An estimated 250,000 of Experian's victims live in San Diego County. Among other crimes resulting from the security lapse, hackers obtained \$65 million in fraudulent tax returns.

The lawsuit also names Court Ventures, Inc., as a defendant; Experian is its parent company. The lawsuit alleges that the companies were aware of the security lapses for years, yet took no steps to notify consumers, despite California law requiring companies to notify victims of security lapses that put them at risk by exposing personal information.

This case was argued before the Court of Appeal on behalf of the people of the State of California by Deputy City Attorney Kevin B. King of the City Attorney's Affirmative Civil Enforcement Unit.

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