Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF STEELE **THIRD JUDICIAL DISTRICT**

PAYSHENCE CARR, on behalf of herself individually and all others similarly situated, Plaintiff, v. SOUTH COUNTRY HEALTH ALLIANCE, A JOINT POWERS BOARD, Defendant.	Court File No. 74-CV-21-632 Judge Karen R. Duncan Case Type: Breach of Contract; Minnesota Government Data Practices Act

MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, AND APPOINTMENT OF SETTLEMENT CLASS COUNSEL

Comes now the Plaintiff, Proposed Class Representative, Payshence Carr ("Class Representative"), individually and on behalf of the Settlement Class (as defined in the Settlement Agreement and stated below)[1], by and through counsel, and pursuant to Minn. R. Civ. P. 23.05, respectfully moves the Court for preliminary approval of a class action settlement in this action, concurrently submitting this integrated Memorandum of Law in support.

I. INTRODUCTION

Following concerted, arms'-length negotiations, the Parties have reached an amicable resolution to settle this matter, which is memorialized in writing in the Settlement Agreement (the "Settlement" or "SA") attached hereto as ***Exhibit 1***. The proposed Settlement provides timely and excellent benefits for the Settlement Class. Under the Settlement, Settlement Class members are eligible to recover compensation for up to $2,500.00 for Economic Losses,

[1] The definitions in the Settlement are incorporated herein by reference.

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

including Lost Time, incurred as a result of the Data Breach under a claims made structure with an aggregate cap of $300,000.00. As detailed herein, the Settlement satisfies the preliminary approval standard as it is likely to be approved as fair, reasonable, and adequate.

Class Representative respectfully moves this Court for entry of an Order: (1) granting preliminary approval of the Settlement; (2) approving the Notice Program; (3) preliminarily certifying the Settlement Class for settlement purposes only; (4) appointing Payshence Carr as Class Representative; (5) appointing Stranch Jennings & Garvey, PLLC (formerly Branstetter, Stranch & Jennings, PLLC) Cohen & Malad, LLP, The Johnson Firm (formerly Linville Johnson, PLLC), and Hellmuth & Johnson, PLLC as Class Counsel, (all collectively, "Proposed Class Counsel"); (6) approving the form and content of the Claim Form, Detailed Notice and Summary Notice, attached as Exhibits A–B, E to the Settlement Agreement, respectively; and (7) scheduling a Final Fairness Hearing to consider entry of a final order approving the Settlement, final certification of the Settlement Class, and Proposed Class Counsel's request for Attorneys' Fees and expenses, and Class Representative service awards. The proposed Preliminary Approval Order is attached as Settlement Agreement Exhibit D.

II. FACTUAL BACKGROUND

A. The Data Breach

In the original Complaint, former Plaintiff Justin Hiatt, and now in the Amended Complaint, Plaintiff Payshence Carr (Class Representative) alleges that on or about June 25, 2020, Defendant, South Country Health Alliance, a Joint Powers Board ("Defendant" or "SCHA") providing health plan services to its members, experienced a Data Breach[2] in which an unauthorized individual infiltrated one of SCHA's employee's email accounts, resulting in the

[2] Capitalized terms in this Settlement Agreement are defined below in Sections **Error! Reference source not found.** and **Error! Reference source not found.**.

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

access and compromise of the Personal Health Information ("PHI") of Defendant's members stored therein, including Ms. Carr and the proposed Class Members, approximating 66,874 persons. This information, PHI, included their names, Social Security numbers, addresses, Medicare and Medicaid numbers, health insurance information, diagnostic or treatment information, dates of death (if applicable), provider name and treatment cost information. *See* Complaint, Amended Complaint, Paragraphs 3, 11, 14. Class Representative alleged that the Data Breach was caused by SCHA's violation of its obligation to abide by best practices and industry standards concerning the security of its computer and email systems; that SCHA failed to comply with security standards and allowed its victims' PHI to be stolen by failing to implement security measures that could have prevented or mitigated the Data Breach; and that Defendant failed to adequately train its employees on even the most basic of cybersecurity protocols. *Id*. ¶¶ 34-35. Defendant became aware of the Data Breach on September 14, 2020, and that same day, SCHA commenced an investigation, ultimately discovering that the PHI of 66,874 members "may have been in the account'" that was accessed. *Id*. ¶ 16. SCHA began providing notice of the Data Breach to affected persons on or about December 30, 2020. *Id*. ¶ 15. SCHA's notice communicated that the above-described PHI "may have been involved in the incident," encouraged SCHA members to call a dedicated toll-free line to answer questions, and advised members to "notify [their] financial institution immediately if [they] detect any suspicious activity on any of [their] accounts, including unauthorized transactions or new accounts opened in [SCHA's] name that [they] do not recognize." *Id*. ¶¶ 17-18, 38. The notice further offered impacted persons complimentary identify monitoring services. *Id*. ¶ 42.

Plaintiff alleged that as a result of the Data Breach, the Settlement Class of members

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

across Minnesota whose PHI were compromised[3] suffered injury and damages, including monetary losses, lost time, anxiety, and emotional distress; and, suffered or are at increased risk of suffering loss of the opportunity to control how their PHI is used; diminution in value of their PHI; compromise, publication and/or theft of their PHI; Out-of-pocket costs associated with the prevention, detection, recovery, and remediation from identity theft or fraud; Lost opportunity costs and lost wages associated with the time and effort expended and the loss of productivity from addressing and attempting to mitigate the actual and future consequences of the Data Breach; Delay in receipt of tax refund monies; Unauthorized use of stolen PHI; continued risk to their PHI, which remains in the possession of SCHA and subject to further breaches so long as Defendant fails to undertake appropriate measures to protect the PHI, and current and future costs in terms of time, effort and money that will be expended to prevent, detect, contest, remediate and repair the impact of the Data Breach for the remainder of the lives of Class Representative and the Class Members. *Id.* ¶ 53. In the Amended Complaint, Plaintiff Carr alleges that as a result of the Data Breach, she began to receive excessive spam emails and telephone calls, must expend considerable time and effort monitoring her accounts to protect herself from additional identity theft, and has experienced worry and anxiety about the information compromised in the Data Breach. *Id.* ¶ 80.

B. Procedural History

[3] The Complaint preliminarily defined the proposed Class as "All citizens of Minnesota whose PHI was compromised as a result of the Data Breach with SCHA which was announced by SCHA on or about December 30, 2020," excluding (1) any judge or magistrate presiding over this action and members of their families; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, affiliated entities, and any entity in which the Defendant or its parent has a controlling interest, and their current or former officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff s counsel and Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons." Complaint ¶¶ 90-91.

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

Following SCHA's notification to those affected by the Data Breach, on April 29, 2021 former Plaintiff Justin Hiatt filed the instant action in Minnesota state court in the District Court for Steele County, 74-CV-21-632. Class Representative's Class Action Complaint sets forth causes of action sounding in breach of contract (*Id*. ¶¶ 100-116), promissory estoppel (*Id*. ¶¶ 117-123), and for violation of the Minnesota Government Data Practices Act Minn. Stat. §§ 13.01, *et seq.* ("MGDPA") (*Id*. ¶¶ 124-135). In the Complaint, Class Representative sought judgment of monetary damages including compensatory, exemplary, punitive damages, and statutory damages, restitution, as well as injunctive and declaratory relief. *See Id.*, Prayer for Relief.

In February 2022, the Plaintiff and Defendant agreed to a mediation with Hon. Wayne R. Andersen (Ret.), JAMS, which was held on March 1, 2022. *See* Declaration of J. Gerard Stranch, IV ("Stranch Decl.") ¶ 3. Although the Parties were not able to settle this case at mediation, they continued negotiations, and in November 2022, the Parties reached an agreement in principle as to the substantive relief for the proposed class. *Id.* ¶ 5. This substantive settlement was prior to the discussion or negotiation of attorneys' fees and a class representative service award. *Id.* ¶ 17. The Parties subsequently reached a supplemental agreement in principle as to attorneys' fees and a class representative service award. *Id.* ¶¶ 14-15. Following the Parties' agreement in principle, the Parties engaged in discussions over the detailed terms of the Settlement Agreement, *Exhibit 1*. *Id.* ¶ 6.

Recently, it became necessary to substitute Payshence Carr as Plaintiff in the place of Justin Hiatt. Accordingly, on May 8, 2023, the parties submitted a joint stipulation to substitute Payshence Carr as Plaintiff in place of Hiatt, for the Amended Complaint be filed within seven (7) days, and that Plaintiff be granted seven (7) days from the Court's entry of the proposed Order to file the Amended Complaint to file her Motion for Preliminary Approval. The Court

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

entered the Order on May 8, 2023. On May 12, 2023, proposed Class Representative Carr filed the Amended Complaint.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Settlement Class

For settlement purposes only, the Settling Parties agreed to certification of the following Settlement Class:

> …all persons, approximating 15,213 persons, whose Personally Identifiable Information and/or Protected Health Information was potentially compromised or who reported identity theft to South Country Health Alliance, in writing, on or before May 15, 2023, as a result of the alleged Data Breach described in the Complaint as identified by category in Term Sheet Exhibit A, attached to this Settlement Agreement; but, not including any person who serves as, or is designated as an alternate to serve as, a member of the South Country Health Alliance Joint Powers Board, and not including any person who serves as South Country Health Alliance's Chief Executive Officer, Chief Financial Officer, or Compliance Officer.

SA ¶ 2.19.

B. Settlement Benefits

The proposed Settlement provides Settlement Class members with benefits targeted at remediating the specific harms they have suffered as a result of the Data Breach. The benefits of the Settlement provide up to $2,500.00 per Class Member for documented Economic Losses through submission of valid claims, subject to a generous $300,000.00 aggregate cap, as follows hereinafter. SA ¶ 4.1; Stranch Decl. ¶ 9.

1. *Economic Losses Reimbursement*

Under the proposed Settlement, Settlement Class members are each eligible to receive compensation for up to $2,500.00 for their documented, unreimbursed Economic Losses, including Lost Time, that are fairly traceable to the Data Breach, through submission of a valid claim, within one (1) year of final approval of the Settlement by the Court. *See* SA ¶¶ 4.1, 5.2.,

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

2.14, 2.16, 3.8; Claim Form (SA Exhibit A); Stranch Decl. ¶ 9. These Economic Losses include unreimbursed losses fairly traceable to the Data Breach, including Lost Time, including expenses for bank fees, long distance phone charges, cell phone and data charges (if charged by usage), postage expenses, fuel expenses, parking expenses, fees to replace a card or identification (e.g., a driver's license), fees for additional credit reports, between June 25, 2020, and the date the Court enters the Preliminary Approval Order. *Id.* Economic Losses also include any unreimbursed monetary loss suffered by a Class Member that arises from financial fraud or identity theft, that is attributable to the Data Breach, and that the Class Member made reasonable efforts to avoid, mitigate, or seek other reimbursement for. Stranch Decl. ¶ 10; SA ¶¶ 2.16; SA Ex A (Claim Form) at pg. 2. Lost Time means time a Class Member spent dealing with the Data Breach, such as, for example, time spent freezing credit reports, obtaining credit monitoring, or dealing with identity theft. SA ¶ 2.14; Stranch Decl. ¶ 10(c).

Under the Settlement, in determining whether Economic Losses are fairly traceable to the Data Breach, the Settlement Administrator must consider: (i) whether the timing of the loss occurred on or after the date of the Data Breach, June 25, 2020; and (ii) whether the information used to commit identity theft or fraud consisted of the type of information that was potentially compromised for that Class Member in the Data Breach, if applicable. SA ¶ 5.2. If the total amount of valid claims for Economic Losses for all Class Members exceeds $300,000.00, the aggregate cap, the payment due to each Class Member with a valid claim will be reduced on a pro rata basis. SA ¶ 4.1.

A Class Member may obtain these benefits by submitting the completed Claim Form to the Settlement Administrator by mail or by submitting such a request online through a Settlement Website, within one (1) year of final approval. *See* SA ¶¶ 4.1, 3.8.

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

2. *Costs of Notice and Settlement Administration, Attorneys' Fees, Expenses, and Service Awards*

Separate from the individual Settlement Class member claims up to $2,500.00 for Economic Losses, capped in the aggregate at $300,000.00, SCHA will pay the costs of Notice and Settlement Administration, and pay Attorneys' Fees and Expenses for Class Counsel as approved by the Court, in a total sum not to exceed $200,000.00. SA ¶ 4.3; Stranch Decl. ¶ 14. SCHA will pay the sum of $200,000 into a Fee and Expense Fund for this purpose. SA ¶¶ 4.2, 4.3; Stranch Decl. ¶ 15. Proposed Class Counsel will petition the Court for attorneys' fees and expenses within 14 days after the Deadline to Send Notice, which is 30 days after the Court enters the Preliminary Approval Order. SA ¶¶ 4.4, 3.5, 3.4; Stranch Decl. ¶ 16. In addition, SCHA will also not contest a request for Service Award to the Plaintiff, proposed Class Representative in a sum not to exceed $1,500.00 as Counsel shall move, as approved by the Court. SA ¶ 4.4; Stranch Decl. ¶ 17. The Parties did not discuss or agree upon payment of Attorneys' Fees, Expenses, and Service Awards until *after* they agreed on all material terms of the above-described substantive relief to the Settlement Class. Stranch Decl. ¶ 18.

III. ARGUMENT: THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED

Plaintiff's Counsel, proposed Class Counsel submits that the proposed Settlement is fair, reasonable, and adequate, and meets all the requirements for a class action under Minnesota law, and should therefore be preliminarily approved by the Court. The Settlement provides immediate benefits to the Class that are not guaranteed if the litigation continues. Through hard-fought negotiations, the Parties have reached an agreement that is fair for both sides given the inherent risks underlying the lawsuit. For these reasons and the reasons that follow, proposed Class Representative respectfully requests that the Court preliminarily approve the Settlement.

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

"Trial courts have considerable discretionary power to determine whether class actions may be maintained." *Streich v. Am. Fam. Mut. Ins. Co.*, 399 N.W.2d 210, 213 (Minn. Ct. App. 1987) *e.g., Forcier v. State Farm Mutual Automobile Insurance Co.*, 310 N.W.2d 124, 130 (Minn.1981). To maintain a class action under Minnesota law, a plaintiff must first satisfy the four prerequisites of Minn. R. Civ. P. 23.01: "numerosity, commonality, typicality, and representivity." *Id*. "Second, a class must also satisfy the requirements of one of the subdivisions of Rule 23.02." *Lewy 1990 Tr. ex rel. Lewy v. Inv. Advisors, Inc.*, 650 N.W.2d 445, 451–52 (Minn. Ct. App. 2002). As follows hereinafter, this action is properly certified as a class action under Minn.R.Civ.P. 23.01, and 23.02(c).

In addition, the proposed settlement is fair, reasonable, and adequate, and properly approved by the Court.

A. The Settlement is Fair, Reasonable, and Adequate

Under Minn. R. Civ. P. 23.05, "[a] settlement, voluntary dismissal, or compromise of the claims, issues, or defenses of a certified class is effective only if approved by the court." Minn. R. Civ. P. 23.05(a)(1). The purpose of preliminary approval is to determine whether the proposed settlement is within the range of possible approval to warrant notice as required by Minn. R. Civ. P. 23.05(a)(2). The Court may approve the settlement of a class action, but "only after a hearing and on finding that the settlement, voluntary dismissal, or compromise is fair, reasonable, and adequate." Minn. R. Civ. P. 23.05(a)(3). Moreover, "[t]he parties seeking approval of a settlement, voluntary dismissal, or compromise under Rule 23.05(a) must file a statement identifying any agreement made in connection with the proposed settlement, voluntary dismissal, or compromise." Minn. R. Civ. P. 23.05(b).

"A court may approve a class action settlement if it is fair, adequate, reasonable, and not

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

the product of collusion between the parties." *Heller v. Schwan's Sales Enterprises, Inc.*, 548 N.W.2d 287, 289 (Minn. Ct. App. 1996) citing *SST, Inc. v. City of Minneapolis*, 288 N.W.2d 225, 231 (Minn.1979). Furthermore, "[t]he court must compare the settlement's terms with the results the plaintiffs would have likely received after a full trial," but "is not required to make such a comparison with different settlements in other districts." *Id.*, 288 N.W.2d at 289, 291. In determining whether to approve a class action settlement, "[t]he trial court, absent a finding of fraud or collusion, should be hesitant to substitute its own judgment for that of counsel. Essentially, '[t]he evaluation of a proposed settlement requires an amalgam of delicate balancing, gross approximations and rough justice.'" *State by Wilson v. St. Joseph's Hosp.*, 366 N.W.2d 403, 406 (Minn. Ct. App. 1985) quoting *SST, Inc. v. City of Minneapolis*, 288 N.W.2d 225, 231 (Minn.1979) (citations omitted).

Additionally, there is guidance under federal caselaw. "Minn. R. Civ. P. 23 is modeled after Fed.R.Civ.P. 23. *Compare* Fed.R.Civ.P. 23 *with* Minn. R. Civ. P. 23. Because the procedural rules are essentially parallel, federal precedent is instructive in interpreting our rule." *Lewy 1990 Tr. ex rel. Lewy v. Inv. Advisors, Inc.*, 650 N.W.2d 445, 452 (Minn. Ct. App. 2002) citing *Johnson v. Soo Line R.R.*, 463 N.W.2d 894, 899 n. 7 (Minn.1990) ("federal cases interpreting the federal rule are helpful and instructive but not necessarily controlling"). And, Fed.R.Civ.P. 23(e) requires that a court preliminarily evaluate the fairness of a class action settlement:

> Review of a proposed class action settlement generally involves two hearings. First, counsel submit the proposed terms of settlement and the judge makes a preliminary fairness evaluation. In some cases, this initial evaluation can be made on the basis of information already known, supplemented as necessary by briefs, motions, or informal presentations by the parties. If the case is presented for both class certification and settlement approval, the certification hearing and preliminary fairness evaluation can usually be combined…The judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing.

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

Manual For Complex Litigation § 21.632 (4th ed. 2004); *see also* 4 Alba Conte & Herbert B. Newberg, Newberg on Class Actions, § 11.25 (4th ed. 2002). Once the Court evaluates the fairness of the settlement preliminarily, and after notice has been issued, a final fairness hearing is held to determine whether the proposed settlement is fair, reasonable, and adequate. *See* Manual for Complex Litigation § 21.633-34; Newberg, § 11.25.

Under Federal Rule 23(e)(2) "'[i]f the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering' certain factors." *Fath v. Am. Honda Motor Co.*, No. 18-CV-1549 (NEB/LIB), 2019 WL 6799796, at *2 (D. Minn. Dec. 13, 2019) quoting Fed. R. Civ. P. 23(e)(2). These factors include "(1) whether 'class representatives and class counsel have adequately represented the class,' Fed. R. Civ. P. 23(e)(2)(A); (2) whether "the proposal was negotiated at arm's length," Fed. R. Civ. P. 23(e)(2)(B); (3) whether 'the relief provided for the class is adequate,' taking certain specified considerations into account, Fed. R. Civ. P. 23(e)(2)(C); and (4) whether 'the proposal treats class members equitably relative to each other,' Fed. R. Civ. P. 23(e)(2)(D)." *Id.* The Eighth Circuit employs overlapping factors as set forth in *Swinton v. SquareTrade, Inc.*, No. 418CV00144SMRSBJ, 2019 WL 617791 (S.D. Iowa Feb. 14, 2019). This looks to (1) "the merits of the plaintiff's case, weighed against the terms of the settlement"; (2) "the defendant's financial condition"; (3) "the complexity and expense of further litigation"; and (4) "the amount of opposition to the settlement." *Id.* at *5 quoting *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988).

"At the preliminary-approval stage, the fair, reasonable, and adequate standard is lowered, with emphasis only on whether the settlement is within the range of possible approval due to an absence of any glaring substantive or procedural deficiencies." *Martin v. Cargill, Inc.*,

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

295 F.R.D. 380, 383 (D. Minn. 2013) (internal quotation marks omitted). That being said, the "Court must be particularly scrupulous because preliminary approval establishes 'an initial presumption of fairness.'" *Id*. At the same time, the finding that preliminary approval should be granted and notice should be provided to the settlement class, "is at most a determination that there is what might be termed 'probable cause' to submit the proposal to class members and hold a full-scale hearing as to its fairness." *Cleveland v. Whirlpool Corp.*, No. 20-CV-1906 (WMW/KMM), 2021 WL 5937403, at *6 (D. Minn. Dec. 16, 2021) quoting *In re Traffic Exec. Ass'n-E. R.R.s*, 627 F.2d 631, 634 (2d Cir. 1980).

In the instant case, the proposed Settlement is fair, reasonable, and adequate, the settlement's terms are favorable compared to the results Plaintiff would likely receive after a full trial, and there was no collusion in reaching the Settlement. Accordingly, the balance of the factors weighs in favor of preliminarily approval of the Settlement.

1. The Settlement's Terms Compared with the Likely Result at Trial; and Complexity and Expense of Further Litigation

First, looking to the standard annunciated in *SST, Inc. v. City of Minneapolis*, 288 N.W.2d 225 (Minn.1979), the benefits provided under the proposed Settlement are favorable compared to the likely result at trial on the merits, and within the range of likely final approval. This factor is substantially similar to the first factor under federal law, e.g., *Swinton v. SquareTrade, Inc.*, 2019 WL 617791 (S.D. Iowa Feb. 14, 2019) (the merits of the plaintiff's case, weighed against the terms of the settlement). Plaintiff's Counsel strongly believe in the merits of this case, as evidenced by their vigorous advocacy throughout this litigation. This includes investigations even prior to filing suit and before mediation, including obtaining key information including the size of the class, the types of PHI accessed and stolen in the Data Breach, and SCHA's investigation into and response to the Data Breach. Stranch Decl. ¶¶ 3, 5. Moreover, this

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

included vigorous advocacy at mediation and during subsequent settlement negotiations. Indeed, although the parties mediated the case with Wayne R. Anderson on March 1, 2022, they were not able to settle the case at that time, and only reached a settlement in principle on the substantive terms in November 2022. Stranch Decl. ¶ 6; SA ¶ 1.4. There were no discussions or negotiations of attorneys' fees or a class representative service award until after the substantive relief to the Class was agreed upon. Stranch Decl. ¶ 18.

However, due to the risks inherent in data breach litigation, it is possible that the Class could receive nothing if the case continues to be litigated. This could result from issues with causation, a motion for summary judgment after merits discovery, the Court possibly denying a motion for class certification following formal class discovery or, assuming Plaintiff prevails upon these motions, SCHA could prevail at trial. See *Id.* ¶ 19. *See Heller v. Schwan's Sales Enterprises, Inc.*, 548 N.W.2d 287, 290 (Minn. Ct. App. 1996) (settlement of portion of class action liability suit was "fair, adequate, reasonable, and compared favorably to members' likely recovery at trial given that most of these class members would have found it difficult to demonstrate that manufacturer's products caused their injuries.")

There are also legal and factual questions which place the litigation's outcome in doubt, such that the Settlements terms are comparable to the likely results plaintiffs would receive after trial. For example, in its Answer, SCHA admits that Plaintiff's Complaint seeks injunctive relief, damages, and restitution, together with costs and reasonable attorneys' fees, but denies Plaintiff has standing to seek relief on behalf of the class and denies he is entitled to any of the relief sought. *See* SCHA Answer and Affirmative Defenses ¶ 5. SCHA also denies that the proposed Class can be certified. *See Id.* ¶ 90, *et seq*. While Proposed Class Counsel disagree with SCHA's defenses—which would likely asserted and argued in a motion for summary judgment—they are

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

mindful of the inherent problems of proof and possible defenses to the claims asserted in this litigation, which will require complex and protracted litigation. Class Representative's counsel also recognizes the difficulties in establishing liability on a class-wide basis through summary judgment or even at trial and in achieving a result better than that offered by the Settlement here. Because merits discovery has not been conducted, there are necessarily factual issues which remain unresolved, which may place the ultimate outcome of this action in doubt.

In addition, further litigation will be complex, lengthy, and require significant resources. data breach class actions such as this are complex in and of themselves. As stated, if this matter proceeds, the Parties will need to conduct expansive and concerted class discovery, merits discovery, including written discovery and numerous depositions. Expert witnesses will necessarily be obtained on both sides. Thereafter, the parties will engage in briefing and arguing summary judgment and class certification motions. Assuming Plaintiff is able to prevail upon the same, there will need to be trial on the merits. This amounts to further litigation that is complex and expensive both in terms of cost and labor. And, as stated above, there are questions which place the ultimate outcome of this litigation in doubt.

In contrast, the Settlement presents tangible benefits which will be immediately available to compensate Settlement Class Members for their Economic Losses, including Lost Time, up to $2,500.00 per Settlement Class Member, up to an aggregate cap of $300,000 for the Settlement Class, simply through submission of a valid claim. Stranch. Dec. ¶¶ 9-10. These benefits for compensation of Economic Losses include redress for myriad types of common harms which Class Members suffered on account of the Data Breach, including bank fees, long distance phone charges, cell phone and data charges (if charged by usage), postage expenses, fuel expenses, parking expenses, fees to replace a card or identification (e.g., a driver's license), fees for

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

additional credit reports, any unreimbursed monetary loss suffered by a Class Member arising from financial fraud or identity theft attributable to the Data Breach. Stranch Decl. ¶ 10; SA ¶¶ 2.16; SA Ex. A (Claim Form) at pg. 2. These benefits also serve to compensate Settlement Class Members for Lost Time spent dealing with the Data Breach, such as, by way of example, time spent freezing credit reports, obtaining credit monitoring, or dealing with identity theft. SA ¶ 2.14; Stranch Decl. ¶ 10(a)-(c). The compensation for Economic Losses is available to each Settlement Class Member simply through submission of a claim form.

These benefits that will be made available to the Class through the Settlement are comfortably within the range of possible recovery of the Class Members. Further, the nature of the Settlement ensures that Class Members will be meaningfully compensated for the unreimbursed Economic Losses they incurred on account of the Data Incident based upon the ample $300,000.00 aggregate cap on the amount that SCHA will pay to the Class as a whole. This ensures that Class Members who submit valid claims will receive compensation of their selection for the harms that they have suffered as a result of the Data Breach.

Indeed, the Settlement is comparable with settlements in similar data breach cases. For example: in *Citrix Data Breach Litig.*, Case No. 19-cv-61350-RKA, (June 11, 2021), the court approved a settlement for 24,316 class patients with a non-reversionary cash settlement fund of $2.275 million allowing claims up to $15,000.00 for reimbursement of out-of-pocket losses, five years of credit monitoring services and identity restoration, and additional business practice commitments.[4] In *In re: ICCU Data Breach Litigation*, Master Case No. CV03-20-00831 (Dist. Ct., Sixth Dist., Idaho) the court approved a settlement for 17,831 class patients with a non-

[4] *See generally, Citrix Data Breach Litig.*, Case No. 19-cv-61350-RKA, (June 11, 2021), Settlement Agreement, Citrix Data Breach Litigation Settlement Website, available at https://angeion-public.s3.amazonaws.com/www.CitrixDataBreachSettlement.com/docs/Settlement+Agreement.pdf(last accessed May 15, 2023).

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

reversionary cash settlement fund of $1.55 million (compensation of up to $1,000.00 for ordinary losses, or up to $20,000.00 for proven extraordinary monetary losses), 12 months of additional credit monitoring services and identity restoration, and additional business practice commitments.[5] In *Equifax Customer Data Breach Sec. Litig*., 2020 U.S. Dist. LEXIS 118209, the court approved a settlement for 147 million class patients with a consumer restitution fund of $380.5 million, as well as four to six years of credit monitoring services, and business practice changes. In *In re Premera Blue Cross Customer Data Sec. Breach Litig*., Case No. 3:15-md-2633-SI, 2019 U.S. Dist. LEXIS 127093, at *23-24 (D. Or. July 29, 2019) the court approved a settlement for 11 million class patients with a $32 million fund, and in *In re Anthem, Inc. Data Breach Litig*., 327 F.R.D. 299, 318 (N.D. Cal. 2018) the court approved a $115 million settlement on behalf of more than 79 million class patients.

As the immediate recovery available through the Settlement is more valuable than the mere possibility of a more favorable outcome after further protracted litigation and trial, this factor weighs in favor of the Court preliminarily approving this Settlement.

When the uncertainty of litigation is contrasted with the certain benefits made available in the Settlement, there is wisdom in the proverb "a bird in the hand is worth two in the bush." *Morgan v. Pub. Storage*, 301 F. Supp. 3d 1237, 1250 (S.D. Fla. 2016) (internal citation and quotation marks omitted). The benefits obtained by the Settlement in favor of the class are fair, reasonable, and adequate when the complexity and uncertainty of further litigation are considered.

---

[5] *See In re: ICCU Data Breach Litigation*, Master Case No. CV03-20-00831 (Dist. Ct., Sixth Dist., Idaho). *In re: ICCU Data Breach Litigation Website*, Settlement Agreement, avail. at https://angeion-public.s3.amazonaws.com/www.ICCUDataBreachSettlement.com/docs/Settlement+Agreement+and+Release.pdf; https://iccudatabreachsettlement.com/frequently-asked-questions.php (last acc. May 15, 2023).

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

2. The Proposed Settlement is Not the Product of Collusion Between the Parties.

Second, the Settlement is not the product of collusion between the Parties, and was fairly and honestly negotiated. This second consideration under Minnesota law is similar to Fed. R. Civ. P. 23(e)(2)(B)'s factor of whether the proposal was negotiated at arm's length.

Here, the Settlement is the product of concerted arm's length negotiations conducted by experienced counsel. As stated prior, on March 1, 2022, the Settling Parties participated in a mediation before an experienced mediator, Wayne R. Andersen. Stranch. Dec. ¶ 4. Throughout the mediated negotiations, Proposed Class Counsel and counsel for SCHA vigorously represented the interests of their respective clients. Although the Settling Parties were unable to settle this case at mediation, they continued concerted negotiations afterwards, continuing to vigorously represent their clients. It was not until November 2022 that the Settling Parties were able to reach an agreement in principle as to the substantive relief for the proposed class as set forth above. *See* SA ¶ 1.4; Stranch Decl. ¶ 6. Only after this settlement was reached following mediation did the Settling Parties later negotiate an agreement as to the payment of Notice and Settlement Administration costs, attorney's fees, and the class representative service award. *Id.* ¶ 18. Moreover, the Settling Parties continued negotiations regarding the detailed terms of the Settlement Agreement. SA ¶ 1.5.

There is nothing before the Court to indicate the presence of any fraud or collusion in reaching the Settlement. *See Heller v. Schwan's Sales Enterprises, Inc.*, 548 N.W.2d 287, 289 (Minn. Ct. App. 1996) (internal citations omitted)("A court may approve a class action settlement if it is fair, adequate, reasonable, and not the product of collusion between the parties.").

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

3. Opinion of Experienced Counsel

In addition, the Settlement is Supported by Proposed Class Counsel. Counsel believes that the Settlement is an excellent outcome for the class considering the foregoing possible issues that could arise during litigation, including proving causation, prevailing on a motion for summary judgment, that a motion for class certification may not be granted, and in prevailing at trial, and then prevailing on appeal. *See* Stranch Decl. ¶ 19. A settlement today not only avoids the risks of continued litigation, but it provides immediate, tangible benefits to the members of the Settlement Class now, as opposed to after years of risky litigation. The favorable tangible benefits provided in the Settlement place the Settlement well within the range of possible final approval. *Id.*

4. Financial Condition of the Parties.

Another consideration under *Swinton v. SquareTrade, Inc.,* No. 418CV00144SMRSBJ, 2019 WL 617791 (S.D. Iowa Feb. 14, 2019) is the financial condition of the Parties. Here, SCHA is a Joint Powers Board for various Minnesota counties under Minn. Stat. formed to operate, control, and manage county-based purchasing functions for persons enrolled in public healthcare programs, which coordinates social service, public health, and medical services, providing health plan services to Wabasha County, Goodhue County, Brown County, Dodge County, Kanabec County, Sibley County, Steele County, Waseca County and Freeborn County, Minnesota. *See* Compl. ¶¶ 7, 11. According to Defendant, it is a "county-based purchasing health plan serving 8 Minnesota counties […] in a joint effort to support accessible, quality health care through partnerships with community services and local health care providers for Minnesota Health Care Program enrollees,"[6] with Medicaid and Medicare programs.[7] As a relatively small

[6] South County Health Alliance website, available at https://mnscha.org/ (last acc. May 15, 2023)
[7] *Id*. avail. at https://mnscha.org/programs/medical-assistance-medicaid-programs/ (last acc. May

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

joint-county health plan services provider to the public, including Medicaid and Medicare recipients, Counsel submits that the proposed Settlement is favorable when considering Defendant's financial position.

5. Opposition to Settlement.

As relevant to this stage seeking preliminary approval, the proposed Settlement is fair, reasonable and adequate such that notice should be provided to the Settlement Class and the Settlement submitted to the Class Members for a Final Approval Hearing as to its fairness. *See Cleveland v. Whirlpool Corp.*, No. 20-CV-1906 (WMW/KMM), 2021 WL 5937403, at *6 (D. Minn. Dec. 16, 2021) quoting *In re Traffic Exec. Ass'n-E. R.R.s*, 627 F.2d 631, 634 (2d Cir. 1980). Under the proposed Settlement, any prospective Class Member may opt out and exclude themselves by mailing the Settlement Administrator a signed written request for exclusion containing that person's name, address, and stating in substance that he or she requests to opt out or be excluded from the settlement. SA ¶ 7.5. This must be postmarked no later than the deadline to Opt-Out, which is 30 days after the Deadline to Send Notice. *Id*. ¶¶ 7.5, 3.7.

Of course, Minn. R. Civ. P. 23.05(d)(1) mandates that any class member may object to a proposed settlement. Likewise, under the Settlement, any Class member may object by mailing a written objection to the Settlement Administrator, and filing such objection with the Court. *Id.* ¶ 7.6. All objections must be postmarked and filed no later than the Deadline to Object, which is also 30 days after the Deadline to Send Notice. *Id.* ¶¶ 7.6, 3.6. Objecting Class Members may, of course, appear at the Final Approval hearing and voice any concerns. *See Id.* ¶ 7.6.

All of the foregoing factors under *SST, Inc. v. City of Minneapolis*, 288 N.W.2d 225, 231 (Minn.1979) and federal law under *Swinton v. SquareTrade, Inc.*, No. 418CV00144SMRSBJ, 2019 WL 617791 (S.D. Iowa Feb. 14, 2019) militate in favor of the Court preliminarily

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

approving this Settlement. The Settlement is fair, reasonable, and adequate, and is not the product of collusion, and should be preliminarily approved by the Court.

B. The Settlement Meets the Prerequisites of Minn. R. Civ. P. 23.01 and 23.02.

The Settlement meet the prerequisites of Minn. R. Civ. P. 23.01 and 23.02 and should be preliminarily certified. In order for a class to be certified under Minnesota law, a plaintiff must first satisfy the Minn. R. Civ. P. 23.01 requirements of numerosity, commonality, typicality, and representativity. *See Lewy 1990 Tr. ex rel. Lewy v. Inv. Advisors, Inc.*, 650 N.W.2d 445, 451–52 (Minn. Ct. App. 2002). Class Representative in the instant case is able demonstrate that the proposed class satisfies these requirements, as well as those under Minn. R. Civ. P. 23.02, and class certification is therefore proper.

As stated prior, the Settlement Class is defined as all persons, approximating 15,213 persons, whose Personally Identifiable Information and/or Protected Health Information ("PHI") was potentially compromised or who reported identity theft to SCHA, in writing, on or before May 15, 2023, as a result of the alleged Data Breach described in the Complaint as identified by category in Term Sheet Exhibit A, attached to the Settlement Agreement; but, not including any person who serves as, or is designated as an alternate to serve as, a member of the SCHA Joint Powers Board, and not including any person who serves as Defendant's Chief Executive Officer, Chief Financial Officer, or Compliance Officer. SA ¶ 2.19. This is substantially the same as Class Representative's preliminary proposed class in the Complaint ¶¶ 90-91, of, "[a]ll citizens of Minnesota whose PHI was compromised as a result of the Data Breach with SCHA which was announced by SCHA on or about December 30, 2020," with the addition of the approximate number of Settlement Class members, as reflected in the Class Member List, Ex. A. The Settlement Class satisfies the requirements of numerosity, commonality, typicality, and adequacy

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

under Minn. R. Civ. P. 23.01.

1. *Numerosity, Minn. R. Civ. P. 23.01(a)*

The number of persons in the proposed class makes the joinder of all class members impracticable. The Class here consists of 15,213 current and former members of Defendant. This is well over the number required to satisfy the numerosity requirement. SA ¶ 7.3.

Minn. R. Civ. P. 23.01 provides in pertinent part, "[o]ne or more members of a class may sue or be sued as representative parties on behalf of all only if […] the class is so numerous that joinder of all members is impracticable." Minn. R. Civ. P. 23.01(a). "Rule 23.01(a) requires that the class be 'so numerous that joinder of all members is impracticable.'" *Lewy 1990 Tr. ex rel. Lewy v. Inv. Advisors, Inc.*, 650 N.W.2d 445, 452 (Minn. Ct. App. 2002) citing *Jenson v. Cont'l Fin. Corp.*, 404 F.Supp. 806, 809 (D.Minn.1975) (stating that numerosity is satisfied if joinder of plaintiffs, while theoretically feasible, is impracticable). As the Minnesota Court of Appeals has explained:

> Courts have not developed "arbitrary or rigid rules" to define the required size of a class, and impracticability is a fact-specific determination. *Parkhill v. Minn. Mut. Life Ins. Co.,* 188 F.R.D. 332, 337 (D.Minn.1999) (citing *Boyd v. Ozark Air Lines, Inc.,* 568 F.2d 50, 54 (8th Cir.1977)). In determining impracticability, courts generally consider a number of factors, including the size of the putative class, the size of the class member's individual claim, the inconvenience of trying individual suits, and the nature of the action itself. *See Parkhill,* 188 F.R.D. at 337 (citing *Paxton v. Union Nat'l Bank,* 688 F.2d 552, 559–60 (8th Cir.1982)).

The size of class cannot be speculative to satisfy the numerosity requirement. *See Id.* citing *Irvin E. Schermer Trust v. Sun Equities Corp.*, 116 F.R.D. 332, 336 (D.Minn.1987). But, "…the fact that a precise number of class members cannot be specified is not decisive, as […a plaintiff] need only show 'some evidence or reasonable estimate of the number of purported class members.'" *Id*. at 452–53 (Minn. Ct. App. 2002) (citing *Linquist v. Bowen*, 633 F.Supp. 846, 858 (W.D.Mo.1986) (quoting *Zeidman v. J. Ray McDermott & Co.,* 651 F.2d 1030, 1038 (5th

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

Cir.1981). *aff'd,* 813 F.2d 884 (8th Cir.1987)). And, "[w]hen the class is very large—numbering in the **hundreds**—joinder is almost always impracticable, but the difficulty of joining as few as 40 class members may also raise a presumption that joinder is impracticable." *Id. citing Lockwood Motors, Inc. v. Gen. Motors Corp.,* 162 F.R.D. 569, 574 (D.Minn.1995) (citing 1 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* § 3.05 (3d ed.1992)) (emphasis added).

Here, the Class comprised of 15,213 persons is sufficiently numerous such that joinder of all members in a single action would be impracticable. Accordingly, Class Representative satisfies Rule 23.01(a)'s numerosity requirement.

2. *Commonality, Minn. R. Civ. P. 23.01(b)*

Many questions of law and fact in the case are common to all class members, such that Class Representative satisfies Minn. R. Civ. P. 23.01(b)'s commonality requirement. "Commonality requires that there be questions of law or fact common to the class." *Streich v. Am. Fam. Mut. Ins. Co.*, 399 N.W.2d 210, 214 (Minn. Ct. App. 1987). "The threshold for commonality is not high and requires only that the resolution of the common questions affect all or a substantial number of class members." *Id.* citing *Jenkins v. Raymark Industries, Inc.*, 782 F.2d 468, 472 (5th Cir.1986). For commonality to exist, behavior causing a common effect must be subject to some dispute. *In Re Objections and Defenses To Real Property Taxes for The 1980 Assessment*, 335 N.W.2d 717, 719 (Minn.1983).

In this case, numerous common questions of law and fact exist here, including:

a. whether SCHA breached its contractual promises to safeguard Plaintiff's and the Class Members' PHI;

b. whether Defendant knew or should have known about the inadequacies of its data

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

security policies and system and the dangers associated with storing sensitive PHI;

c. whether Defendant failed to use reasonable care and commercially reasonable methods to safeguard and protect Plaintiff s and the other Class Members' PHI from unauthorized release and disclosure;

d. whether the proper data security measures, policies, procedures, and protocols were in place and operational within Defendant's computer and software systems to safeguard and protect Plaintiffs and the other Class Members' PHI from unauthorized release and disclosure;

e. whether Defendant took reasonable measures to determine the extent of the Data Breach after it was discovered;

f. whether Defendant's delay in informing Plaintiff and the other Class Members of the Data Breach was unreasonable;

g. whether Defendant's method of informing Plaintiff and the other Class Members of the Data Breach was unreasonable;

h. whether Plaintiff and the Class Members were damaged as a proximate cause or result of Defendant's breach of its contract with Plaintiff and the Class Members;

i. whether Defendant's practices and representations related to the Data Breach that compromised the PHI breached implied warranties;

j. what the proper measure of damages is; and

k. whether Plaintiff and the Class Members are entitled to restitutionary, injunctive, declaratory, or other relief.

See Complaint ¶ 96.

Accordingly, there are common issues of law or fact so that Rule 23.01(b)'s commonality

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

requirement is satisfied. This likewise weighs in favor of class certification here.

3. *Typicality, Minn. R. Civ. P. 23.01(c)*

Class Representative's claims are also typical of the rest of the Class's claims so that Minn. R. Civ. P. 23.01(c) is satisfied. Of course, Rule 23.01(c) provides in pertinent part that, a class action may be maintained only if, "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Minn. R. Civ. P. 23.01(c). "The prerequisites of typicality and representivity exist "to insure that the claims of the class members are fully presented and vigorously prosecuted." *Cavanaugh v. Hometown Am., LLC*, No. A05-595, 2006 WL 696259, at *1 (Minn. Ct. App. Mar. 21, 2006) citing *Streich v. Am. Family Mut. Ins. Co.*, 399 N.W.2d 210, 215 (Minn.App.1987), *rev. den.* (Minn. Mar. 25, 1987). "Typicality looks at whether the interests of the representative parties are compatible with those of the putative class that they seek to represent." *Id.* "A potential for rivalry or a conflict that may jeopardize the interests of the class weighs against a finding of typicality." *Lewy 1990 Tr. ex rel. Lewy v. Inv. Advisors, Inc.*, 650 N.W.2d 445, 453 (Minn. Ct. App. 2002). The typicality requirement is satisfied "when the claims of the named plaintiffs arise from the same event or are based on the same legal theory as the claims of the class members. *Id.* citing *Alpern v. UtiliCorp United, Inc.*, 84 F.3d 1525, 1540 (8th Cir.1996). "A 'strong similarity of legal theories' satisfies the typicality requirement even if substantial factual differences exist." *Id.*

Class Representative and the Class all suffered injuries arising out of the Data Breach. All of their claims arise from the same event, the June 25, 2020 Data Breach announced by SCHA on December 30, 2020, and under the same legal theories of liability, injury, and damages. This is true despite minor variation in the nature of the Class Members' injuries.

Accordingly, as Class Representative demonstrates that his claims arise from the same

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

event, the Data Breach, and under the same legal theories as the Class Members, he has satisfied the requirement of typicality under Minn. R.Civ. P. 23.01(c).

4. *Representational Adequacy, Minn. R. Civ. P. 23.01(d)*

Class Representatives and Proposed Class Counsel are more than adequate and easily meet the requirement of representational adequacy under Minn. R. Civ. P. 23.01(d). As the Court of Appeals said in *Lewy*:

> Rule 23.01(d) requires that "the representative parties will fairly and adequately protect the interests of the class." Representational adequacy means the representative parties' interests must coincide with the interests of other class members and that the parties and their counsel will competently and vigorously prosecute the lawsuit. *Ario,* 367 N.W.2d at 513. Factors used to determine if representivity is satisfied include: (1) whether the representatives' interests are sufficiently identical to those of absent class members so that the representatives will vigorously prosecute the suit on their behalf; (2) whether the attorneys are qualified, experienced, and capable of conducting the litigation; and (3) whether the representatives have any interests that conflict with the objective of the class they represent. *See Smith v. B & O R.R.,* 473 F.Supp. 572, 581 (D.Md.1979).

Lewy 1990 Tr. ex rel. Lewy v. Inv. Advisors, Inc., 650 N.W.2d 445, 454 (Minn. Ct. App. 2002).

Class Representative Payshence Carr has demonstrated that she is well-suited to represent the Settlement Class. As set forth in proposed Class Counsel's Declaration, in recent months, the original Plaintiff, Justin Hiatt, was no longer able to serve as plaintiff in this action, necessitating the substitution of Ms. Carr in his stead. Accordingly, proposed Class Counsel and SCHA have stipulated to substituting Ms. Carr as Plaintiff, as stated in the Amended Complaint, which the Court ordered on May 8, 2023. Stranch Decl. ¶ 20. In this process, Ms. Carr enthusiastically and expediently stepped forward to serve as named Plaintiff, proposed Class Representative, in a unique circumstance, demonstrating her involvement and ability to fairly and adequately represent the interests of the Class in this matter. *Id.* Her interests are aligned with those of the other Settlement Class members, and are in no way antagonistic.

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

Additionally, Proposed Class Counsel are well qualified to represent the Settlement Class, as they possess significant experience leading the prosecution of complex class action matters, as follows below.[8]

The adequacy requirement of Rule 23.01(d) is therefore met here.

C. The Settlement Meets the Requirements of Minn. R. Civ. P. 23.02(c)

As stated prior, to maintain a class action under Minnesota law, after satisfying the requirements of Minn. R. Civ. P. 23.01(a)-(d), plaintiff must further satisfy the requirements of one of the subdivisions of Rule 23.02. *See Lewy 1990 Tr. ex rel. Lewy v. Inv. Advisors, Inc.*, 650 N.W.2d 445, 451–52 (Minn. Ct. App. 2002). Here, Class Representative pursues this class action pursuant to Rule 23.02(c), under which a class action may be maintained if, "the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Minn. R. Civ. P. 23.02(c). Because this action presents common questions which predominate over individual ones, and because the class action is the superior method to other available methods for the fair and efficient adjudication of the controversy, Class Representative satisfies Rule 23.02(c).

1. *Common Questions Predominate Over Questions Affecting Individuals*

As concerns the predominance requirement, "[n]o bright-line rules determine whether common questions predominate []. Instead, a court must consider whether the generalized

[8] *See, e.g.*, *McKenzie et al. v. Allconnect, Inc.*, No. 5:18-cv-00359-JMH (E.D. Ky.) (data breach class action settlement), *Slos v. Select Health Network, Inc.*, No. 71D05-2002-PL-000060 (St. Joseph Cnty. Super. Ct.) (same), *and Joyner v. Behavioral Health Network, Inc.*, No. 2079CV00629 (Hampden Super. Ct.) (same), among others. *See also In re Wellbutrin XL Antitrust Litigation*, Civ. No. 2:08-cv-2433 (E.D. Penn), Final Order and Judgment (Dkt. 473), July 22, 2013 (Branstetter, Stranch, & Jennings, PLLC has "effectively and efficiently prosecuted this difficult and complex action on behalf of the members of the Class for several years with no guarantee they would be compensated…").

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

evidence will prove or disprove an element on a simultaneous, class-wide basis that would not require examining each class member's individual position." *Lewy 1990 Tr. ex rel. Lewy v. Inv. Advisors, Inc.*, 650 N.W.2d 445, 455 (Minn. Ct. App. 2002). "[P]redominance will be found where generalized evidence may prove or disprove elements of a claim." *Id*. at 455-56 citing *In re Hartford Sales Practices Litig.*, 192 F.R.D. 592, 604 (D.Minn.1999) (citation omitted). "When determining whether common questions predominate courts 'focus on the liability issue [] and if the liability issue is common to the class, common questions are held to predominate over individual questions.'" *Id.* (citation omitted).

This litigation revolves around a singular event, the June 25, 2020 Data Breach announced by SCHA on December 30, 2020, which affected all Class Members in similar ways. The main underlying legal question common to the claims of all Class Members is whether SCHA breached its contractual duties to keep the Class Members' PHI safe. *See, e.g.,* Compl. ¶ 96. The main factual questions surrounding this litigation are whether Defendant knew or should have known about the inadequacies of its data security policies and system and the dangers associated with storing sensitive PHI; whether SCHA failed to use reasonable care and commercially reasonable methods to safeguard and protect Plaintiff s and the other Class Members' PHI from unauthorized release and disclosure; whether Defendant took reasonable measures to determine the extent of the Data Breach after it was discovered; and, whether Plaintiff and the Class Members were damaged as a proximate cause or result of Defendant's breach of its contract with Plaintiff and the Class Members. *See Id.*

All these questions are common to all the Class Members. The predominance requirement is satisfied.

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

2. *A Class Action is Superior Here*

Moreover, a class action is the superior method for the fair and efficient adjudication of this action under Rule 23.02(c). "Factors to consider in a 'superiority' analysis include 'manageability, fairness, efficiency, and available alternatives.' […] The class action is most often needed in litigation in which individual claims are small." *Lewy 1990 Tr. ex rel. Lewy v. Inv. Advisors, Inc.*, 650 N.W.2d 445, 457 (Minn. Ct. App. 2002) (citation omitted).

Here, a class action here is superior because of the inherently increased efficiency and because a class action is likely the *only* way many Class members would be able to receive any compensation for their injuries stemming from the Data Breach. Courts routinely recognize that class actions are superior to individual litigation in other data breach cases where class-wide settlements have been approved. *See, e.g., In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2020 U.S. Dist. LEXIS 129939, at *43 (N.D. Cal. July 22, 2020); *Hameed-Bolden v. Forever 21 Retail, Inc.*, No. 2:18-CV-03019 SJO (JPRx), 2019 U.S. Dist. LEXIS 231593, at *18 (C.D. Cal. Aug. 12, 2019); *Hutton v. Nat'l Bd. of Exam'rs in Optometry, Inc.*, No. JKB-16-3025, 2019 U.S. Dist. LEXIS 120558, at *13 (D. Md. July 15, 2019).

The Settlement Class here consists of approximately 15,213 persons. SA ¶ 2.19. The amount of damages for each class member is relatively small in contrast to the significant burden and cost of prosecuting individual actions in the complex data breach litigation, rendering it virtually impossible for individual members of the Class to obtain relief from Defendant's alleged misconduct absent a class action. Conducting individual trials for all the Class members would be impracticable and inefficient for the Court. Further, there was and is no other litigation concerning the subject Data Breach. There are no management problems associated with the Class which are anticipated. Lastly, it is desirable to concentrate this litigation in this forum, as

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

SCHA is a Minnesota Joint Powers Board providing health plan services to its members, in Minnesota, involving a Class of Minnesota citizens.

A class action is superior to any other form of resolution here, and accordingly Class Representative satisfies the superiority requirement of Rule 23.02(c).

IV. THE NOTICE PROGRAM IS SATISFACTORY

The Notice program will provide the best notice practicable in compliance with Minnesota Rule 23.05(a)(2) ("The court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.").

The proposed Settlement provides for a comprehensive notice program calculated to send notice to the Settlement Class through the selected Settlement Administrator, with a mailed Summary Notice **(SA Ex. E)**, and Detailed Notice **(SA Ex. B)** posted on a Settlement Website. Specifically, within 7 days of the Court granting Preliminary Approval, SCHA will provide the selected Settlement Administrator with the Class Member List, which includes the approximately 15,213 individuals, containing the name and last-known address of each member of the Settlement Class, as reasonably determined from Defendant's records. SA ¶¶ 7.3, 2.5. Notice is to be given to the proposed Settlement Class by the Settlement Administrator, within thirty (30) days of the order granting preliminary approval, with creation of a Settlement Website on which the Detailed Notice (**SA Ex. B**) is posted, and with the Summary Notice **(SA Ex. E)** mailed to the Settlement Class Members by postcard notice to each individual whose mailing address can be ascertained with reasonable effort. *See* SA ¶¶ 7.3, 3.9; SA Exhibit(s) B, E. In the event any mailed Summary Notice is returned as undeliverable, the Settlement Administrator must forward the returned Summary Notice to the forwarding address provided or, if no forwarded address is provided, must attempt to locate the correct address through a reasonable search and must

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

forward the Summary Notice to the address, if any, obtained from the search. SA ¶ 7.3. The Summary Notice is written in plain language and will be readily understandable to the Settlement Class. **SA Exhibit E.**

The Notice program provides the best practicable method to reach the potential Settlement Class members based upon the Class List, and is consistent with other class action notice programs that have been approved by various courts for similarly situated matters. Stranch Decl. ¶¶ 22-23.

V. APPOINTMENT OF CLASS COUNSEL

Lastly, Proposed Class Counsel moves the Court pursuant to Minn. R. Civ. P. 23.03(7) to be appointed class counsel. Rule 23.03(2) provides that, "[a]n order certifying a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23.07." Minn. R. Civ. P. 23.03. Under Rule 23.07, class counsel must fairly and adequately represent the interests of the class. Minn. R. Civ. P. 23.03(7)(a)(2). In appointing class counsel, the Court should consider (i) the work counsel has done in identifying or investigating potential claims in the action, (ii) counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action, (iii) counsel's knowledge of the applicable law, and (iv) the resources counsel will commit to representing the class. Minn. R. Civ. P. 23.03(7)(a)(3).

Here, proposed Class Counsel, J. Gerard Stranch, IV of Stranch, Jennings & Garvey, PLLC (formerly Branstetter, Stranch & Jennings, PLLC), Cohen & Malad, LLP, The Johnson Firm (formerly Linville Johnson), and Hellmuth & Johnson, PLLC are well qualified to serve as class counsel to fairly and adequately represent the best interests of the class. They have engaged in significant work in connection with this action on behalf of the Plaintiff and the Class. Prior to the filing of the Complaint, they thoroughly investigated the claims in this matter, researched the

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

Data Breach to SCHA's systems in June 2020, reviewed SCHA's public disclosures of the incident and relevant media, and examined the applicable law. Stranch Decl. ¶ 3. Prior to the March 1, 2022 mediation, counsel exchanged key information with SCHA's counsel to inform their negotiations, including the size of the class, the types of PHI accessed and stolen in the Data Breach, and Defendant's investigation into and response to the Data Breach. *Id*. ¶¶ 4-5. Proposed Class Counsel vigorously advocated for the interests of Plaintiff and the Class at mediation, and thereafter in continued negotiations until a settlement in principle was reached in November 2022, and continued to negotiate over the detailed terms of the Settlement terms until the Settlement Agreement was executed by all parties on April 6, 2023. *Id*. ¶ 7.

Further, Proposed Class Counsel possess significant experience leading the prosecution of complex class action matters, as shown by the firm resumes of (1) J. Gerard Stranch, IV of Stranch, Jennings, & Garvey PLLC (formerly Branstetter, Stranch & Jennings, PLLC), (2) Cohen & Malad, LLP, (3) The Johnson Firm (formerly Linville Johnson, PLLC), and (4) Hellmuth & Johnson, PLLC, attached as Exhibit(s) A-D to Mr. Stranch's Declaration. *Id*. ¶ 21. As an example, Mr. Stranch has extensive experience in litigating class actions in specifically pertaining to data security incidents and unauthorized disclosure of personal information as alleged in this matter. *Id.*

Accordingly, Proposed Class Counsel submits that they are well qualified to serve as Class Counsel in this action to fairly and adequately represent the best interests of the class, and should be appointed as Class Counsel pursuant to Minn. R. Civ. P. 23.03(7).

VI. CONCLUSION

In light of the foregoing, the Settlement readily meets the standard for preliminary approval under Minnesota law. The Class Representative respectfully requests that this

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

Honorable Court enter an Order:

A. Preliminarily approving the Settlement;

B. Directing that notice be disseminated to the Settlement Class Members in accordance with the Notice Program;

C. Approving the form and content of the Summary Notice, Detailed Notice, and Claim Form attached, respectively, as Exhibits A, B, and E to the Settlement Agreement;

D. Appointing the Plaintiff, Payshence Carr, as Class Representative;

E. Appointing Stranch, Jennings & Garvey, PLLC, Cohen & Malad, LLP, The Johnson Firm, and Hellmuth & Johnson, PLLC as Class Counsel;

F. Scheduling a Final Fairness hearing to consider the entry of final order and judgment approving the Settlement and the request for Attorneys' Fees, Expenses, and Service Awards; and,

G. Awarding such other relief as the Court deems just and appropriate.

Dated: May 25, 2023

Respectfully submitted,

/s/ Nathan D. Prosser

Nathan D. Prosser (#0329745)
Anne T. Regan (#0333852)
HELLMUTH & JOHNSON PLLC
8050 West 78th Street
Edina, Minnesota 55439
(952) 941-4005
nprosser@hjlawfirm.co
aregan@hjlawfirm.com

J. Gerard Stranch, IV*
Andrew E. Mize*
STRANCH, JENNINGS & GARVEY, PLLC[9]
223 Rosa L. Parks Avenue, Suite 200

[9] Formerly Branstetter, Stranch & Jennings, PLLC

Filed in District Court
State of Minnesota
5/25/2023 1:37 PM

Nashville, Tennessee 37203
(615) 254-8801
gstranch@stranchlaw.com
amize@stranchlaw.com

Lynn A. Toops*
COHEN & MALAD, LLP
One Indiana Square
Suite 1400
Indianapolis, IN 46204
(317) 636-6481
ltoops@cohenandmalad.com

Christopher D. Jennings*
THE JOHNSON FIRM[10]
610 President Clinton Avenue, Suite 300
Little Rock, Arkansas7220l
(501) 209-7777
chris@yourattorney.com

Attorneys for Plaintiff and Proposed Class

ACKNOWLEDGMENT REQUIRED BY MINN. STAT. 549.211, SUBD. 1

The undersigned hereby acknowledges that sanctions may be imposed pursuant to Minn. Stat. 549.211. subd. 3, if, after notice and a reasonable opportunity to respond, the Court determines that the undersigned has violated the provision of Minn. Stat. 549.211, subd. 2.

Dated: May 25, 2023

/s/ Nathan D. Prosser
Nathan D. Prosser

[10] Previously Linville, Johnson, PLLC