

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF STEELE

THIRD JUDICIAL DISTRICT

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 PAYSHENCE CARR, on behalf of herself  
individually and all others similarly situated,

Plaintiff,

v.

SOUTH COUNTRY HEALTH ALLIANCE,  
A JOINT POWERS BOARD,Defendant.
 

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Court File No. 74-CV-21-632

Judge Karen R. Duncan

Case Type: Breach of Contract;  
Minnesota Government Data Practices Act

TO: ALL PARTIES ABOVE NAMED AND THEIR COUNSEL OF RECORD:

**NOTICE**

PLEASE TAKE NOTICE that Plaintiff, Class Representative, PAYSHENCE CARR (“Class Representative”) brings the following Motion, pursuant to Minn. R. Civ. P. 23.08 to be heard at the Final Approval Hearing scheduled for **November 6, 2023 at 8:45 a.m.** Parties agree that the Court may rule on the Motion without oral argument pursuant to Minn. R. Civ. P. 7.02, unless the Court directs otherwise.

**UNOPPOSED MOTION FOR ATTORNEYS’ FEES, EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARD AND INTEGRATED MEMORANDUM OF LAW IN SUPPORT**

Class Representative, by Class Counsel, hereby moves the Court under Minn. R. Civ. P. 23.08 to approve an agreed payment by Defendant of \$123,551.57 for Class Counsel’s attorneys’ fees and \$8,348.43 in litigation expenses, and for a service award to the Class Representative of \$1,500.00, as set forth in the parties’ Class Action Settlement Agreement (“SA”) ¶¶ 4.2-4.4, and the Court’s July 18, 2023 Preliminary Approval Order. The Court should grant this Motion because

the requested attorneys' fees, expenses, and service award payments are fair and reasonable, and Defendant does not oppose paying the requested amounts in addition to all of the benefits of the Settlement provided to the Class Members. As grounds for and in support of this Motion, Class Counsel states as follows.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. Statement of Facts**

As Class Counsel previously apprised the Court in the Motion for Preliminary Approval of Class Action Settlement and Appointment of Settlement Class Counsel, this class action arises out of June 25, 2020 data breach to the systems of Defendant, South Country Health Alliance, a Joint Powers Board ("Defendant" or "SCHA") a health plan services provider, resulting in the compromise of the Personal Health Information ("PHI") of Defendant's members stored therein. This included Class Members' 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* Amended Complaint, Paragraphs 3, 11, 14. The Complaint, and Amended Complaint, 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, resulting in the Data Breach. *Id.* ¶¶ 34-35. SCHA learned of the Data Breach on September 14, 2020, and after investigating, determined that the PHI of 66,874 members may have been in the account that was accessed. SCHA began providing notice of the Data Breach to affected persons on or about December 30, 2020. *Id.* ¶ 6. As a result of the Data Breach, Class Representative and the Class Members whose PHI was compromised 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, Class Representative alleged 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 and the Settlement**

The Complaint was filed by original plaintiff Justin Hiatt on April 29, 2021 including causes of action for 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). On March 1, 2022, the parties mediated with Hon. Wayne R. Andersen (Ret.), JAMS, but were unable to reach a settlement. *See* Declaration of J. Gerard Stranch, IV in Support of Unopposed Motion for Preliminary Approval (“Stranch Decl.”) ¶ 3. The parties continued vigorous negotiations, and in November 2022, reached an agreement in principle as to the substantive settlement relief for the proposed class. *Id.* ¶ 5. This was prior to the discussion

or negotiation of attorneys' fees and a class representative service award. *Id.* ¶ 17. The substantive terms of the Settlement include agreed certification of the Settlement Class of:

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

Following the Parties' agreement in principle, the Parties engaged in discussions over the detailed terms of the Settlement Agreement. Stranch Decl. ¶ 6. The Parties subsequently reached a supplemental agreement in principle as to attorneys' fees and a class representative service award. *Id.* ¶¶ 14-15. Under the Settlement, SCHA will pay the costs of Notice and Settlement Administration, and pay Attorneys' Fees and Expenses for Class Counsel as approved by the Court, and the Service Award, in a *total* sum not to exceed \$200,000.00. SA ¶ 4.3 (emphasis added); Stranch Decl. ¶ 14.

On May 12, 2023, an Amended Complaint was filed substituting Class Representative Payshence Carr for former plaintiff Justin Hiatt as per the Court's Order of May 8, 2023. On May 24, 2023, the Settlement Agreement was executed, subject to Court approval, and on May 25, 2023 Class Counsel filed the Unopposed Motion for Preliminary Approval of the Class Action Settlement and Appointment of Settlement Class Counsel. Following a hearing on July 17,

2023, the Court entered the Preliminary Approval Order on July 18, 2023. In that Order, the Court certified the Settlement Class; appointed Class Counsel and the Class Representative; found that the terms of the Settlement were within the range of a fair, reasonable, and adequate compromise; approved forms of notice and directed that notice be provided to the Class Members to inform them of the Settlement and their rights to object or opt out; and set a final approval hearing for November 6, 2023, to consider whether to grant final approval and to consider approval of Class Counsel's attorneys' fees and expenses and the Class Representative's service award in conjunction with final approval. Prelim. App. Ord. ¶¶ 3, 4, 5, 6, 8-9. Further, in the Preliminary Approval Order, the Court appointed Kroll as Settlement Administrator. *Id.* ¶ 7.

Under the Settlement, in addition to the substantive relief to the Class, SCHA agreed to pay a sum not to exceed \$200,000.00 into the Fee and Expense Fund for payment of attorneys' fees, expenses, and for costs of the administration of the Settlement, as well as the requested Service Award to the Class Representative of \$1,500.00. SA ¶¶ 4.2-4.4. The costs of administration by Kroll are approximately \$66,600.00. *See* Stranch Declaration in Support of Motion for Attorneys' Fees, Expenses, and Class Representative Service Award ("Stranch Fee Decl.") ¶ 6. With these considered, Class Counsel seek attorneys' fees and reimbursement of costs totaling \$131,900.00, including **\$8,348.43** in costs and attorneys' fees of **\$123,551.57**, as well as a Service Award to Class Representative of \$1,500.00. As these are fair, reasonable, and unopposed by SCHA, they should be approved by the Court.

## II. ARGUMENT OF LAW

### A. Standard, Minn. R. Civ. P. 23.08

Under Minnesota Rule 23.08, "[i]n an action certified as a class action, the court may award reasonable attorney fees and nontaxable costs authorized by law or by agreement of the parties..."

Minn. R. Civ. P. 23.08. Notice of the motion must be given to all parties, and directed to the class members in a reasonable manner, who may object. *See* Minn. R. Civ. P. 23.08(a)-(b). “The court may hold a hearing and must find the facts and state its conclusions of law on the motion under Rule 52.01.” Minn. R. Civ. P. 23.08(c).

“[A] lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole.” *Flores v. Zorbalas*, No. A19-0578, 2019 WL 7142886, at \*1 (Minn. Ct. App. Dec. 23, 2019) (unpublished) quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S. Ct. 745, 749 (1980). In Minnesota and federal courts, “[u]sing the percentage method of awarding attorney fees in common-fund cases is both approved and well established.”<sup>1</sup> *Id.* quoting *Yarrington v. Solvay Pharm., Inc.*, 697 F. Supp. 2d 1057, 1061 (D. Minn. 2010) (quotation omitted). *See also Hawkins v. Thorp Loan & Thrift Co.*, No. 85-6074, 1992 WL 589727, at \*5 (Minn. Dist. Ct. Feb. 21, 1992) (“The courts of Minnesota are also awarded percentage fees in common fund cases.”) citing *Streich v. American*

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<sup>1</sup> The Court should decline to employ the lodestar method of determining attorneys’ fees in this case. “Under the lodestar method, a court must first determine the number of hours reasonably expended on the litigation and then multiply those hours by a reasonable hourly rate ... [and second] consider other relevant circumstances bearing on the reasonableness of the fee.” *Faricy L. Firm, P.A. v. API, Inc. Asbestos Settlement Tr.*, 912 N.W.2d 652, 659 (Minn. 2018) quoting *Green v. BMW of N. Am., LLC*, 826 N.W.2d 530, 536 (Minn. 2013). While Minnesota courts have used the lodestar method to cross-check the percentage-based common fund method, *see Flores*, 2019 WL 7142886, at \*2, it is primarily employed to calculate statutory attorney fees under Minnesota law. *See, e.g., Green*, 826 N.W.2d at 535 (“Generally, Minnesota courts have used the lodestar method for determining the reasonableness of statutory attorney fees.”). Moreover, the lodestar method “create[s] a temptation for lawyers to run up the number of hours for which they [are] paid.” *Flores*, 2019 WL 7142886, at \*2 quoting *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 167-68 (S.D.N.Y. 1989). There is no legal authority requiring the Court to perform a cross-check to confirm the reasonableness of the attorneys’ fee award. In contrast, “[t]here are strong policy reasons behind the judicial and legislative preference for the percentage of recovery method.” *In re Xcel Energy*, 364 F. Supp. 2d at 991. “...[O]ne of the primary advantages of the [percentage of recovery] method is that it is thought to equate the interests of class counsel with those of the class members and encourage class counsel to prosecute the case in an efficient manner.” *Id.* at 992 (bracket in original).

*Family Mutual Ins. Co.*, 399 N.W.2d 210 (Minn.1987) (30% awarded as attorney fees in unpublished opinion, File No. 456247, Ramsey Dist. Ct.). In evaluating the propriety of an attorneys' fee award under the percentage-of-the-fund method, courts look to:

(1) the benefit conferred on the class, (2) the risk to which plaintiffs' counsel was exposed, (3) the difficulty and novelty of the legal and factual issues of the case, (4) the skill of the lawyers, both plaintiffs' and defendants', (5) the time and labor involved, (6) the reaction of the class, and (7) the comparison between the requested attorney fee percentage and percentages awarded in similar cases.

*Flores*, 2019 WL 7142886, at \*1. "The court has wide discretion in the weight to assign each factor, given that not all of the individual factors apply to every case." *Id.* Looking to federal law in the Eighth Circuit, "courts have frequently awarded attorneys' fees ranging up to 36% in class actions." *Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) (affirming one-third attorneys' fee award), citing *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (affirming attorneys' fee award of 36% in class action settlement); *In re Xcel Energy, Inc., Sec., Derivative & "ERISA" Litig.*, 364 F.Supp.2d 980, 998 (D. Minn. 2005) ("[C]ourts in this circuit and this district have frequently awarded attorney fees between twenty-five and thirty-six percent of a common fund in other class actions.") "Whether an attorneys' fee is reasonable is a question of fact. *Ryan v. Bigos Props. by Bigos*, 351 N.W.2d 680, 681 (Minn. Ct. App. 1984). The court's determination "must be based either upon its observation of the services performed or proof of their value . . . and the findings must be reasonably supported by the evidence." *Id.*

**B. The Requested Attorneys' Fees Are Reasonable and Should be Approved.**

Here, the relevant factors all support the Court approving the payment to Class Counsel of the requested attorneys' fees of \$123,551.57. As these are fair, reasonable, and unopposed by SCHA, they should be approved by the Court.

### ***1. Benefit Conferred on the Class***

First, looking to the percentage of the recovery approach, the attorneys' fees requested are reasonable considering the benefit conferred on the Class by the Settlement. *See Flores*, 2019 WL 7142886, at \*1. This factor is accorded particular weight. *See In re Xcel Energy, Inc., Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980, 994 (D. Minn. 2005). Here, Class Counsel obtained a robust Settlement for the Class Members, under which Settlement Class Members can receive up to \$2,500.00 for documented, unreimbursed Economic Losses, including Lost Time, that are fairly traceable to the Data Breach, available through submission of a valid claim, and capped at \$300,000.00 in the aggregate. *See SA ¶¶ 4.1, 5.2., 2.14, 2.16, 3.8; Claim Form (SA Exhibit A); Stranch Decl. ¶ 9.* These Settlement benefits are highly favorable considering their immediate accessibility, and the risks inherent in this data breach litigation. These risks include potential issues in proving causation, in prevailing upon a motion for summary judgment, possible denial a motion for class certification, or risk of not prevailing at trial, as well as considering the time and expense of further litigation. And, because the Settlement provides for SCHA to pay the requested attorneys' fees and expenses in addition to the Settlement benefits, the Settlement benefits to the Class are not diminished by these payments. The total value of the Settlement can be calculated as the claims amount (\$300,000) plus the fees and expenses to be paid by Defendant (\$131,900) plus the service award to be paid by Defendant (\$1,500) plus the costs of notice and administration to be paid by Defendant (\$66,600) for a total value of \$500,000. Thus, the requested fees are equal to 24.71% of the total value, less than the one-third fee that is routinely approved. This factor weighs in favor of approving Class Counsel's attorneys' fees. Stranch Fee Decl. ¶ 8.

### ***2. Risks to Which Class Counsel was Exposed and Difficulty and Novelty of the Issues***

“Courts have recognized that the risk of receiving little or no recovery is a major factor in

awarding attorney fees.” *In re Xcel*, 364 F.Supp.2d at 994. *Yarrington*, 697 F. Supp. 2d at 1062 citing *In re Xcel*, 364 F. Supp. 2d at 994. “The risks plaintiffs’ counsel faced must be assessed as they existed in the morning of the action, not in light of the settlement ultimately achieved at the end of the day.” *In re Xcel Energy, Inc., Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d at 994 (citation omitted).

This action involved enormous risks to Class Counsel, especially considering the difficulty and novelty of the legal and factual issues of the case. Class Counsel took the litigation on a 100% contingent basis, meaning they bore the risk of potentially never being compensated for their labor nor reimbursed their thousands of dollars in litigation expenses. This risk is amplified because of the difficulty of complex class action litigation in general, and the unique issues presented in data breach litigation, including questions regarding standing to sue, issues in proving causation, denial a motion for class certification, or the risk of not prevailing at trial. *See* Stranch Decl. ¶ 19. Indeed, “[t]he realm of data breach litigation is complex and largely undeveloped. It would present the parties and the Court with novel questions of law.” *In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2807, 2019 WL 3773737, at \*6 (N.D. Ohio Aug. 12, 2019). Nevertheless, Class Counsel undertook to vigorously represent Class Representative and the Class Members in this action, and through hard-fought negotiations, obtained a Settlement that provides significant benefits to the Class. Both the risks involved in this litigation and the difficulty of the legal and factual issues in data breach class action cases weigh in favor of Class Counsel’s requested attorneys’ fee award.

### ***3. Skill of Counsel.***

Next, an award of the requested attorneys’ fees is supported by the skill of Class Counsel, as well as the time and labor involved. Class Counsel are uniquely experienced and highly qualified

in class action litigation, and in consumer data security matters. *See* Stranch Decl. ¶ 21. As an example, Mr. Stranch has extensive experience in litigating class actions including data security incidents and unauthorized disclosure of personal information as alleged in this matter. *Id.*; *see e.g., K.B. (minor) through Joan Blank et al. v. East Tennessee Children's Hospital Association, Inc.* (No.: C2LA0081, Anderson Cnty. Tenn. Cir. Ct.) (data breach class action impacting over 400,000 patients, including minors; preliminary approval granted July 27, 2023); *Julien, et al. v. Cash Express, LLC.*, (No. 2022-CV-221, Putnam Cnty. Tenn. Cir. Ct.) (data breach class action impacting over 100,000 persons; prelim. app. granted June 27, 2023); *In re CorrectCare Data Breach Litigation*, No. 5:22-319-DCR (E.D. Ky.) (consolidated data breach class action in which Mr. Stranch was appointed interim co-lead counsel). These have included *McKenzie, et al. v. Allconnect, Inc.*, No. 5:18-cv-00359-JMH (E.D. Ky) (estimated \$2.2 million settlement providing \$100 direct cash payments to class members without the need for any claim form submission, credit monitoring, and capped reimbursement of economic losses); and *In re: Anthem, Inc. Data Breach Litig.*, MDL 2617, No. 15-MD-02617 (N.D. Cal.) (data breach litigation resulting in landmark \$115 million settlement). *See also: Slos v. Select Health Network*, No. 71D05-2022-PL-000060 (St. Joseph Super. Ct. Aug. 5, 2021); *Jones v. Methodist Hospital, Inc.*, No. 45C01-1911-CT-001201 (Lake Cnty. Super. Ct.); *Joyner v. Behavioral Health Network, Inc.*, No. 2079CV00629 (Mass. Super. Ct.); *Baldwin v. Nat'l W. Life Ins. Co.*, No. 2:21-cv-04066-WJE (W.D. Mo.); *In re BJC Healthcare Data Breach Litig.*, No. 2022-CC09492 (Mo. Cir. Ct.); *Marshall v. Conway Reg. Med. Ctr., Inc.*, No. 23CV-20-771 (Ark. Cir. Ct.); *Crawford v. thyssenkrupp Materials NA, Inc.*, No. 2122-CC00411 (Mo. Cir. Ct.); *Carr v. Beaumont Health*, No. 2020-181002- NZ (Mich. Cir. Ct.); *Goetz v. Benefit Recovery Specialists, Inc.*, No. 2020CV000550 (Wis. Cir. Ct.).

Further still, Class Counsel faced highly experienced opposing counsel in this action, Zelle, LLP, an international litigation firm experienced in defending *and* prosecuting class actions.<sup>2</sup>

#### ***4. The Time And Labor Involved.***

Further, the requested attorneys' fee award is supported by the time and labor involved. Class Counsel have engaged in significant work in connection with this action, thoroughly investigating the claims in this matter, researching the Data Breach to SCHA's systems in June 2020, reviewing documents pertinent to the case, and examining applicable law. *Id.* ¶ 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. Class Counsel strongly advocated for the interests 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. *Id.* ¶ 7. The significant time and labor involved too weighs in favor of the Court approving the requested attorneys' fees.

#### ***5. Reaction of the Class***

A lack of objection to a settlement's terms by Class Members supports its fairness. *See Heller v. Schwan's Sales Enterprises, Inc.*, 548 N.W.2d 287, 291 (Minn. Ct. App. 1996) ("That so few plaintiffs objected to the settlement is a significant factor that supports the fairness and adequacy of the settlement terms."). Here, the Class Members have until September 18, 2023 to object or opt-out, and Class Counsel will address any objections at the Final Approval Hearing.

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<sup>2</sup> *See* Zelle, LLP, "Class Actions," avail. at [https://www.zellelaw.com/Class\\_Actions](https://www.zellelaw.com/Class_Actions)

**6. Comparison Between Requested Attorney Fee Percentage and Percentages Awarded in Similar Cases.**

Lastly, the requested attorneys' fees of **\$123,551.57** are fair and reasonable as constituting 24.71% of the estimated value of the Settlement. Class Counsel estimates that the total value of the Settlement is \$500,000, including the \$300,000 maximum aggregate cap for economic loss reimbursement to Class Members, as well as the \$200,000 SCHA will pay for attorneys' fees, expenses, settlement administration, and service award, if approved by the Court. Based on this, the requested attorneys' fees of \$123,551.57 represents 24.71% of the total estimated Settlement value. This is well within the range of fees typically approved. *See, e.g., Flores*, 2019 WL 7142886 (Minn. Ct. App. Dec. 23, 2019) (affirming Minnesota District Court award of 25% of common fund as fair and reasonable); *Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) (affirming U.S. District Court award of 1/3rd of total settlement fund, stating, "Indeed, courts have frequently awarded attorneys' fees ranging up to 36% in class actions. *See, e.g., In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (affirming attorneys' fee award of 36% in class action settlement); *In re Xcel Energy, Inc., Sec., Derivative & "ERISA" Litig.*, 364 F.Supp.2d 980, 998 (D. Minn. 2005) ("[C]ourts in this circuit and this district have frequently awarded attorney fees between twenty-five and thirty-six percent of a common fund in other class actions.")). Accordingly, the requested attorneys' fees are fair and reasonable as within the range approved in Minnesota class actions, and should likewise be approved by the Court.

**C. Class Counsel's Expenses are Reasonable.**

Under Minn. R. Civ. P. 23.08, the Court may award nontaxable costs authorized by law or by agreement of the parties. Here, SCHA has agreed to pay Class Counsel's expenses out of the Fee and Expense Fund, as set forth in the Settlement. SA ¶ 4.4. "Courts generally allow plaintiffs' counsel in a class action to be reimbursed for costs and expenses out of the settlement fund, so

long as those costs and expenses are reasonable and relevant to the litigation” *Khoday v. Symantec Corp.*, No. 11-CV-180 (JRT/TNL), 2016 WL 1637039, at \*12 (D. Minn. Apr. 5, 2016), *report and recommendation adopted*, No. 11-CV-0180 (JRT/TNL), 2016 WL 1626836 (D. Minn. Apr. 22, 2016), *aff’d sub nom. Caligiuri v. Symantec Corp.*, 855 F.3d 860 (8th Cir. 2017).

As stated in the attached Declaration of J. Gerard Stranch, IV, Class Counsel have collectively incurred costs of **\$8,348.43** in prosecuting this action. These costs are of the customary kind incurred in litigation, including for filing fees, *pro hac vice* admission fees, and for the costs of mediation. Stranch Fee Decl. ¶¶ 3, 4. These expenses are ordinary and reasonable, and relevant to the litigation. As part of the Settlement, SCHA has agreed to pay these expenses in addition to the Settlement benefits to the Class. These costs should be approved by the Court.

#### **D. Class Representative Service Award.**

Lastly, Class Counsel moves the Court to approve the Service Award to the Class Representative in the sum of \$1,500.00. SA ¶ 4.4. These incentive payments are commonly awarded to class representatives in recognition of the role they took in litigating claims on behalf of the class. *See, e.g., Kurvers v. Nat’l Computer Syst., Inc.*, No. 27-cv-00-11010, 2003 WL 25437178, at \*1 (Minn. Dist. Ct. Jan. 24, 2003) (“The incentive awards sought are reasonable given the Class Representatives’ services on behalf of the Class and the policy of encouraging people to come forward and litigate meritorious claims on behalf of their fellow consumers”). In evaluating whether incentive awards are appropriate for class representatives, courts consider what actions the plaintiffs took to protect the class’s interests, the degree the class benefited and the time and effort the plaintiffs expended in pursuing the litigation. *See In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002). As to amount, courts “regularly grant service awards of \$10,000 or greater.” *Caligiuri*, 855 F.3d at 867 (8th Cir. 2017) (approving \$10,000 service award) (citing

*Huyer v. Njema*, 847 F.3d 934, 941 (8th Cir. 2017) (affirming approval of settlement that included \$10,000 service awards to named plaintiffs); *Holt*, 2020 WL 12604384, at \*1 (approving \$10,000 service award); *Jones v. Casey's Gen. Stores, Inc.*, 266 F.R.D. 222, 231 (S.D. Iowa 2009) (approving \$10,000 service awards to each of nine plaintiffs). And much higher service awards are not uncommon. *See, e.g., Zilhaver v. UnitedHealth Grp., Inc.*, 646 F. Supp. 2d 1075, 1085 (D. Minn. 2009) (approving \$15,000 service awards to two representatives); *Tussey*, 2019 WL 3859763, at \*6 (approving \$25,000 service awards to each of three representatives); *In re Charter Commc'ns, Inc., Sec. Litig.*, No. MDL 1506, 2005 WL 4045741, at \*25 (E.D. Mo. June 30, 2005) (approving \$26,625 service award).

Here, Class Representative Payshence Carr stepped-in as named Plaintiff in May 2023 to replace former plaintiff, Justin Hiatt to represent the interests of the Class. In so doing, she undertook this crucial role to represent the best interests of the Class at a pivotal point in the case, for the best interests of the Class. Without her, there would be no Settlement to compensate the Class Members for the compromise of their PHI in this case. Considering the degree to which the Class has benefited from Class Representative's involvement, the Service Award of \$1,500.00 is appropriate and should be approved.

### III. CONCLUSION

For the foregoing reasons, Class Representative, PAYSHENCE CARR, by Class Counsel, moves the Court pursuant to Minn. R. Civ. P. 23.08 for an award of attorneys' fees, expenses, and a service award, as set forth herein.

Dated: September 15, 2023

Respectfully submitted,

**HELLMUTH & JOHNSON PLLC**

/s/ Nathan D. Prosser

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**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: September 15, 2023

/s/ Nathan D. Prosser

Nathan D. Prosser