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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

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

NOTICE

PLEASE TAKE NOTICE that Plaintiff, Class Representative, PAYSHENCE CARR ("Class Representative," "Plaintiff," or "Ms. Carr") will bring the following Motion pursuant to Minn. R. Civ. P. 23.05 to be heard at the Final Approval Hearing scheduled for **November 6, 2023 at 8:45 a.m.**

UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND INTEGRATED MEMORANDUM OF LAW IN SUPPORT

Class Representative, individually, and on behalf of the Settlement Class[1], by and through counsel, pursuant to Minn. R. Civ. P. 23.05, moves the Court for final approval of the class action Settlement in this action with Defendant, SOUTH COUNTRY HEALTH ALLIANCE, A JOINT

[1] …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 the 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.

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POWERS BOARD ("SCHA" or "Defendant"), concurrently submitting this integrated Memorandum of Law in support. As follows, the Court should approve the Settlement as fair, reasonable, and adequate under Minnesota law, and allow the Settlement Class to access the benefits of the Settlement to compensate them for the harms caused by the Data Breach.

I. INTRODUCTION

Following concerted, arms'-length negotiations, and with the assistance of a mediation conducted on March 1, 2022, the Parties reached the Settlement in this case, as memorialized in the Settlement Agreement (the "Settlement" or "SA"), Exhibit 1 to the Unopposed Motion for Preliminary Approval. The proposed Settlement provides timely, significant benefits for the Settlement Class, including compensation for each Class Member who makes a timely claim, up to $2,500.00 for Economic Losses, including Lost Time, incurred as a result of the Data Breach, under a claims made structure with an aggregate cap of $300,000.00. *In addition*, under the Settlement, 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.

After notice was sent to the 17,369 Class Members, only five (5) people have opted-out, and **no Class Member has objected to the Settlement**. *See* Declaration of Scott M. Fenwick of Kroll Settlement Administration LLC, in Connection with Final Approval of Settlement ("Notice Decl.") ¶ 15, **attached as Exhibit 1.** This overwhelmingly positive response to the Settlement confirms the Court's preliminary determination that the Settlement is fair, reasonable, and adequate. and the Court should now grant final approval so that the Class Members can receive the benefits of the Settlement and this case can be resolved.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Data Breach

As previously set forth in the Unopposed Motion for Preliminary Approval and Motion for Fees and Expenses, in the original Complaint, former Plaintiff Justin Hiatt, and now in the Amended Complaint, Plaintiff/Class Representative Payshence Carr alleges that on or about June 25, 2020, SCHA, a joint powers board 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 access and compromise of the Personal Health Information ("PHI") of Defendant's members stored therein, including Ms. Carr and the proposed Class Members. 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, ¶¶ 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 nationwide "may have been in the account'" that was accessed. *Id.* ¶ 16.[3]

[2] Capitalized terms have the definitions set forth in the Settlement Agreement.
[3] *See* Maine Attorney General Data Breach Notification, available at https://apps.web.maine.gov/online/aeviewer/ME/40/ac5bc20b-bfa1-4b3d-a25f-a58743eb6c0a.shtml (last accessed October 20, 2023).

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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, she and the proposed Class of Minnesota citizens whose PHI were compromised,[4] 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 Ms. Carr alleges that as a result of the Data Breach, she began to receive excessive spam emails and telephone calls, must expend

[4] *See* Compl. ¶¶ 90-91.

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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

Following SCHA's notification to those affected by the Data Breach, former Plaintiff Justin Hiatt filed a Complaint against SCHA on April 29, 2021 on behalf of himself and the proposed Class of Minnesota citizens whose PHI was compromised as a result of the Data Breach. *Id.* ¶ 90. The Complaint included 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).

Realizing the benefits of an early resolution to this action, in February 2022, the parties 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 in Support of Motion for Preliminary Approval of Class Action Settlement ("Stranch Decl.") ¶ 4. 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.* ¶¶ 5. On March 1, 2022, the parties mediated with Hon. Wayne R. Andersen (Ret.), JAMS. *Id.* ¶¶ 4, 6. Class Counsel strongly advocated for the interests of the Class at mediation, but were unable to reach a settlement. Thereafter, 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.* ¶ 6. This was prior to the discussion or negotiation of attorneys' fees and a class representative service award. *Id.* ¶ 18. The substantive terms of the Settlement include agreed certification of the Settlement Class as detailed below.

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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. ¶ 7. The Parties subsequently reached a supplemental agreement in principle as to attorneys' fees and a class representative service award. *Id*. ¶¶ 14-18. 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; 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. A hearing on the motion for preliminary approval was held on July 17, 2023, and the Court entered the Preliminary Approval Order on July 18, 2023.

III. SUMMARY OF THE 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 (emphasis added).

B. Settlement Benefits

The proposed Settlement provides significant benefits to Settlement Class members which are tailored to remediate 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., 2.14, 2.16, 3.8; Claim Form (SA Exhibit A); Stranch Decl. ¶ 10. 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

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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). 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 Settlement benefits simply 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, or on or before **November 5, 2024**. *See* SA ¶¶ 4.1, 3.8.

2. Defendant will pay the costs of notice and settlement administration, attorneys' fees, expenses, and service awards in addition to the Settlement benefits to the Class

Separate from the individual Settlement Class member benefits of claims up to $2,500.00 for Economic Losses, capped in the aggregate at $300,000.00, 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 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. 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 has moved the Court for 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. *See* Unopposed Motion for Attorneys' Fees, Expenses, and Class Representative Service Award and Integrated Memorandum of Law in Support ("Fee and Expense Motion"), pg. 5.

IV. PRELIMINARY APPROVAL, NOTICE, AND NO OBJECTIONS

A. The Court Grants Preliminary Approval to the Settlement

On July 18, 2023, the Court granted the Unopposed Motion for Preliminary Approval of the Settlement. Therein, 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 Settlement Administration, LLC ("Kroll") as Settlement Administrator. *Id.* ¶ 7.

B. Notice to the Class Members, Opt-Outs, and No Objections

The proposed Settlement provides for a comprehensive notice program calculated to send notice to the Settlement Class through the selected Settlement Administrator, Kroll, with a mailed Summary Notice (SA Ex. E), and Detailed Notice (SA Ex. B) posted on a Settlement Website. On July 20, 2023, Kroll designated a dedicated post office box to receive requests for exclusion, Claim Forms, objections, and correspondence from Class Members, and on July 21,

2023 established a toll-free telephone number, for Class Members to call and obtain additional information regarding the settlement through an Interactive Voice Response ("IVR") system and/or by being connected to a live operator. *See* Notice Decl. ¶¶ 4-5. As provided in the Settlement, on July 25, 2023, Kroll created a dedicated Settlement Website, www.southcountrysettlement.com, which was active as of August 18, 2023, containing the Detailed Notice, settlement documents, the Preliminary Approval Order, and the Claim Form. The website allowed Class Members to file claims online. Notice Decl. ¶ 6; SA ¶¶ 2.20, 4.1 (claims submitted through website).

On July 25, 2023, Kroll received one (1) data file from the Defendant comprising the Class Member List containing 17,415 names and physical addresses of Class Members. Notice Decl. ¶ 7; SA ¶¶ 7.3, 2.5. Kroll identified forty-four (44) duplicate records as well as two (2) records missing name information in the data, resulting in 17,369 names with physical addresses to be mailed a Summary Notice. Notice Decl. ¶ 7. Kroll ran these names through the U.S. Postal Service's ("USPS") National Change of Address database and updated the Class Member List with address changes received. *Id*.

In accordance with the Settlement, within thirty days of the Court's July 18, 2023 Preliminary Approval Order, on August 17, 2023, Kroll caused 17,369 Summary Notices (SA Ex. E) to be mailed via USPS first class mail. Notice Decl. ¶ 8; *see* SA ¶¶ 7.3, 3.9. As of September 22, 2023, 184 Summary Notices were returned by USPS with a forwarding address 183 of which were automatically re-mailed by USPS, and 1 of which was mailed to the forwarding address by Kroll. Notice Decl. ¶ 9. Also, 2,364 Summary Notices were returned by the USPS as undeliverable as addressed, without a forwarding address, which Kroll then ran through advanced address searches, revealing 1,545 updated addresses, to which Kroll has re-mailed Summary Notices to the 1,520. None of these 1,520 were returned as undeliverable a second time, and as of September

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22, 2023, Kroll is in the process of re-mailing the additional twenty-five (25) Summary Notices to the updated addresses obtained from the advanced address search. Kroll continues to run advanced address searches for the remaining one (1) undeliverable record and any additional undeliverable notices that were unable to be forwarded by the USPS. Notice Decl. ¶¶ 10.

All in all, of the 17,369 persons to whom the Summary Notice was mailed, Kroll determined that 16,550 will reach the Class Members, a 95.3% success rate. Notice Decl. ¶ 11. As Kroll outlines in its Notice Declaration:

Notice Declaration on Dissemination & Reach		
Description	**Volume of Class Members**	**Percentage of Class Members**
Class Members	17,369	100.0%
Initial Summary Notice Mailing		
(+) Summary Notices Mailed (Initial Campaign)	17,369	100%
(-) Total Summary Notices returned as undeliverable	(2,364)	13.6%
Supplemental Summary Notice Mailing		
(+) Total Summary Notices Re-mailed	1,545	8.9%
(-) Total Undeliverable (Re-Mailed) Summary Notices	0	0%
Notice Declaration Reach		
(=) Likely Received Summary Notice	16,550	95.3%

Under the Settlement, the deadline for Class Members to Opt-Out or Object to the Settlement was **September 18, 2023**, which was 30 days after the Deadline to Send Notice (August 17, 2023). Notice Decl. ¶ 15; SA. ¶¶ 7.5, 3.7. As of September 22, 2023, Kroll has received five (5) timely exclusion requests, and **no objections to the settlement**. The list of Class Members who submitted timely requests for exclusion is attached to the Notice Declaration as Exhibit D. Notice Decl. ¶ 16.

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V. ARGUMENT OF LAW: THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE, AND SHOULD BE FINALLY APPROVED

A. Standard

The Court should grant final approval of the Settlement as fair, reasonable, and adequate, pursuant to Minnesota law. 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 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). Of course, "[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," as the parties have done in this case. *See* Minn. R. Civ. P. 23.05(b).

"A court may approve a class action settlement if it is fair, adequate, reasonable, and not 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). In so doing, "[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)

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(citations omitted).

Additionally, federal case law provides guidance in whether to grant final approval. "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"). After preliminary approval has been granted, and after notice has been given to the Class, 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 include:

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3); and
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). Prior to the addition of Fed. R. Civ. P. 23(e)(2) in 2018, federal courts in the Eighth Circuit considered "(1) 'the merits of the plaintiff's case'; (2) 'the defendant's financial condition'; (3) 'the complexity and expense of further litigation'; and (4) 'the amount of opposition

to the settlement.'" *Murphy v. Harpstead,* No. CV 16-2623 (DWF/LIB), 2023 WL 4034515, at *4 (D. Minn. June 15, 2023) citing *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988). These factors are intertwined with considerations under Minnesota law and remain relevant to evaluating the fairness of the Settlement under Fed. R. Civ. P. 23(e)(2).

B. The Settlement is Fair, Reasonable, and Adequate, the Product of Arms's-Length Negotiations, and Satisfies the Factors under Fed. R. Civ. P. 23(e)(2) and other Factors

In the instant case, the proposed Settlement is fair, reasonable, and adequate, is the result of informed, arms'-length negotiations, and the Settlement's terms are favorable compared to the results Plaintiff would likely receive after a full trial. Moreover, the Settlement satisfies the factors frequently cited by federal courts for final approval of Class Action settlements. Class Counsel will first address the Minnesota factors alongside corresponding considerations under Fed. R. Civ. P. 23(e)(2), and then examine additional guiding factors under federal law. All support the Court granting final approval to the Settlement.

1. The Settlement is the Product of Arms' Length Negotiations, and Not Collusion

First, the Settlement is not the product of collusion between the Parties, but of arms' length negotiations, and was fairly and honestly negotiated. *See Heller v. Schwan's Sales Enterprises, Inc.,* 548 N.W.2d 287, 289 (Minn. Ct. App. 1996). This is similar to the factors in Fed. R. Civ. P. 23(e)(2)(B). There is an initial strong presumption that a proposed class action settlement is fair and reasonable when it is the result of arms-length negotiations. *Great Neck Capital Appreciation Inc. Partnership, L.P. v. PricewaterhouseCoopers,* LLP, 212 F.R.D. 400, 410 (W.D. Wis. 2002); *see also* Newberg on Class Actions §11.41 at 11-88 (3d ed. 1992). Here, the Settlement is the product of concerted arm's length negotiations conducted by experienced counsel. As stated prior, on March 1, 2022, the Parties participated in a mediation before an experienced mediator, Wayne R. Andersen. Stranch. Dec. ¶ 4. Throughout the mediated negotiations, Proposed Class Counsel

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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. After eight (8) months of additional extensive negotiations, in November 2022 the Parties were able to reach an agreement in principle as to the substantive relief for the 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."). Accordingly, this factor supports the Court granting final approval of the Settlement.

2. The Settlement' is Favorable Compared with the Likely Result at Trial and Complexity and Expense of Further Litigation

Next, the Settlement benefits are favorable compared to the likely result at trial on the merits. *Heller*, 548 N.W.2d at 289 (Minn. Ct. App. 1996) citing *SST, Inc. v. City of Minneapolis,* 288 N.W.2d 225, 231 (Minn.1979) ("The court must compare the settlement's terms with the results the plaintiffs would have likely received after a full trial."). This factor is similar to Fed. R. Civ. P. 23(e)(2)(C) (whether relief provided to the class is adequate taking into account (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any

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agreement required to be identified under Rule 23(e)(3)), as well as the factors considering the merits of Plaintiff's case and the complexity and expense of further litigation. *See Murphy v. Harpstead,* No. CV 16-2623 (DWF/LIB), 2023 WL 4034515, at *4 (D. Minn. June 15, 2023); *Swinton v. SquareTrade, Inc.,* 454 F. Supp. 3d 848, 860 (S.D. Iowa 2020); *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988).

As stated in Class Representative's Motion for Preliminary Approval, Class 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 included vigorous advocacy at mediation and during 8 months of 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.

Nevertheless, 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. "The 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). 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,

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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 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.

Plaintiff would need to prevail upon the claims of breach of contract (Am. Compl. ¶¶ 100-116), promissory estoppel (*Id.* ¶¶ 117-123), and the claim for violation of the Minnesota Government Data Practices Act Minn. Stat. §§ 13.01, *et seq.* ("MGDPA") (*Id.* ¶¶ 124-135), first on summary judgment, if filed, and then at trial. She may not be successful on any one of these

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claims. For example, and although Class Counsel would disagree, the Court may decide that SCHA's promises to protect patient personal information made in its Notice of Privacy Practices (Compl. Ex. B) do not constitute contractual promises. *See,* e.g., *In re Nw. Airlines Priv. Litig.,* No. CIV.04-126(PAM/JSM), 2004 WL 1278459, at *6 (D. Minn. June 6, 2004) ("The usual rule in contract cases is that 'general statements of policy are not contractual' [and] [t]he privacy statement on Northwest's website did not constitute a unilateral contract.").

In addition, further litigation will be complex, lengthy, and require significant resources. *See* Fed. R. Civ. P. 23(c)(2)(ii); *Murphy,* 2023 WL 4034515, at *6. 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.

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 Form. 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 additional credit reports, any unreimbursed monetary loss suffered by a Class Member arising from

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financial fraud or identity theft attributable to the Data Breach. Stranch Decl. ¶ 10; SA ¶¶ 2.16; SA Ex. A (Claim Form) at pg. 2. The Settlement benefits also 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 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.[5] 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-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.[6]

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[5] *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).

[6] *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).

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.

3. The Settlement is an Effective Method of Distributing Relief to the Class

Next, the proposed method of distributing relief to the class through the claims made process and the method of processing class-member claims through the Settlement Administrator is fair, reasonable, and adequate. *See* Fed. R. Civ. B. 23(e)(2)(C)(ii). Under the Settlement, Kroll is responsible for collecting and processing all Claim Forms, whether submitted by mail or through the Settlement Website, and applies fixed, reasonable, and discernable criteria to determine the validity of claims. SA ¶ 5.1. Per the Settlement, a claim for Economic Losses will be valid so long as: (i) the claim is submitted by a Class Member; (ii) the information required to process the claim has been completed; (iii) the original claim has been submitted on or before the Deadline to Submit Claims; and (iv) the claim is supported by documentation sufficient to show the Economic Losses were fairly traceable to the Data Breach. SA ¶ 5.2. In determining whether Economic Losses are fairly traceable to the Data Breach, the Settlement Administrator considers: (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. These requirements are certainly reasonable to ensure that Class Members are properly compensated for their respective Economic Losses traceable to the Data Breach, by requiring documentation of the loss, that they are temporally connected to the Data Breach, and whether the Economic Loss claimed resulted from misuse of the information compromised for each Class Member in the Data Breach. In addition, there is a generous claims period of one year following the date of final approval to ensure Class Members have sufficient time to submit claims, including gathering supporting documentation. SA 3.8. *At the same time*, as soon as the Claims period ends, the deadline to pay Claims is only 60 days thereafter. *See* SA ¶¶ 3.14, 3.15. This allows Class Members to be quickly compensated for their Economic Losses due to the Data breach, while ensuring they have sufficient time to submit a claim.

4. The Settlement Treats Class Members Equitably Relative to Each Other

Looking to Fed. R. Civ. P. 23(e)(2)(D), the Settlement treats the Class Members equitably, relative to each other. *See Murphy*, 2023 WL 4034515, at *6. All Class Members will all have access to the Settlement Benefits of reimbursement for Economic Losses up to $2,500.00 through the same, convenient, claims made process including submission of Claim Forms via mail or website submission, and subject to the same fixed criteria for determining validity of claims. Moreover, ***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. The Settlement treats each Class Members equitably compared to one another based on this equity of access to Settlement benefits, and uniform

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standards applied by the Settlement Administrator to determine the validity of their claims.

5. Class Representative and Class Counsel have adequately represented the Class

Addressing the final factor under federal Rule 23(e)(2), Fed. R. Civ. P. 23(e)(2)(A), Class Represent Ms. Carr has undeniably adequately represented the Class, given the unique circumstances in her coming forward. Ms. Carr served a crucial role in this litigation, stepping-in as Plaintiff in the place of former Plaintiff Justin Hiatt as a matter of necessity, quickly and enthusiastically coming forward to represent the interests of the Class. Stranch Decl. ¶ 20. Her involvement made it possible for the Settlement to come to fruition for the good of the Class, and for the Class Members to obtain the invaluable benefits the Settlement provides to compensate them for the compromise of their PHI in this case, including the reimbursement of Economic Losses, if approved by the Court.

Likewise, Class Counsel have adequately represented the Class, undertaking the litigation on a 100% contingent basis, and bearing the risk of potentially never being compensated for their labor nor reimbursed their thousands of dollars in litigation expenses; and engaging 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, Class Counsel obtained 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 Class's interests at mediation, and continued negotiations until a settlement in principle was reached in November 2022 which would adequately compensate the Class Members. Both Class Representative and

Class Counsel have adequately represented the interests of the Class, a factor which too supports the Court approving the Settlement.

6. The Financial Condition of Defendant

In addition to the above factors, Minnesota federal courts have considered the financial condition of the defendant in determining whether to grant final approval. *See Murphy,* 2023 WL 4034515, at *4 citing *Van Horn*, 840 F.2d at 607. As discussed in the Unopposed Motion for Preliminary Approval, SCHA is a Joint Powers Board created pursuant to a Joint Powers Agreement entered into between various Minnesota counties under Minn. Stat. $ 471.59 in accordance with Minn. Stat. § 2568.692, formed to operate, control, and manage county-based purchasing functions for persons enrolled in public healthcare programs. Compl. ¶ 7. Defendant 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,"[7] with Medicaid and Medicare programs.[8] Thus, Defendant is a small joint-county health plan services provider to the public, including Medicaid and Medicare recipients. Out of gross income of $280,889,896 in 2022, SCHA had only $17.6 million in annual revenue in 2022.[9] As a quasi-governmental entity with little financial resources, relatively speaking, SCHA's financial condition weighs in favor of the Settlement being fair, reasonable and adequate when the total $500,000.00 value of the Settlement is considered.

[7] South County Health Alliance website, available at https://mnscha.org/ (last acc. May 15, 2023)
[8] *Id*. avail. at https://mnscha.org/programs/medical-assistance-medicaid-programs/ (last acc. May 15, 2023)
[9] *See* Minnesota Department of Health, Statement of Revenue, Expenses and Net Income for the year ending December 31, 2022, available at https://www.health.state.mn.us/facilities/insurance/managedcare/docs/2023/supplemental/scha23ar.pdf (last acc. Oct. 19, 2023)

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7. No Objections to the Settlement

The lack of any opposition to the Settlement remains a significant factor in favor of the Court approving the Settlement in this case. *See Murphy*, 2023 WL 4034515, at *4. As stated prior, from the 17,369 total Class Members who were sent the mailed Summary Notice—and out of the 16,550 Class Members who the Settlement Administrator declares likely received the mailed postcard notice—**not one Class Member has objected to the Settlement**. *See* Notice Decl. ¶ 15. This 100% support from the Settlement Class confirms that the Settlement is fair, reasonable, and adequate, and should be finally approved by the Court.

8. Opinion of Experienced Counsel

Finally, the Settlement is supported by experienced Class Counsel. Counsel believes that the Settlement is an excellent outcome for the class considering the above 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.

VI. CONCLUSION

WHEREFORE, in light of the foregoing, Plaintiff, Class Representative, PAYSHENCE CARR moves the Court to grant final approval to the Settlement, so that the Class Members can receive the benefits provide therein, by entering the Final Approval Order submitted prior, and attached to this Motion.

Dated: October 23, 2023 Respectfully submitted,

HELLMUTH & JOHNSON PLLC

/s/ Nathan D. Prosser

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

J. Gerard Stranch, IV*
Andrew E. Mize*
STRANCH, JENNINGS & GARVEY, PLLC
223 Rosa L. Parks Avenue, Suite 200
Nashville, Tennessee 37203
(615) 254-8801
gerards@bsjfirm.com
peterj@bsjfirm.com
andrewm@bsjfirm.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
610 President Clinton Avenue, Suite 300
Little Rock, Arkansas7220l
(501) 209-7777
chris@yourattorney.com

Attorneys for Class Representative and the Settlement Class

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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: October 23, 2023

/s/ Nathan D. Prosser
Nathan D. Prosser (#0329745)