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STATE OF MINNESOTA	**DISTRICT COURT**
COUNTY OF WASHINGTON	**TENTH JUDICIAL DISTRICT**

ASHLEY BURGESS, on behalf of herself and all others similarly situated, Plaintiff, v. **MINNESOTA ORTHODONTICS AND DENTOFACIAL ORTHOPEDICS, P.A.**, Defendant.	No. 82-cv-25-3249 Judge Douglas B. Meslow

MEMORANDUM IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, ATTORNEYS' FEES AND COSTS AWARD, AND SERVICE AWARD

I. INTRODUCTION

Pursuant to Rule 23.05 of the Minnesota Rules of Civil Procedure, the Settlement Agreement (Index No. 26, Ex. A, "S.A.")[1] and this Court's February 10, 2026 Preliminary Approval Order (Index No. 34, the "Preliminary Approval Order"), Plaintiff Ashley Burgess, respectfully moves the Court for final approval of the proposed Settlement with Minnesota Orthodontics and Dentofacial Orthopedics, P.A. and confirmation of the Settlement Agreement as approved by the Court in its Preliminary Approval Order. Additionally, Plaintiff hereby respectfully requests that the Court grant her request for Attorneys' Fees and Costs Award, and Plaintiff's Service Award, consistent with the Parties' Settlement Agreement in this matter.

[1] The capitalized terms referenced herein have the same meaning as in the Parties' Settlement Agreement ("S.A.").

The Settlement is an excellent result for the Settlement Class[2] as it resolves all of Plaintiff's and Class Members' claims against Defendant in this action arising from a data breach of Defendant's systems that put Plaintiff's and the Class's Private Information at risk. To resolve Plaintiff's and the Class's claims, Defendant agreed to provide Settlement Class Members who submit valid claims with either Credit Monitoring for two years through one bureau with up to $1,000,000 in identity theft protection or a $25.00 Alternative Cash Payment, the latter of which is subject to a maximum aggregate amount of $50,000. In addition, Minnesota Orthodontics has committed to improving its cybersecurity to protect Settlement Class Members' Private Information from future breaches, and will provide reasonable confirmatory information to Settlement Class Counsel describing its information security enhancements since the Data Incident. Finally, Minnesota Orthodontics will pay the costs of notice, claims administration, Fee and Costs Award, and Service Award, separate and apart from the benefits provided to the Settlement Class.

Pursuant to the Preliminary Approval Order, the Settlement Administrator, Analytics Consulting LLC ("Analytics"), issued notice to the Settlement Class on March 12, 2026. Declaration of Settlement Administrator Regarding Notice ("Analytics Decl.") ¶ 7. Direct notice reached 43,061 of the 49,958 Class Members, or 86.5%. *Id.* ¶ 13. June 10, 2026 is the Claims Deadline, and through April 27, 2026, Analytics has received and processed a total of 2,731 Claim Forms. *Id.* ¶ 16. Additionally, zero Class Members have opted out of the Settlement, and no Class

[2] In its October 14, 2025, Preliminary Approval Order at ¶ 2, the Court preliminarily certified a "Settlement Class" comprising "all persons residing in the United States who were sent notice that their Private Information was compromised in the Data Incident experienced by Defendant in January 2025."

Member has objected to the Settlement. *Id.* ¶ 15. As such, the Settlement satisfies Rule 23.05, and the Court should grant final approval.

From the start of this case through the filing of this motion, Class Counsel invested over 100 hours, a lodestar of $73,032.50, and costs of $3,778.00 to litigate the claims of Plaintiff and the Settlement Class. Joint Decl. ¶ 42. Here, the record reflects efficient and effective pleading and hard-fought negotiations that ultimately resulted in the Settlement.

Therefore, Class Counsel requests Fees and Costs of $135,000.00—which equates to a modest lodestar multiplier of 1.8, and is a reasonable percentage of the total value of the Settlement. Joint Decl. ¶ 43. Moreover, the requested Fee is supported by the seven relevant factors under Minnesota law, as used by state and federal courts. *See Yarrington v. Solvay Pharm., Inc.*, 697 F. Supp. 2d 1057, 1061-62 (D. Minn. 2010). Additionally, Class Counsel requests a Service Award of $2,000.00 for Plaintiff. No Class Member has objected to the proposed Fee and Costs Award or the Service Award. In sum, the requested Fee and Costs Award and the Service Award are reasonable, and this Court should grant Plaintiff's motion.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

A. Litigation History

Defendant is an orthodontic treatment provider with its principal place of business in Minnesota. Index No. 1 ("Compl.") ¶¶ 2, 15, 19. As a medical treatment provider, Defendant collects and maintains the Private Information of thousands of their current and former patients and employees. *Id.* ¶¶ 1, 21. Plaintiff alleged that, on or about February 26, 2025, Defendant detected a Data Incident that impacted Plaintiff's and Class Members' Private Information *Id.* ¶¶ 3, 30. On June 2, 2025, Plaintiff Ashley Burgess filed a complaint against Defendant in the Washington County District Court for the Tenth Judicial District of Minnesota concerning the Data

Incident. *See* Compl. Plaintiff brought claims for negligence, negligence *per se*, breach of fiduciary duty, and breach of implied contract. *Id*.

In July 2025, recognizing the benefits of early resolution, the parties entered into arms'-length settlement discussions. Joint Declaration of Class Counsel in Support of Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement, Attorneys' Fee Award and Costs and Service Award. ("Joint Decl.") ¶ 11. Pursuant to those discussions, the Parties exchanged informal discovery including information related to, among other things, the nature and cause of the Data Incident, the number and geographic location of victims impacted by the Data Incident, the specific type of information potentially accessed, and the limited financial and insurance circumstances of Defendant. *Id*.

Over the following months, Plaintiff's counsel and Defendant's counsel, both of whom are experienced in data breach class actions, conducted prolonged and extensive rounds of arms'-length negotiations, spoke on the phone numerous times, and exchanged several draft term sheets. *Id*. ¶ 12. However, after unsuccessfully reaching a resolution, the Parties recognized the need for a mediator, and on September 19, 2025, the Parties filed a stipulation for a stay of all case deadlines while they engaged in a mediation with retired Judge Tom Fraser, which the Court granted on September 23, 2025. *Id*. After the parties attended a full-day mediation with retired Judge Tom Fraser on October 21, 2025, they ultimately agreed on the terms of the Settlement. On November 18, 2025, the Parties filed a joint notice of settlement notifying the Court they reached an agreement on the material terms of a class settlement. *Id*. The parties did not negotiate attorneys' fees or service awards until after they had agreed on benefits for the Settlement Class. *Id*. ¶ 13.

Eventually, in or around November 2025, the Parties executed the Settlement Agreement. *Id*. ¶ 12; S.A. Thereafter, on December 18, 2025, Plaintiff moved the Court for preliminary approval. Index No. 25. The Court granted preliminary approval of the Settlement on February 10, 2026, and set the final approval hearing for June 5, 2026. Index No. 34. Since preliminary approval was granted, Class Counsel has worked with the Settlement Administrator to effectuate class notice and facilitate the claims process. *Id.* ¶ 15. That work is ongoing and will continue through the conclusion of the case. *Id.*

B. Settlement Benefits

The Settlement provides substantial and timely relief to the Settlement Class. S.A. ¶ 58. Under the Settlement, Settlement Class Members can make claims for either Credit Monitoring or an Alternative Cash Payment. *Id.* ¶ 58.

Settlement Class Members may make a Claim for Credit Monitoring that will include two years of one-bureau Credit Monitoring through IDX Financial Shield Pro which will include up to $1,000,000.00 in identity theft protection, among other features. *Id.* ¶ 58 (a).

As an alternative to Credit Monitoring, Settlement Class Members may elect to make a Claim for an alternative cash payment in the amount of $25.00. The maximum aggregate amount payable to Settlement Class Members for benefits claimed for the Alternative Cash Payment shall be $50,000.00. In the event the aggregate claimed amount of Alternative Cash Payments exceeds $50,000.00, then the value of such payments shall be reduced on a pro rata basis, such that the aggregate value of all alternative cash payments does not exceed $50,000.00. *Id.* ¶ 58 (b).

In addition, as part of the Settlement Agreement, Defendant has committed to implementing data security improvements, and to provide reasonable confirmatory information to Settlement Class Counsel describing its information security improvements since the Data Incident. *Id.* ¶ 59. Finally, the costs of attorneys' fees and costs, the service award, and notice and claims administration will be paid by Defendant separate and apart from the benefits provided to the Settlement Class. *Id*. ¶¶ 60, 89-90.

Critically, the Parties did not discuss or negotiate fees or service awards until they agreed on the terms benefiting the Class. Joint Decl. ¶ 13. In so doing, the Parties avoided conflict with the Class's interests, thereby fulfilling their responsibilities to the Class. Under the Settlement, Defendant agrees to pay the Fee and Costs Award of $135,000.00, subject to Court approval. S.A. ¶ 90. Additionally, the Settlement provides that Defendant will pay a Service Award of $2,000.00 to the Class Representative, again subject to Court approval. *Id.* ¶ 89. The Service Award is intended to recognize Plaintiff's efforts in the litigation and commitment to the Class in reaching and implementing this Settlement. *See* Joint Decl. ¶ 17.

C. The Notice Program

Pursuant to the Preliminary Approval Order, the Settlement Administrator Analytics issued notice to the Settlement Class—which directly reached 86.5% of the Settlement Class. Analytics Decl. ¶ 13. On February 19, 2026, Counsel for Defendant provided Analytics a data file containing, 50,115 records with names and mailing addresses. *Id*. ¶ 5. Analytics performed standard data hygiene, merging, deduplication analysis and skip-tracing, conforming the final class list contained 49,779 unique records of Class Members. *Id*. ¶¶ 6-7.

On March 12, 2026, Analytics mailed the Postcard Notice by First Class U.S. mail to the 49,779 Class Members. *Id*. ¶ 7. The Postcard Notices advised Class Members of their rights to submit a claim, request exclusion from the settlement, object to the settlement, or do nothing, and the implications of each action. *Id*. ¶ 7.

As of April 20, 2026, 323 of the 9,156 mailed Postcard Notices were returned. *Id*. ¶ 12. For mailings returned without a forwarding address, Analytics undertook an advanced address search (*i.e.*, skip trace) using commercially reasonable methods to ascertain a valid address for the affected Settlement Class Members. *Id*. As a result of these efforts, 2,438 returned Postcard Notices were successfully re-mailed to updated addresses or the forwarding addresses provided by U.S. mail. *Id*. In total, notice directly reached 43,061 of the 49,958 Class Members. *Id*. ¶ 13.

In addition, prior to mailing the Notice, Analytics published and continues to maintain a dedicated website with the domain www.mnorthodatasettlement.com (the "Settlement Website"). *Id*. ¶ 8. The Settlement Website contains the Settlement Agreement and Release, Long Form Notice, Postcard Notice, Claim Form, and the Court's Preliminary Approval Order. The Settlement Website also permitted Settlement Class Members to submit a claim form. *Id*. As of April 27, 2026, there have been 2,137 pages views and 1,304 unique visitors to the website. *Id*. ¶ 9.

Finally, Analytics established a Settlement-specific toll-free telephone number: (888) 717-2747, and a dedicated email box (info@MNOrthoDataSettlement.com) to receive and respond to Settlement Class Member inquiries. *Id*. ¶ 10. The phone number and email address were included in the Class Notice. *Id.*

Based on the foregoing, and after completion of all re-mailings, Analytics reasonably believes that the Notices reached 43,061 of the 49,958 to whom notice was disseminated, which equates to an overall direct-mail reach rate of approximately 86.5%. *Id*. ¶ 13. This is a high reach rate, and is consistent with other court-approved, best practicable notice programs. *Id*.

D. Claim Form Submission, Claims Processing, Requests for Exclusion and Objections

The deadline to submit a Claim Form is June 10, 2026. *Id*. ¶ 19. As of April 27, 2026, Analytics has received 3,619 Claim Form submissions. *Id*. ¶ 16. The Claim Forms are under review. Of the 3,619 total claims received, 2,731 have been processed, id., and 2,308 have been determined to be timely and approved, resulting in a valid claims rate of 4.64% at this time, *Id*.

¶ 17. The Parties and Analytics are working through how to handle the deficient submissions, and will continue to work through the claims submitted.

The postmark deadline for Class Members to submit a request for exclusion or an objection is May 11, 2026. *Id.* ¶ 15. As of April 20, 2026, Analytics has received zero requests for exclusion and zero objections to the Settlement. *Id*. Thus, the Settlement Class is reacting overwhelmingly positive in response to the Settlement.

III. ARGUMENT

A. The Court Should Grant Final Approval of the Settlement

The Settlement satisfies the requirements for final approval of a class action settlement. Under the Settlement Agreement, Class Members were able to submit claims for damages resulting from the alleged Data Incident. The Parties agree that this Settlement meets the standards for approval required under Minnesota Rule of Civil Procedure 23.05, and Plaintiff requests that the Court approve the Settlement.

1. The Settlement is Fair, Reasonable and Adequate and Therefore Warrants Final Approval

A district court has broad discretion in evaluating a class action settlement, and as a matter of public policy, courts favor settlement as a method of resolving disputes. *See Johnson v. St. Paul Ins. Cos.*, 305 N.W.2d 571, 573 (Minn. 1981); *see also Van Horn v. Trickey*, 840 F.2d 604, 606-07 (8th Cir. 1988). Courts favor the voluntary settlement of litigation. *Holden v. Burlington N., Inc*., 665 F. Supp. 1398, 1405 (D. Minn. 1987). This is particularly so with complex and time-consuming class action litigation, as substantial resources can be preserved by avoiding costly prolonged litigation. *White v. Nat'l Football League*, 822 F. Supp. 1389, 1416 (D. Minn. 1993).

Minnesota Rule of Civil Procedure 23.05 requires judicial approval of any settlement that will bind absent class members. This involves a two-step process: preliminary approval and final approval. When preliminary approval has been granted and class members had the opportunity to request exclusion or object, as is the case here, the Court must finally determine whether the settlement is "fair, adequate, reasonable, and not the product of collusion between the parties." *SST, Inc. v. City of Minneapolis*, 288 N.W.2d 225, 231 (Minn. 1979) (quoting *Cotton v. Hinton*, 559 F.2d 1326 (5th Cir. 1977)); *see also* Minn. R. Civ. P. 23.05. The Court considers various factors when determining whether to finally approve a class action settlement, including whether:

1. The settlement is reached through arm's-length bargaining;
2. Investigation and discovery are sufficient to allow counsel and the court to act intelligently;
3. Counsel is experienced in similar litigation; and
4. The percentage of objectors is small.

Kurvers v. Nat'l Computer Sys., Inc., No. 00-cv-11010, 2003 WL 25437178 (Minn. Dist. Ct. Jan. 24, 2003) (formatting modified) (citing 2 Herbert B. Newberg and Alba Conte, *Newberg on Class Actions*, § 11.41 (3d ed. 1992)). There is a "presumption of fairness" if these four basic factors are present. *Id*. The decision whether to approve a class action settlement falls within the discretion of the court. *Marshall v. Nat'l Football League*, 787 F.3d 502, 508 (8th Cir. 2015).

Courts also consider several additional factors in assessing the ultimate "fairness" of a class action settlement, including: (1) the reasonableness of the settlement in light of all attendant risks of litigation; (2) the expense, likely duration and complexity of litigation; (3) the opinions of class counsel and class representatives; and (4) the extent of discovery completed and the stage of the proceedings. *Welsch v. Gardebring*, 667 F. Supp. 1284, 1290 (D. Minn. 1987); *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 124 (8th Cir. 1975). These factors also support a finding that the Settlement should be approved.

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i. The Settlement was Reached through Arms'-Length Negotiations

The determination of a class action settlement establishes a presumption of fairness when a settlement "has been negotiated at arm's length, discovery is sufficient, [and] the settlement proponents are experienced in similar matters." *In re Zurn Pex Plumbing Prods. Liab. Litig.*, 08-MDL-1958 (ADM/AJB), 2013 WL 716088, at *6 (D. Minn. Feb. 27, 2013). The court gives "great weight" to and may rely on the judgment of experienced counsel in its evaluation of a proposed settlement. *Id.*

Here, the Parties engaged in months of arms-length negotiations which involved the exchange of informal discovery. Joint Decl. ¶¶ 11-12. Because the Parties are represented by counsel experienced in complex litigation, consumer class actions and data breach matters in particular, the Parties were well-equipped to evaluate the risks of continuing litigation and weighed those risks against the merits of the claims and the scope of damages to come to an agreement. *See id*. ¶¶ 25-27. Moreover, the Settlement proposed to the Court is within the range of possible approval because there are no substantive or procedural deficiencies such as complex claim forms or preferential treatment of Plaintiff. *Id*. ¶ 8.

ii. Counsel had Sufficient Information to Act Intelligently

Class Counsel have extensive experience in class actions involving data breaches and are well-positioned to assess the fairness of the Settlement in light of the risks of continued litigation. *Id.* ¶ 27. In addition, Class Counsel took informal discovery from Defendant's Counsel, permitting them to fully evaluate the risks and merits of continued litigation. *Id*. ¶ 11. This enabled Class Counsel to evaluate the strengths and weaknesses of Plaintiff's claims, including information about the size and scope of the Data Incident and Defendant's response thereto. *Id*. Armed with this significant information, Class Counsel was empowered to negotiate the Settlement and assess the best of interests of Plaintiff and the Settlement Class.

iii. Class Counsel are Experienced in Class Action Litigation

Class Counsel is made up of attorneys who are knowledgeable and highly experienced in class action litigation. *Id*. ¶ 27. This team of attorneys worked together to advocate for the Settlement Class and acted professionally and reasonably in all respects. *Id*. ¶ 28; Index No. 27, Exs. A-B (firm resumes for Class Counsel).

iv. The Settlement is Reasonable in Light of the Attendant Risks of Continued Litigation

The primary consideration when reviewing fair and reasonableness is whether the settlement terms compare with "the likely rewards the plaintiff would have received after a full trial." *SST*, 288 N.W.2d at 231. Here, the fact that Class Counsel strongly believes in the merits of Plaintiff's case as best evidenced by their rigorous advocacy throughout the action, including, *inter alia*: drafting and filing the class action complaints; seeking and obtaining targeted information from Defendant through informal discovery requests that provided significant insight into the scope of the Data Incident, and negotiating an excellent result for the Settlement Class. *See* Joint Decl. ¶¶ 11-12, 18, 29.

While Class Counsel believes in the merits of Plaintiff's claims, Class Counsel is well aware of the inherent risks in data breach litigation and understands that the Settlement Class could receive nothing if the litigation continued without settlement. *See id*. ¶ 25-27. While nearly all class actions involve a high level of risk, expense and complexity, this is an especially complex case in an uncertain arena. Class Counsel anticipated a motion to dismiss, motions summary judgment, motions opposing class certification and, ultimately, a risky trial. *Heller v. Schwan's Sales Enters.,* 548 N.W.2d 287, 290, 292 (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[.]"). There are also legal and factual questions which place the litigation's outcome in doubt, such that, given the risks and uncertainty of continued litigation, the Settlement's terms are reasonable given the possibility Plaintiff and the Class might receive nothing should litigation go forward. Joint Decl. ¶ 26.

Although Class Counsel is confident that its damages methodologies are sound, the evolving field of data breach class actions leaves uncertainty when these facts are tried to a jury or tested in motions to exclude expert testimony. *See id*. ¶ 25. Without settlement, Plaintiff and the Class may recover nothing for the harms that they suffered, as each of the risks associated with this form of complex litigation could prevent the litigation from proceeding. *See id*. ¶¶ 24, 26.

In contrast, the Settlement provides tangible benefits which will be immediately available to compensate Class Members, including an Alternative Cash Payment. S.A. ¶ 58(b). Further and alternatively, the Settlement affords Class Members the opportunity to mitigate future harm through two years of Credit Monitoring with identity theft insurance coverage up to $1,000,000. *Id.* ¶ 58(a). Accordingly, the Settlement provides timely comprehensive relief to all Class Members. "The very purpose of compromise is to avoid the delay and expense of … a trial." *DeBoer v. Mellon Mortg. Co*., 64 F.3d 1171, 1178 (8th Cir. 1995) (internal citation omitted). Indeed, the immediate recovery available through the Settlement is a more favorable outcome to further protracted litigation and trial. Joint Decl. ¶ 24. Therefore, this factor weighs in favor of the Court approving the Settlement.

v. Class Counsel and Plaintiff Believe that the Proposed Settlement is Fair, Reasonable and Adequate

This factor examines the opinions of Class Counsel and the named Plaintiff in this litigation. *Welsch*, 667 F. Supp. at 1290. These individuals understand the risks of their case better than anyone, and so their judgment is accorded significant value. *Id.* at 1295 (opinion of experienced counsel should be given significant weight, and the court is entitled to rely on these evaluations). Class Counsel are highly experienced, bringing decades of experience to this litigation, and having litigated numerous class actions and similarly complex cases. Joint Decl. ¶ 27; Index No. 27, Ex. A-B (firm resumes for Class Counsel).

The Settlement provides benefits directly intended to redress the harm caused by the Data Incident. Specifically, Class Members can receive an Alternative Cash Payment or Credit Monitoring to address the potential future misuse of their data. S.A. ¶ 58(a-b).

Given these benefits, Class Counsel believes that this Settlement is highly favorable to Plaintiff and the Class and that this factor should be given significant weight. *See Welsch*, 667 F. Supp. at 1295 (holding the opinion of experienced counsel should be given significant weight, and the court is entitled to rely on these evaluations). The Settlement is also fully supported by the Class Representative. Joint Decl. ¶ 30. Accordingly, the proposed Settlement is both reasonable and in the best interests of the Settlement Class and should be granted Final Approval.

vi. The Class Overwhelmingly Favors the Settlement

This factor is satisfied and supports final approval because the Settlement Class is reacting favorably to the Settlement. *See Spar v. Cedar Towing & Auction, Inc.*, 2013 Minn. Dist. LEXIS 116, at *4. So far, zero Class Members have requested to be excluded from the Settlement and no Class Member has objected to the Settlement. Analytics Decl. ¶ 15. The Parties will submit updated information at the Final Approval Hearing on objections and opt-outs. Such a reaction strongly supports final approval. *Flores v. Zorbalas*, 2019 Minn. Dist. LEXIS 186, at *1, *4 (granting final approval when "[t]here were no objections to the settlement filed by the deadline"). Indeed, in *Spar*, the court granted final approval when only "[t]wo members of the class asked to be excluded." 2013 Minn. Dist. LEXIS 116, at *4. Thus, the holding of *Spar* (that final approval was proper), applies with even greater force here—and this factor strongly supports final approval.

B. The Notice Program Satisfied Due Process

The Court should approve the notice program—which was successful and provided direct notice to 86.5% of the Settlement Class. Analytics Decl. ¶ 13; *see also In re Pork Antitrust Litig.*, No. 18-1776, 2022 U.S. Dist. LEXIS 170244, at *37 (D. Minn. Sep. 14, 2022) (granting final approval and explaining that "the [notice] program reached 81.1 percent of potential class members," which "is within the range that is generally considered reasonable"). Moreover, as evidenced by the Analytics Declaration, the notice program provided Class Members with all the information required by due process, Rule 23.05, and the Court's Preliminary Approval Order. *See* Analytics Decl. ¶¶ 5-14; *see also Spar*, 2013 Minn. Dist. LEXIS 116, at *2 (granting final approval when "[c]ounsel mailed notices to all class members . . . . and established a website describing the class-action lawsuit and the subsequent settlement"). Thus, the Court should find that the Notice Program was sufficient and reasonable.

C. The Court Should Grant Plaintiff's Request for Attorneys' Fees, Costs, and Service Award

The Court should grant Plaintiff's request for Attorneys' Fees, Costs and Service Award. Under Minn. R. Civ. P. 23.08, the Court "may award reasonable attorney fees and nontaxable costs authorized by law or by agreement of the parties" upon a motion by class counsel and shared with class members "in a reasonable manner." Courts in Minnesota typically rely on these seven important factors in assessing motions for attorney's fees in class actions:

> (1) the benefit conferred on the class, (2) the risk to which Plaintiff' counsel were exposed, (3) the difficulty and novelty of the legal and factual issues in the case, including whether Plaintiff were assisted by a relevant governmental investigation, (4) the skill of the lawyers, both Plaintiff and Defendant, (5) the time and labor involved, including the efficiency in

> handling the case, (6) the reaction of the class and (7) the comparison between the requested attorney fee [and fees] awarded in similar cases.

In re Xcel Energy, Inc., 364 F. Supp. 2d 980, 993 (D. Minn. 2005); *see also Khoday v. Symantec Corp.*, No. 11-cv-180, 2016 U.S. Dist. LEXIS 55543, at *25 (D. Minn. Apr. 4, 2016), *adopted by* No. 11-cv-0180, 2016 U.S. Dist. LEXIS 54434 (D. Minn. Apr. 21, 2016), *aff'd sub nom Caligiuri v. Symantec Corp.*, 855 F.3d 860 (8th Cir. 2017); *Yarrington v. Solvay Pharm., Inc.*, 697 F. Supp. 2d 1057, 1062 (D. Minn. 2010); *Zilhaver v. UnitedHealth Grp., Inc.*, 646 F. Supp. 2d 1075, 1082–83 (D. Minn. 2009). Moreover, "[c]ourts have recognized that the risk of receiving little or no recovery is a major factor in awarding attorney fees." *In re Centurylink Sales Practices & Sec. Litig.*, No. 17-2795, 2020 U.S. Dist. LEXIS 227558, at *34 (D. Minn. Dec. 4, 2020) (quoting *In re Xcel Energy, Inc.*, 364 F. Supp. 2d at 994)).

1. Using the Lodestar Method, Plaintiff's Request for $135,000.00 in Attorneys' Fees and Costs is Reasonable.

Here, the lodestar method is appropriate to assess the reasonableness of the fee request. *See In re UnitedHealth Group Inc. Derivative Litig.*, 2009 Minn. Dist. LEXIS 121, at *22 (Hennepin Cty. Dist. Ct., May 14, 2009) (noting that the lodestar method is appropriate for determining attorneys' fees in class actions) (citing *Milner v. Farmers' Insurance Exchange*, 748 N.W.2d 608 (Minn. 2008)). "The lodestar method requires the court to determine the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Id.* (citing *Milner*, 748 N.W.2d at 621). The court then further assesses the reasonableness of the fee request using the seven factors identified above.

The lodestar method is employed where "the hours expended by an attorney are multiplied by a reasonable hourly rate of compensation so as to produce a fee amount which can be adjusted, up or down, to reflect the individualized characteristics of a given action." *Johnston v. Comerica*

Mortg. Corp., 83 F.3d 241, 244 (8th Cir. 1996). The "multiplier" should take into account the contingent nature of success, and the quality of the attorney's work. *Khoday v. Symantec Corp.*, No. 11-cv-180 (JRT/TNL), 2016 U.S. Dist. LEXIS 55543, at *33 (D. Minn. Apr. 4, 2016). "The resulting multiplier need not fall within any pre-defined range, so long as the court's analysis justifies the award, such as when the multiplier is in line with multipliers used in other cases." *In re Xcel Energy, Inc.*, 364 F. Supp. 2d at 999 (approving a multiplier of 4.6). The lodestar method is recommended for "socially beneficial litigation," like here, because it is "reasonably objective, neutral, and does not require making monetary assessments of intangible rights." *Johnston*, 83 F.3d at 245 (internal citations omitted).

Within the Eighth Circuit, courts have approved substantial hourly rates for highly experienced attorneys, including rates approaching and exceeding $900 per hour. *Fath v. Am. Honda Motor Co.*, No. 18-CV-1549, 2020 U.S. Dist. LEXIS 252264, at *11 (D. Minn. Sep. 11, 2020) (approving attorneys' hourly rates of up to $950 per hour). Courts have also recognized that prevailing market rates for senior equity partners at top law firms nationwide substantially exceed that figure. *PHT Holding II LLC v. N. Am. Co. for Life*, No. 4:18-cv-00368, 2023 U.S. Dist. LEXIS 222028, at *22 (S.D. Iowa Nov. 30, 2023) (finding an $800 hourly rate reasonable given "the median standard billing rate for equity partners" nationwide was "$1,463 per hour").

Here, Class Counsel's hourly rates range from $650 for attorneys to $850 for experienced partners, and $200-$250 for legal support staff. Joint Decl. ¶¶ 33, 38. Thus, these rates are well within the range of hourly rates approved by courts in the Eighth Circuit. And, as of April 27, 2026, Class Counsel has expended 100 hours, and when each timekeeper's current hourly rate is applied, the total lodestar is $73,032.50.[3] *Id.* ¶ 42. Class Counsel is asking for $135,000.00 for fees

[3] Class Counsel will provide detailed fee records for the Court's review, if requested.

and expenses—this represents a modest lodestar multiplier of approximately 1.8 at present. Class Counsel anticipates that the total number of hours and the lodestar will increase when their work on this Motion, the Final Approval Hearing, as well as their continued supervision of the settlement administration until completion, is reflected in the final numbers, which will *lower* this multiplier. *Id.* ¶ 44.

a. The benefits conferred on the Class.

"In awarding attorney fees, the most critical factor is the degree of success obtained." *Wheeler v. Mo. Highway & Transp. Comm'n*, 348 F.3d 744, 754 (8th Cir. 2003) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)). Class Counsel secured a Settlement which confers guaranteed and substantial benefits on the Settlement Class. Notably, the Settlement provides that Defendant will provide credit monitoring services or monetary compensation for the Settlement Class—including an alternative cash payment of $25.00 per Class Member up to $50,000.00 in the aggregate. S.A. ¶ 58(a-b). Additionally, separate from and in addition to the Settlement Class Member Benefits, Defendant will provide a confidential declaration to Class Counsel describing its information security improvements since the Data Incident and estimating the annual cost of those improvements, and shall pay Settlement Administration Costs. *Id.* ¶ 58(c-d).

The benefits negotiated under this Settlement are guaranteed and exceed the relief that could possibly be obtained at trial. Class Counsel is not aware of any data breach class actions that have gone to trial, and thus it is difficult to predict what a jury may award. However, recent class certification decisions in data breach actions provide a roadmap for the types of relief that will be sought on a classwide basis. One potential class damages option that may be available class-wide is damages for the value of time spent mitigating the risk of harm. *See Savidge v. Pharm-Save, Inc.*, No. 3:17-CV-186, 2023 U.S. Dist. LEXIS 56382, at *63 (W.D. Ky. Mar. 31, 2023) ("[T]he

Court believes Korczyk possesses the 'scientific, technical, or other specialized knowledge' to offer an opinion on the projected value of Plaintiff's time necessary to protect against future harm to their Private Information at trial. This figure could help the jury decide damages if they successfully prove liability on either of their remaining claims, and particularly if the jury determines Plaintiffs are entitled to compensation for their increased risk of future harm.") (internal citation omitted); *see also Green-Cooper v. Brinker Int'l, Inc.*, 73 F.4th 883, 894 (11th Cir. 2023) (finding "the value of [class member] time" was a valid class damages model). Another potential option is the value of out-of-pocket damages. *See Brinker*, 73 F.4th at 893. And last, nominal damages have been recognized as a vehicle for class damages in data breach cases. *See Attias v. Carefirst, Inc.*, 346 F.R.D. 1, 12 (D.D.C. 2024). Here, Class Members who submit valid and timely claims can recover each of these categories and more *now* rather than waiting for the risk and uncertainty of class certification and trial, evidencing that the requested fees and award are reasonable.

Indeed, the benefits conferred on the Class are similar to—and arguably better than—the relief obtained in similar class actions within Minnesota. For example, in *In re Centurylink*, the court found that an award of $45 was "non-nominal" and weighed towards approval. *In re Centurylink Sales Practices & Secs. Litig.*, 2020 U.S. Dist. LEXIS 227558, at *34 (D. Minn. Dec. 4, 2020). Here, the Settlement provides for an alternative cash payment of $25.00, or credit monitoring. S.A. ¶ 58(a-b). Thus, the logic of *In re Centurylink* similarly applies here.

Finally, this result was achieved relatively quickly and without extensive use of judicial time and resources. In *In re Xcel Energy*, Judge Doty granted plaintiffs' fee petition for 25% of the recovery—which represented nearly a 5x multiplier under the lodestar method—because "[plaintiffs' counsel] moved the case along efficiently to a just result in a remarkably short period

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of time." 364 F. Supp. 2d at 992 (internal quotation marks omitted). It is also well-recognized that the policy "favoring the voluntary resolution of litigation through settlement is particularly strong in the class action context." *In re Uponor, Inc.*, No. 11-MD-2247, 2012 U.S. Dist. LEXIS 90294, at *22 (D. Minn. June 29, 2012) (quoting *White v. Nat'l Football League*, 822 F. Supp. 1389, 1416 (D. Minn. 1993)). Minnesota courts also recognize "strong public policy favoring the settlement of disputed claims without litigation." *Katun Corp. v. Clarke*, 484 F.3d 972, 975 (8th Cir. 2007) (internal citations omitted); *Liddell v. Board of Educ. of the City of St. Louis*, 126 F.3d 1049, 1056 (8th Cir. 1997). Thus, the substantial benefits conferred on the Class strongly supports the requested attorneys' fee.

b. The risks to which Class Counsel was exposed

Class Counsel was exposed to significant risk, which strongly supports the requested attorneys' fee. After all, "[t]he risk of no recovery in complex cases of this sort is not merely hypothetical. Precedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy." *In re Xcel Energy, Inc.*, 364 F. Supp. 2d at 994 (citing *Glover v. Standard Fed. Bank*, 283 F.3d 953 (8th Cir. 2002) (reversing class certification) and *In re Milk Prods. Antitrust Litig.*, 195 F.3d 430, 437–38 (8th Cir. 1999) (affirming dismissal of complaint without leave to replead)).

Moreover, the Eighth Circuit has explained that by "taking [a] case on a contingent fee basis," Class Counsel is "exposed to significant risk"—which weighs toward approval. *Caligiuri*, 855 F.3d at 866 (holding that "[w]e find no error in the [district] court's analysis"). And again, in *Keil v. Lopez*, the Eighth Circuit reiterated that working on a "contingency" basis "weighs in favor of awarding the requested fee." 862 F.3d 685, 703 (8th Cir. 2017).

Here, Class Counsel took Plaintiff's case on a contingent basis. Joint Decl. ¶¶ 19-22. Moreover, Class Counsel was exposed to numerous substantial risks. First, a successful outcome remains uncertain and would be achieved, if at all, only after prolonged, arduous litigation with the attendant risk of drawn-out appeals and the potential for no recovery at all. *Id*. ¶¶ 24-26. And Plaintiff faces serious risks prevailing on the merits, including proving causation, as well as risk at class certification and at trial, and surviving appeal. *See id*.

Class Counsel undertook this contingent fee litigation while the application of negligence law to data breach cases is a developing area of law—and recent precedents in similar cases have had mixed outcomes. Some cases secured settlements. *See, e.g., In re Target Corp. Customer Data Sec. Breach Litig.*, No. 14-2522, 2016 U.S. Dist. LEXIS 63125 (D. Minn. May 12, 2016); *In re The Home Depot, Inc., Customer Data Sec. Breach Litig.*, No. 1:14-md-02583, 2016 U.S. Dist. LEXIS 200113 (N.D. Ga. Aug. 23, 2016); *Veridian Credit Union v. Eddie Bauer LLC*, No. 2:17-cv-00356, 2019 U.S. Dist. LEXIS 189116 (W.D. Wash. Oct. 25, 2019). But other similar cases were dismissed in whole or in substantial part. *See, e.g., Community Bank of Trenton v. Schnuck Mkts., Inc.*, 887 F.3d 803, 817–18 (7th Cir. 2018); *SELCO Community Credit Union v. Noodles & Co.*, 267 F. Supp. 3d 1288, 1297 (D. Colo. 2017). And in others, class certification was denied. *See, e.g., In re TJX Cos. Retail Securities Breach Litig.*, 246 F.R.D. 389, 395–396 (D. Mass. 2007) (denying class certification because necessity of individualized inquiries regarding causation, comparative negligence, and damages precluded a finding of predominance). Thus, this factor weighs in favor of the reasonableness of the fee award.

c. The difficulty and novelty of the legal and factual issues.

The legal and factual issues were both difficult and novel, which strongly supports the requested attorneys' fee. In *Keil v. Lopez*, the Eighth Circuit explained that "the novelty and difficulty of the questions" is a relevant factor in determining the fee award. 862 F.3d at 703. There, the Eighth Circuit noted that a requested fee was reasonable when "further litigation would be complex and expensive." *Id*. Likewise, further litigation would get more expensive and complex as the Parties engage in formal discovery, commission expert reports, pursue third-party vendor information, and move towards class certification and dispositive motions. Joint Decl. ¶ 24.

As a data breach class action, this case poses substantially difficult and novel legal and factual issues. For one, in the analogous data breach case, *Reynolds v. Marymount Manhattan College*, the court noted that the "novel, evolving and complex nature of data breach" class actions justified the requested award. No. 1:22-CV-06846, 2023 U.S. Dist. LEXIS 191993, at *5 (S.D.N.Y. Oct. 23, 2023). And in the data breach case *Hapka v. Carecentrix, Inc.*, the court found that, *inter alia*, the issues of "Article III standing for data breach victims," "what type of damages are available at trial," and "whether Plaintiff [] could obtain class certification of a class of data breach victims" were all difficult and novel issues which "support[ed] Class Counsel's application for attorneys' fees." No. 2:16-cv-02372, 2018 U.S. Dist. LEXIS 68186, at *6 (D. Kan. Feb. 15, 2018). Here, the factual and legal issues of this data breach case mirror the novelty and complexity of those in *Reynolds* and *Hapka*. Thus, the difficulty and novelty of the legal and factual issues in this case strongly support the requested attorneys' fee.

d. The skill of the attorneys involved.

The attorneys litigating this case are highly skilled and experienced in such complex class actions, which strongly supports the requested attorneys' fee. For example, the Eighth Circuit has reasoned that "class counsel hav[ing] significant experience in class actions and complex litigation" weighs in favor of awarding a requested fee. *Keil*, 862 F.3d at 703. Here, Class Counsel has years of experience litigating complex class actions in state and federal courts across the country. *See* Joint Decl. ¶ 27. More particularly, Class Counsel has significant experience in litigating data breach class actions. *Id*.

Here, Class Counsel worked tirelessly to resolve this case on behalf of the Settlement Class, eventually achieving the significant benefits previously presented to the Court. Class Counsel's success in securing a Settlement is especially noteworthy given that data breach class actions can result in dismissal (in full or part). *See, e.g., Kuhns v. Scottrade, Inc.*, 868 F.3d 711, 713, 719 (8th Cir. 2017) (affirming the district court's dismissal with prejudice of a data breach class action); *George D. v. NCS Pearson, Inc.*, No. 19-2814, 2020 U.S. Dist. LEXIS 117916, at *2 (D. Minn. July 6, 2020) (dismissing for lack of standing); *Wilson v. J.B. Hunt Transp., Inc.*, No. 5:21-CV-5194, 2022 U.S. Dist. LEXIS 243393, at *22 (W.D. Ark. Oct. 6, 2022) (dismissing such that "the Court considers the dismissal to be final and immediately appealable").

Additionally, the skill of Class Counsel is evidenced by its efficiency in litigating Plaintiff's claims. As explained *supra*, courts within the Circuit recognize the importance of the "the just, speedy and inexpensive determination of every action." *In re Xcel Energy, Inc.*, 364 F. Supp. 2d at 992; *see also In re UnitedHealth Grp. Inc. PSLRA Litig.*, 643 F. Supp. 2d 1094, 1105 (D. Minn. 2009) ("While hard-fought, the litigation was conducted cordially and efficiently."); *In re Iowa Ready-Mix Concrete Antitrust Litig.*, No. C 10-4038, 2011 U.S. Dist. LEXIS 130180, at *17–18 (N.D. Iowa Nov. 9, 2011) (declaring that securing a settlement "within a year and a half of the original case filing" was a "fabulous result[] with incredible efficiency"). Class Counsel was able to achieve the Settlement in short order rather than waiting through years of litigation to provide any benefits to the victims of the Data Incident. Thus, the skill demonstrated by Class Counsel strongly supports the requested attorneys' fee.

e. The time and labor involved.

Litigating this case involved a substantial investment of time and labor, which strongly supports the requested attorneys' fee. *See, e.g.*, *Vill. Bank v. Caribou Coffee Co.*, No. 19-cv-1640, 2020 U.S. Dist. LEXIS 266929, at *19–20 (D. Minn. Dec. 1, 2020) (awarding $1,464,055.88 in attorneys' fees, costs, and expenses after noting that "Class Counsel [] reasonably expended over 885.5 hours and incurred substantial out-of-pocket expenses"). Here, Class Counsel's work totaled 100 hours, *so far*. Joint Decl. ¶ 42. This constitutes a significant investment of time and labor into this case. Without a doubt, the time Class Counsel expended on this case diverted, and will continue to divert, substantial time and resources that would otherwise have been spent on other cases. *Id*. ¶ 44. Simply put, if Class Counsel did not bring this litigation, they would have been free to allocate their time and resources elsewhere. *See id*. ¶¶ 20-22. Thus, this factor strongly supports the requested attorneys' fee.

f. The reaction of the Class.

Thus far, the reaction of the Class to the Settlement has been overwhelmingly positive. Here, the exclusion and objection deadlines are both May 11, 2026. *See* mnorthodatasettlement.com. And the claims deadline is June 10, 2026. Thus, Class Counsel will provide the Court with updated information regarding objections, exclusions, and claims when they move for final approval, and at the final approval hearing on June 5, 2026. But so far, the reaction of the Class strongly supports the requested attorneys' fee, with no objections and only zero opt-outs filed to date. Joint Decl. ¶ 44.

g. The result in this case is comparable to those in other cases.

The multiplier here is also consistent with attorney fee awards in other major litigation within the Eighth Circuit and Minnesota. *See, e.g., Keil*, 862 F.3d at 702 (finding multiplier of 2.7

was in line with comparable cases); *Huyer v. Buckley*, 849 F.3d 395, 400 (8th Cir. 2017) (finding multiplier of 1.82 was "well within the range of multipliers awarded in this and other circuits."). Within the Eighth Circuit, lodestar multipliers up to 5.6 have been approved as reasonable. *Huyer*, 849 F.3d at 400 (noting that lodestar multipliers up to 5.6 were approved and thus finding a lodestar multiplier of 1.82 as "well within the range of multipliers awarded in this and other circuits"). Indeed, several federal courts have explained that "a multiplier ranging from 1.0 to 4.0 is considered 'presumptively acceptable.'" *Gutierrez v. Amplify Energy Corp.*, No. 8:21-CV-01628, 2023 U.S. Dist. LEXIS 72861, at *30 (C.D. Cal. Apr. 24, 2023) (citing *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014)). And in *Rawa v. Monsanto Co.*, the Eighth Circuit explained that "while the 5.3 lodestar multiplier is high, it does not exceed the bounds of reasonableness." 934 F.3d at 870; *see also Yarrington*, 697 F. Supp. 2d at 1067 (determining that a multiplier of 2.26 to be "modest" and reasonable "given the risk of continued litigation, the high-quality work performed, and the substantial benefit to the Class"); *In re Xcel Energy, Inc.*, 364 F. Supp. 2d at 999 (finding a lodestar multiplier of 4.7 reasonable); *In re St. Paul Travelers Sec. Litig.*, No. 04-3801, 2006 U.S. Dist. LEXIS 23191, at *11 (D. Minn. Apr. 25, 2006) (approving multiplier of 3.9).

In conclusion, all relevant *Johnson* factors strongly support the requested attorneys' fee. Thus, considering "the risks of continued litigation, the high-quality work performed, and the substantial benefit to the Class" a multiplier of 1.8, at this time, is reasonable and fair.

2. The Costs incurred are reasonable.

Litigation expenses are properly recovered by Class Counsel as a component of the $135,000.00 Fee Award. *See Yarrington*, 697 F. Supp. 2d at 1067 ("Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit from the settlement."); *see also In re Xcel*, 364 F. Supp. 2d at 1000 (finding that expenses of photocopying, postage, messenger services, document depository, telephone and facsimile charges, filing and witness fees, computer assisted legal research, expert fees and consultants, and meal, hotel, and transportation charges for out-of-town travel are proper in a class-action litigation); *In re Visa Check/ Mastermoney Antitrust Litig*., 297 F. Supp. 2d 503, 525 (E.D.N.Y. 2003), *aff'd sub nom. Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96 (2d Cir. 2005) (awarding class counsel costs related to "experts and consultants, litigation and trial support services, document imaging and copying, deposition costs, online legal research, and travel expenses").

Here, Class Counsel is seeking reimbursement of a modest $3,778.00, which will be included as part of the $135,000.00 attorneys' fees award. Joint Decl. ¶ 42. As set forth in the accompanying declaration, these expenses were incurred for filings fees, pro hac application fees, and mediation costs. *Id.* ¶¶ 36, 41. These expenses are reasonable and relevant to the litigation. Accordingly, Class Counsel respectfully request reimbursement for these reasonable expenses through the $135,000.00 Fee Award.

3. The Service Award is Reasonable and Appropriate.

Plaintiff additionally moves for an award giving financial recognition to the services provided by the Class Representative to the Class. Courts routinely grant service awards to named plaintiffs. *Khoday*, 2016 U.S. Dist. LEXIS 55543, at *36; *Yarrington*, 697 F. Supp. 2d at 1068 (noting that "unlike unnamed Class Members who will enjoy the benefits of the Settlement without taking on any significant role, the Named Plaintiffs [make] significant efforts on behalf of the Settlement Class and [participate] actively in the litigation"); *Zillhaver v. UnitedHealth Group, Inc.*, 646 F. Supp. 2d 1075, 1085 (D. Minn. 2009). In determining whether a service award is appropriate, the Minnesota federal courts look to: (1) the "actions the [class representatives] took to protect the class's interests"; (2) the "degree to which the class has benefitted from those actions"; and (3) the "amount of time and effort the [class representatives] expended in pursuing litigation." *Zillhaver*, 646 F. Supp. 2d at 1085 (citing *Koenig v. U.S. Bank*, 291 F.3d 1035, 1038 (8th Cir. 2001)).

Here, Class Counsel requests a modest service award of $2,000.00 for Plaintiff. After all, Plaintiff stepped up and led this litigation on behalf of all Class Members, providing valuable services for the benefit of the Class. *See* Joint Decl. ¶ 17. Plaintiff actively monitored the litigation through continuous communication with Class Counsel and made herself available for discussions regarding this Settlement. *Id*. ¶ 16. The requested service award aligns with service awards in analogous data breach cases. For example, in *Vill. Bank v. Caribou Coffee Co.*, the court approved a service award of $15,000.00 for a single class representative. 2020 U.S. Dist. LEXIS 266929, at *21. Thus, the $2,000.00 service award for Plaintiff is both reasonable and appropriate.

IV. CONCLUSION

For the foregoing reasons, Plaintiff and Class Counsel respectfully request that the Court enter an order: (i) granting final approval of the proposed Settlement of this case as fair, reasonable and adequate; (ii) granting final certification of the Settlement Class; (iii) granting Class Counsel their Fee and Costs Award, as well as granting a Service Award for the Class Representative; and (iv) granting final approval of the methods and forms of notice provided to Class Members.

Dated: April 27, 2026

Respectfully submitted,

By: */s/ Brittany Resch*
Brittany Resch (MN No: 0397656)
STRAUSS BORRELLI PLLC
One Magnificent Mile

980 N. Michigan Ave., Suite 1610
Chicago, IL 60611
Telephone: (872) 263-1100
Facsimile: (872) 263-1109
bresch@straussborrelli.com

Leanna Loginov (*Pro Hac Vice*)
SHAMIS & GENTILE, P.A.
14 NE First Ave., Suite 705
Miami, FL 33132
Telephone: (305) 479-2299
lloginov@shamisgentile.com

Attorneys for Plaintiff and the Proposed Class

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CERTIFICATE OF SERVICE

I, Brittany Resch, hereby certify that on April 27, 2026, I electronically filed the foregoing with the Clerk of the Court using the Odyssey E-Filing system, which will send notification of such filing to counsel of record, via the Odyssey E-Filing system.

DATED this 27th day of April, 2026.

STRAUSS BORRELLI PLLC

By: */s/ Brittany Resch*

Brittany Resch
STRAUSS BORRELLI PLLC
One Magnificent Mile
980 N. Michigan Ave., Suite 1610
Chicago, IL 60611
Telephone: (872) 263-1100
Facsimile: (872) 263-1109
bresch@straussborrelli.com