

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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In Re: Group Health Plan Litigation

Case No. 23-cv-00267 (JWB/DJF)

**PLAINTIFFS’ MEMORANDUM OF  
LAW IN SUPPORT OF THEIR  
APPLICATION FOR AN AWARD OF  
ATTORNEYS’ FEES AND CLASS  
REPRESENTATIVE AWARDS**

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**I. INTRODUCTION**

For over two years, Class Counsel<sup>1</sup> have worked diligently on behalf of Plaintiff and the Class in this case litigating against Defendant Group Health Plan, Inc. (“Defendant” or “Group Health”). In the successful end, Class Counsel reached a settlement with Group Health for a non-reversionary \$6,000,000.00 common fund. This represents an outstanding recovery for the Class.

From the inception of this case until May 20, 2025, Class Counsel have invested more than 1,495.40 hours pursuing the claims associated with the embedded Facebook tracking pixel. *See* Declaration of Class Counsel in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees and Class Representative Awards (“Class Counsel Decl.”), ¶ 29 attached as **Exhibit A**. The docket in this matter reflects efficient and concise pleading of claims against Group Health, overcoming motion practice on Group Health’s motion to

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<sup>1</sup> Unless otherwise defined herein, capitalized terms have the same meaning as used in the Settlement Agreement. [*See* ECF Doc. No. 131-1].

dismiss, and hard-fought negotiations facilitated by United States Magistrate Judge Dulce W. Foster leading to the settlement.

Class Counsel respectfully request a Fee Award of \$2,000,000.00, which is one-third (1/3) of the \$6,000,000.00 common fund. Class Counsel has incurred a lodestar of \$1,154,201.70, equating to a multiplier of 1.73, from the inception of this case through May 20, 2025. Class Counsel Decl., ¶¶ 29-30; *See also* Collective Law Firm Declarations in support of Application for an Award of Attorneys' Fees and Class Representative Awards attached as **Exhibit B**. Class Counsel also request class representative awards of \$2,500.00 for each of Plaintiffs Kelly Vriezen, Sandra Tapp, and Kaye Lockrem ("Plaintiffs"), the Court-appointed Class Representatives. As discussed below, under either the percentage of the common fund/benefit approach or the lodestar approach, the attorneys' fees and service awards should be approved as the requests are all well within the range of awards made by judges of this District as well as the Eighth Circuit. Accordingly, Class Counsel respectfully requests that the Court grant Plaintiffs' Application and award attorneys' fees and service awards in the amount requested.

## **II. INCORPORATION BY REFERENCE**

Class Counsel incorporates by reference Memorandum in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval") (ECF Doc. 139).

### **III. ACTUAL AND PROCEDURAL BACKGROUND**

#### **A. History of the litigation**

Plaintiffs incorporate by reference the Motion for Preliminary Approval pp. 4-6 for a detailed breakdown of the history of the litigation. To briefly summarize, in a matter of first impression in this District, Plaintiffs brought claims against Group Health for employing an unauthorized Facebook tracking pixel on its website that they alleged tracked and transmitted patient information to third parties, including Facebook. *See id.* In doing so, Plaintiffs overcame Defendant's Motion to Dismiss (Order at ECF Doc. 93). Following the Court's Order, the parties engaged in discovery and, with the assistance of Magistrate Judge Foster through a settlement conference, were able to resolve their claims in the common fund settlement of \$6,000,000.00 that is presently before the Court for final approval. *See id.*

#### **B. Negotiations and Settlement Obtained**

Class Counsel references the Motion for Preliminary Approval at p. 6, as well as the forthcoming motion seeking final approval, for a history of negotiations and the full-day settlement conference with Magistrate Judge Foster that resulted in resolution.

#### **C. The Benefits Provided Through the Settlement Agreement**

Class Counsel references the Motion for Preliminary Approval at pp. 2-3, as well as the forthcoming motion seeking final approval, for a full breakdown of the benefits provided to the Class via the settlement.

#### IV. AWARDING ATTORNEYS' FEES TO CLASS COUNSEL IS REASONABLE UNDER GOVERNING LAW

##### A. Applicable Legal Standards

Federal Rule of Civil Procedure 23(h) allows a district court supervising a class action to “award reasonable attorney’s fees and nontaxable costs that are authorized by law.” Fed. R. Civ. P. 23(h). The Court has discretion to determine an appropriate attorneys’ fee award in a class action. *Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019); *In re Monosodium Glutamate Antitrust Litig.*, No. 00-md-1328 (PAM), 2003 WL 297276, at \*1 (D. Minn. Feb. 6, 2003) (“MSG”) (citing *Blum v. Stetson*, 465 U.S. 886, 896-97 (1984)).

As courts within this District have observed, “[t]he theory behind attorneys’ fee awards in class actions is not merely to compensate counsel for their time, but to award counsel for the benefit they brought to the class and take into account the risk undertaken in prosecuting the action.” *MSG*, 2003 WL 297276, at \*1; *see also In re Zurn Pex Plumbing Prods. Liab. Litig.*, No. 08-MDL-1958, 2013 WL 716460, at \*4 (D. Minn. Feb. 27, 2013) (“[A] financial incentive is necessary to entice capable attorneys . . . to devote their time to complex, time-consuming cases for which they may never be paid. To make certain that the public interest is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding.”) (citations omitted).

In exercising their discretion, courts within the Eighth Circuit may base an award of attorneys’ fees either under a percentage of the common benefit recovered or the lodestar method. *Rawa*, 934 F.3d at 870. “[T]he ‘percentage of the benefit’ approach, permits an

award of fees that is equal to some fraction of the common fund that the attorneys were successful in gathering during the course of the litigation.” *Johnson v. Comerica Mortg. Corp.*, 83 F.3d 241, 244 (8th Cir. 1996). “Under the ‘lodestar’ methodology, 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.” *Id.* at 244-45.

**B. Efficiency in Case Prosecution**

Efficiency in complex civil litigation has long been a focus of judges in this District handling class action litigation:

The first observation is a simple one and one in which litigants and their counsel in civil litigation, and especially in complex civil litigation, too often lose sight. The Federal Rules of Civil Procedure shall be construed and administered to ensure the *just, speedy and inexpensive determination* of every action. Under Rule 1, as officers of the court, attorneys share the responsibility with the court of ensuring that cases are resolved not only fairly, but without undue cost or delay.

All counsel – both those representing plaintiffs and defendants – conducted this litigation in an exemplary manner and fulfilled their obligations under Rule 1. This is the type of complex litigation that easily could have dragged on for several more years. Instead, it had a relatively short stay of two and a half years on this court’s docket because counsel litigated the case efficiently and inexpensively. The lodestar of plaintiffs’ counsel could easily have been much higher had not counsel cooperated with one another through the litigation and settlement process. Instead, all plaintiffs’ counsel presented a modest lodestar because they moved the case along efficiently to a just result in a remarkably short period of time.

*In re Xcel Energy, Inc., Sec., Derivative & ERISA Litig.*, 364 F. Supp. 2d 980, 992 (D. Minn. 2005) (emphasis in original) (citations omitted).<sup>2</sup> In awarding fees, courts within this District have time and again struck the efficiency chord:

There is no question of the quality of lead counsel. Both they and their opposite numbers are exceptionally skilled. While hard-fought, the litigation was conducted cordially and efficiently. It is evident that absent counsel's willingness to work efficiently together, this case could well have lasted many more months, if not years.

*In re UnitedHealth Grp. Inc. PSLRA Litig.*, 643 F. Supp. 2d 1094, 1105 (D. Minn. 2009).

This theme of efficient case prosecution is a common thread running through other fee precedent in this District. *See, e.g., Zurn Pex*, 2013 WL 716460, at \*3 (“To a large degree, the settlement and resolution of the complex issues present in this MDL litigation are the result of the diligence and focus of class counsel.”); *Yarrington v. Solvay Pharm., Inc.*, 697 F. Supp. 2d 1057, 1063 (D. Minn. 2010) (noting that “Plaintiffs’ counsel moved the case along expeditiously, and made every effort to limit duplicative efforts and to minimize the use of judicial resources in the management of the case” and “[c]ounsel exhibited diligence and efficiency throughout the litigation, resulting in a favorable result for the Class”). Indeed, Class Counsel litigated and settled this case in approximately sixteen months following their filing of the initial Complaint on February 24, 2023, to the signed Settlement Agreement in July 2024, with a Settlement providing significant benefits to the Class.

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<sup>2</sup> Fed. R. Civ. P. 1 provides that the civil rules “should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”

The services provided by Class Counsel are found in detail in Class Counsel's

Declaration. The highlights are summarized below:

- Prior to the filing of the Consolidated Class Action Complaint, Class Counsel's work in this matter included investigating the cause and effects of the Facebook Tracking Pixel; interviewing potential clients; evaluating the potential class representatives; contributing to the evaluation of the merits of the case before filing the initial complaints; conducting legal research; conducting extensive research into the Facebook Tracking Pixel and their causes and effects, including conducting further extensive research into cybersecurity practices and standards across similar platforms and industries; and drafting and filing the initial Complaints and the Consolidated Complaint [Decl. ¶ 15];
- After the filing of the Consolidated Class Action Complaint, Class Counsel's work in this matter included briefing and overcoming Defendant's Motion to Dismiss; preparing and exchanging written discovery, including interrogatories and requests for production, a comprehensive Rule 30(b)(6) notice of deposition topics, an extensive protocol for discovery involving electronically stored information, and a protective order; evaluating and conferring with experts in the tracking pixel industry; conducting informal discovery regarding the Facebook Tracking Pixel; reviewing Defendants' documents and information produced prior to the mediation and analyzing those documents and information; drafting a detailed settlement brief, preparing for and participating in a formal settlement conference presided over by Honorable Dulce W. Foster [Decl., ¶ 16];
- Following the settlement in principle, Class Counsel's work in this matter included drafting the Settlement Agreement, the relevant notices of Settlement, the Unopposed Motion for Preliminary Approval, and the Unopposed Motion for Final Approval of Class Action Settlement, and the instant Motion for Attorneys' Fees and Class Representative Awards; communicating with defense counsel and the Settlement Administrator on a regular basis; updating and handling questions from our proposed Class Representatives; overseeing the launch and completion of the Notice Program with substantial interaction with the Settlement Administrator; and overseeing the Claim process. Class Counsel has also conferred with colleagues, and with each other, regarding strategy and case status, while being mindful to avoid duplicative efforts within our Firms [Decl. ¶17];
- Class Counsel, along with the law firms of Zimmerman Reed LLP; and Gustafson Gluek PLLC; Markovits, Stock & DeMarco, LLC; The Lyon Firm; Barrack Rodos & Bacine; Emerson Firm, PLLC; and Almeida Law Group

worked cohesively to litigate this matter on behalf of the entire class [Decl. ¶ 27];

- Class Counsel provided settlement conference documents to Magistrate Judge Foster, and advocated zealously during the mediation to reach the Settlement. [*Id.* ¶ 17].

Class Counsel’s focus and efficiency in achieving resolution bears favorably on the quality of services provided by Class Counsel and the efficient efforts should be rewarded.

**C. The Fee Requested is Reasonable under the Percentage-of-the-Fund Method**

The Supreme Court has “recognized consistently that . . . a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The Eighth Circuit has upheld the use of a percentage of the fund approach to determine attorney’s fee awards. *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999). “In the Eighth Circuit, use of a percentage method of awarding attorney’s fees in a common-fund case is not only approved, but also well established.” *Yarrington*, 697 F. Supp. 2d at 1061 (citations and internal quotation marks omitted). Under the percentage-of-the-benefit method, courts award attorney’s fees equal to a reasonable percentage of the fund obtained for the class. *Keil v. Lopez*, 862 F.3d 685, 701 (8th Cir. 2017). “The key issue is whether the desired percentage is reasonable.” *Khoday v. Symantec Corp.*, No. 11-cv-180, 2016 WL 1637039, at \*9 (D. Minn. Apr. 5, 2016) (citing



*Petrovic*, 200 F.3d at 1157), *aff'd sub nom.*, *Caligiuri v. Symantec Corp.*, 855 F.3d 860 (8th Cir. 2017).

The Eighth Circuit has recently reiterated that district courts have discretion to use either the lodestar or percentage-of-the-fund method in determining an appropriate recovery, “and the ultimate reasonableness of the award is evaluated by considering relevant factors from the twelve factors listed in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-20 (5th Cir. 1974).” *Rawa*, 934 F.3d at 870 (quoting *In re Target Corp. Customer Data Sec. Breach Litig.*, 892 F.3d 968, 977 (8th Cir. 2018)). In several recent cases, this District has most often applied the following *Johnson* factors in determining a reasonable attorneys’ fee award:

(1) the benefit conferred on the class, (2) the risk to which plaintiffs’ counsel were exposed, (3) the difficulty and novelty of the legal and factual issues in the case, including whether plaintiffs were assisted by a relevant governmental investigation, (4) the skill of the lawyers, both plaintiffs and defendants, (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 percentage and percentages awarded in similar cases.

*Xcel Energy*, 364 F. Supp. 2d at 993 (“[N]ot all of the individual *Johnson* factors will apply in every case, so the court has wide discretion as to which factors to apply and relative weight to assign to each.”); *Yarrington*, 697 F. Supp. 2d at 1062.

Here, the total value of the monetary benefits secured by Class Counsel for the Class is \$6,000,000.00. Class Counsel’s attorneys’ fee request of 1/3 the total value of the Settlement Fund is \$2,000,000.00, a request fully supported by the *Johnson* factors. *Xcel Energy*, 364 F. Supp. 2d at 998 (collecting cases supporting that this District routinely

approves fee awards of roughly 1/3 the common fund). This fee represents a multiplier of 1.78 on the lodestar, further supporting its reasonableness.<sup>3</sup> The Court should therefore award the requested fee.

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

The benefit conferred on the Class is afforded great weight in assessing the reasonableness of a request of attorneys' fee and expenses. *Beaver Cnty. Emps. Ret. Fund v. Tile Shop Holdings*, No. 0:14-cv-786-ADM-TNL, 2017 WL 2588950, at \*2 (D. Minn. June 14, 2017) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)). Here, Class Counsel's significant litigation efforts pushed this case toward an early, positive resolution that benefits a nationwide class. Through this Settlement, Class Counsel obtained \$6,000,000.00 in non-reversionary monetary relief from Group Health.

The Settlement Fund is non-reversionary, meaning that after deducting the Fee Award, the Service Award, and Administration Expenses, the entirety of the remaining fund will be distributed to Class Members who submit valid Claim Forms. Upon expiration of any checks that have been mailed to Class Members but have not been cashed, 100% of the remaining unclaimed funds after the final round of pro rata distribution will be donated to a charity or non-profit approved by the Court.

Through Class Counsel's vigorous litigation and extensive settlement negotiations, Class Counsel achieved significant relief for the Class Members. The substantial benefits to thousands of Class Members supports the requested Fee Award.

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<sup>3</sup> Class Counsel's lodestar will continue to grow in preparation for the final approval hearing, answering class member inquiries, and overseeing distribution of the settlement.

## 2. The Risks to Which Class Counsel were Exposed

“Courts have recognized that the risk of receiving little or no recovery is a major factor in awarding attorneys’ fees.” *Xcel Energy*, 364 F. Supp. 2d at 994 (citation omitted). Risks “must be assessed as they existed in the morning of the action, not in light of the settlement ultimately achieved at the end of the day.” *Id.* (citation omitted). From commencement of this litigation through its eventual Settlement, Class Counsel faced numerous risks.

In agreeing to the Settlement, Class Counsel carefully considered a range of additional risks, including:

(1) numerous merits issues remained uncertain; (2) the challenges associated with proving damages on a class-wide basis; (3) further developments in the law or the factual record of the case that could undermine Plaintiff’s claims; (5) the risk that a jury might award lower damages than what is provided by the Settlement Agreement or no damages at all; (6) the risk both sides faced that a jury could react unfavorably to the evidence presented; and (7) the uncertainties, risks, expense, and significant delays associated with any appeal that would inevitably be pursued following trial and entry of final judgment.

[Class Counsel Decl. ¶ 18].

Such risks in complex class action litigation are very real. *See, e.g., Xcel Energy*, 364 F. Supp. 2d at 994 (stating that “[t]he risk of no recovery in complex cases of this sort is not merely hypothetical” and that “[p]recedent 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 UnitedHealth Group Inc. S’holder Derivative Litig.*, 631 F. Supp. 2d 1151, 1160 (D. Minn. 2009) (“[T]he Court

finds a multiplier of 2.75 appropriate. Counsel took the case on a contingent basis, working without pay for three years and assuming the risk of a null recovery.”). As one court aptly remarked, “[i]t is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced.” *West Virginia v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970), *aff’d*, 440 F.2d 1079 (2d Cir. 1971).

Despite these risks, Class Counsel undertook this litigation on a wholly contingent basis at a time that the law relating to data tracking and disclosure is still a developing area of law. In sum, the contingent nature of the case and the substantial risks involved in this complex litigation strongly support Class Counsel’s fee request. *See Blum*, 465 U.S. at 902 (Brennan, J., concurring) (“[T]he risk of not prevailing, and therefore the risk of not recovering any attorney’s fees, is a proper basis on which a district court may award an upward adjustment to an otherwise compensatory fee.”); *Zilhaver v. UnitedHealth Grp., Inc.*, 646 F. Supp. 2d 1075, 1083 (D. Minn. 2009) (“In the Eighth Circuit, courts must take ‘into account any contingency factor’ where plaintiffs’ counsel assumes a ‘high risk of loss.’ Plaintiffs’ counsel assumed the risk this case would ‘produce no fee,’ and courts see fit to reward such gambles.”) (citations omitted).

### **3. The Difficulty and Novelty of the Legal and Factual Issues**

Courts also consider the difficulty and novelty of the legal and factual issues when contemplating the appropriate fee award. *See Target Corp.*, 892 F.3d at 977 (“[T]he award was justified by the time and labor required, the difficulty of the matter, the skills necessary to prevail (or to reach the current settlement agreement), and the length of the

representation.”). Typical class action complexity was amplified by the nature of this case, which involved novel questions of law and fact that hinged on expert testimony and untested interpretations of federal and Minnesota law. *See, e.g., In re Novant Health, Inc.*, No. 1:22-CV-697, 2024 WL 3028443, at \*10 (M.D.N.C. June 17, 2024) (“Unauthorized data disclosures and data tracking lawsuits present questions of law that are novel and injuries that are challenging to quantify.... The presence of novel and challenging legal and factual questions supports approval of the attorneys’ fee request.”).

Additionally, the substantial benefits achieved in the Settlement are attributable solely to the efforts of Class Counsel, and the complexity of the factual and legal issues presented by this litigation supports Class Counsel’s request for attorneys’ fees. *See In re AT&T Corp., Sec. Litig.*, 455 F.3d 160, 173 (3d Cir. 2006) (absence of assistance from any government group supported district court’s conclusion that the fee award to class counsel was fair and reasonable); *Dryer v. Nat’l Football League*, No. 09-2182 (PAM/AJB), 2013 WL 5888231, at \*3 (D. Minn. Nov. 1, 2013) (approving settlement where “[t]here is no doubt that further litigation in this matter would be both complex and extraordinarily expensive”).

#### **4. The Skill of Class Counsel**

The skill of the attorneys litigating the case is another factor courts evaluate in determining an appropriate attorneys’ fee. *See MSG*, 2003 WL 297276, at \*2 (awarding attorneys’ fees where “[t]he attorneys prosecuted [the] case very skillfully, often under difficult circumstances”). Class Counsel brought the highest quality skills and efficiency to this litigation. Each firm and attorney has significant complex and class action litigation

experience, both in this District and nationally. Class Counsel's experience in prosecuting class action cases has proven to be critical to the efficient prosecution and ultimate resolution of this case.

Despite the legal and factual hurdles, Class Counsel was able to obtain a settlement affording class-wide relief. *See Xcel Energy*, 364 F. Supp. 3d at 995-96 ("Thus, the effort of counsel in efficiently bringing this case to fair, reasonable and adequate resolution is the best indicator of the experience and ability of the attorneys involved, and this factor supports the court's award . . . ."); *see also Jenkins ex rel. Jenkins v. Missouri*, 127 F.3d 709, 716 (8th Cir. 1997) ("The most important factor in determining what is a reasonable fee is the magnitude of the plaintiff's success in the case as a whole."); *Pentel v. Shepard*, No. 18-CV-1447 (NEB/TNL), 2019 WL 6975448, at \*2 (D. Minn. Dec. 20, 2019) (same); *Roth v. Life Time Fitness, Inc.*, Civ. No. 16-2476 (JRT), 2019 WL 3283172, at \*2 (D. Minn. July 22, 2019) (same). This factor further supports Class Counsel's request for attorneys' fees.

**5. The Time and Labor Involved, Including the Efficiency in Handling the Case**

Class Counsel should be rewarded for moving the litigation along with diligence and extraordinary efficiency. As previously discussed, this case was resolved after a short period of active litigation, providing a significant Settlement to the entire class. In awarding attorneys' fees, courts have consistently recognized and rewarded class counsel for moving the litigation to conclusion with diligence and efficiency. *See Yarrington*, 697 F. Supp. 2d at 1063. As this District previously reasoned when granting a fee request:

[P]laintiffs’ counsel presented a reasonable lodestar in a case that was not yet ancient, but easily could have become so. But for the cooperation and efficiency of counsel, the lodestar plaintiffs’ counsel would have been substantially more and would have required this court to devote significant judicial resources to its management of the case. Instead, counsel moved the case along expeditiously ....

*Xcel Energy*, 364 F. Supp. 2d at 996. This factor, like the others, weighs in favor of approving Class Counsel’s fee request.

#### **6. The Reaction of the Class**

A favorable reaction from the Class also supports the reasonableness of a fee request. *See, e.g., Beaver Cnty. Emps. Ret. Fund*, 2017 WL 2588950, at \*3 (noting that the lack of a single class member objection is “strong evidence that the requested amount of fees and expenses is reasonable”); *Yarrington*, 697 F. Supp. 2d at 1064 (concluding “the Settlement Class strongly supports Settlement Class Counsel’s request for attorneys’ fees of 33% of the Settlement Fund, based on the fact that only one untimely objection was made”); *Xcel Energy*, 364 F. Supp. 2d at 998 (noting notices were mailed to over 265,000 potential class members and concluding that “careful consideration of the merits of the seven [fee] objections and the minuscule number of total objections received in light of the size of the class” supports the fee award).

Notice to the Class has been provided in a manner that complies with this Court’s preliminary approval order. *See* ECF Doc. No. 145, ¶¶ 10-11. The date for Class Members to file objections to the Settlement or request for exclusions from the Class was March 5, 2025. Following completion of notice to the Class pursuant to the Notice Plan approved by the Court in its preliminary approval order, only 67 Class Members have requested

exclusion and no Class Member has objected to the fairness, reasonableness, or adequacy of the award of attorneys' fees or Class Representative awards. *See* Class Counsel Decl. ¶ 35. The favorable reaction of the class supports the reasonableness of Class Counsel's fee request.

**7. The Comparison Between the Requested Attorneys' Fee Percentage and Percentages Awarded in Similar Cases**

The requested attorney's fee is within the range of fees previously approved by courts in similar cases. Class Counsel's request for fees, inclusive of litigation expenses, totaling 1/3 of the common fund, falls squarely within the range of percentages deemed reasonable in similar class cases. *See, e.g., In re Novant Health, Inc.*, 2024 WL 3028443, at \*8-14 (awarding 1/3 of \$6,660,000.00 common fund in an analogous case).

Courts in the Eighth Circuit and this District "have frequently awarded attorney fees between [25%] and [36%] of a common fund in other class actions." *Xcel Energy*, 364 F. Supp. 2d at 998 (collecting cases); *see also Rawa*, 934 F.3d at 870 (noting that fees in the Eighth Circuit have ranged up to 36% in class actions); *Khoday*, 2016 WL 1637039, at \*9 (awarding a fee award of 33.33% for a total fee award of \$20 million from a \$60 million common fund); *In re US Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (36% of \$3.5 million settlement fund awarded); *Carlson v. C.H. Robinson Worldwide, Inc.*, No. CIV 02-3780 JNE/JJG, 2006 WL 2671105, at \*8 (D. Minn. Sept. 18, 2006) (35.5% of the \$15 million settlement fund was "within the range established by other cases"); *Yarrington*, 697 F. Supp. 2d at 1064-65 (33% of \$16.5 million common fund was "certainly within the range established by other cases in this District"); *Reynolds v. Concordia Univ., St. Paul*, No. CV



21-2560 (JWB/DTS), 2024 WL 2270585, at \*2 (D. Minn. May 20, 2024) (award by this Court of 1/3 of the common fund to many of the same counsel in this case). This factor, too, supports Class Counsel’s request.

In conclusion, all relevant *Johnson* factors strongly support the requested attorneys’ fees. Under the percentage-of-the-benefit method, the Court should award the requested attorneys’ fee of one-third (1/3) the common fund.

**D. The Fee Requested is Reasonable Under the Lodestar Method**

The requested attorneys’ fees are also reasonable under the lodestar method. The lodestar approach may be used as an independent basis for a fee award, *see Zurn Pex*, 2013 WL 716460, at \*3-4; as a cross-check in evaluating a fee request under the common fund approach, *see Petrovic*, 200 F.3d at 1157; *Xcel Energy*, 364 F. Supp. 2d at 999; or as a side-by-side analysis alongside the common fund approach, *see MSG*, 2003 WL 297276, at \*2-3. Under the lodestar approach, district courts within this Circuit apply four factors in determining whether requested attorneys’ fees are reasonable: “(1) the number of hours counsel expended; (2) counsel’s ‘reasonable hourly rate’; (3) the contingent nature of success, and (4) the quality of the attorneys’ work.” *In re UnitedHealth Grp.*, 643 F. Supp. 2d at 1106 (citation omitted); *see also In re Life Time Fitness, Inc., Tel. Consumer Prot. Act (TCPA) Litig.*, 847 F.3d 619, 622 (8th Cir. 2017) (noting the lodestar method multiplies the hours expended by a reasonable hourly rate and any adjustment “to reflect the individualized characteristics of a given action.”) (citation omitted). Application of these

factors is straightforward and supports the reasonableness of Class Counsel’s requested fee given the substantial time and resources Class Counsel devoted to litigating this case.

Courts recognize that “[i]n cases where fees are calculated using the lodestar method, counsel may be entitled to a multiplier to reward them for taking on risk and high-quality work.” *In re UnitedHealth Grp.*, 643 F. Supp. 2d at 1106 (using lodestar cross-check and finding appropriate a multiplier of nearly 6.5); *see, e.g., Rawa*, 934 F.3d at 870 (5.3 multiplier was “not unreasonable in light of the results obtained”); *MSG*, 2003 WL 297276, at \*3 (“a multiplier of slightly less than 2” is “within the range of multipliers that courts typically use”); *Yarrington*, 697 F. Supp. 2d at 1067 (2.26 multiplier was “modest” and reasonable “given the risk of continued litigation, the high-quality work performed, and the substantial benefit to the Class”); *Dworsky v. Bank Shares Inc.*, No. 3-93-13, 1993 WL 331012, at \*2 (D. Minn. May 3, 1993) (approving 2.75 multiplier); *In re St. Paul Travelers Sec. Litig.*, Civ. No. 04-3801 JRT-FLN, 2006 WL 1116118, at \*1 (D. Minn. Apr. 25, 2006) (approving 3.9 multiplier); *Xcel Energy*, 364 F. Supp. 2d at 999 (approving 4.7 multiplier).

Here, Class Counsel’s fee request amounts to a request for attorneys’ fees of \$2,000,000.00 — a multiplier of 1.73. This multiplier will continue to shrink as time spent implementing the settlement in 2025 and onwards is incurred. Considering the skill and efficiency of Class Counsel in bringing this case to a relatively speedy resolution, this multiplier is well within, if not below, the range of multipliers frequently awarded by courts in this District.

Class Counsel will take on the process of distributing the awarded fees to the counsel that have provided valuable services in this matter and intend to continue to exercise

responsibility for ensuring that unnecessary expenditures of time and of funds are avoided. This District appropriately expects sound billing judgment and has recognized in other cases that “[o]nly time and expenses authorized and incurred on matters that advance the litigation on behalf of all class members will be considered as compensable.” *Dryer*, 2013 WL 1408351, at \*6. Class Counsel will carefully evaluate and scrutinize time and expense reports in allocating any fee and expense award.<sup>4</sup>

Rates for Class Counsel ranged from paralegals at \$190.00/hour, \$375.00/hour (associate attorney), to \$1,200.00/hour (senior Minnesota-based partner). Class Counsel Decl., ¶ 34. These rates are consistent with the rates typically approved in the District of Minnesota. *See, e.g., Jody A.E. v. Saul*, No. 16-969, 2019 WL 4928921, at \*2 (D. Minn. Oct. 7, 2019) (approving a \$1,229.63 effective hourly rate); *Smith v. Kijakazi*, No. 19-cv-1571, 2023 WL 3580817, at \*2 (D. Minn. May 22, 2023) (approving \$900.00 effective hourly rate and citing cases approving effective hourly rates between \$950.00 and \$1,229.63); *Richard E.C. v. Saul*, No. 19-cv-1900, 2021 WL 9476864, at \*2 (approving \$1,000.00 effective hourly rate); *Yarrington*, 697 F. Supp. 2d at 1066 (recognizing, as of

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<sup>4</sup> Courts recognize that “submission of a combined fee application with actual allocation to be made by lead counsel has generally been adopted by the courts.” *In re Linerboard Antitrust Litig.*, No. MDL 1261, 2004 WL 1221350, at \*17 (E.D. Pa. June 2, 2004). “[F]rom the standpoint of judicial economy, leaving allocation to such counsel makes sense because it relieves the Court of the ‘difficult task of assessing counsel’s relative contributions.’” *Id.* at \*18 (quoting *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 329 n.96 (3d Cir. 1998)). Courts afford broad discretion to lead counsel in initially allocating attorneys’ fee awards. *See In re Indigo Sec. Litig.*, 995 F. Supp. 233, 235 (D. Mass. 1998) (directing that “[a]ny and all allocations of attorneys’ fees and expenses among counsel for all class representatives shall be made by lead counsel for the class, who shall apportion the fees and expenses based upon their assessment of the respective contribution to the litigation made by each counsel”).

2010, partner rates ranging from \$500.00 - \$800.00 “are based on prevailing fees for complex class actions of this type that have been approved by other courts”). Multiplying the total reasonable hours by the various rates, Class Counsel’s lodestar totals \$1,154,201.70, which represents a 1.73 multiplier.

The third and fourth lodestar factors—“the contingent nature of the success” and “the quality of the attorneys’ work”—discussed more fully above, further support Class Counsel’s attorneys’ fee request under a lodestar analysis.

In sum, the requested attorneys’ fee is fair and reasonable under the lodestar method and should be awarded. Therefore, under either the percentage-of-the-common benefit or lodestar methods, the Court should approve the requested attorneys’ fee as fair and reasonable.

**E. Awarding a \$2,500.00 Service Award to Each Class Representative is Reasonable and Appropriate Given Their Service to the Settlement Class**

The district court has discretion to award service awards. *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002). Class Counsel has requested that the Court award \$2,500.00 to each of the Plaintiffs who were appointed as Class Representatives and adequately represented the Class Members in this litigation.

Courts routinely approve such service awards to recognize individuals’ service to the class and to reward them for contributing to the enforcement of laws through the class action mechanism. *See, e.g., China Agritech, Inc. v. Resh*, 584 U.S. 732, 747 n.7 (2018) (a “class representative might receive a share of class recovery above and beyond her

individual claim”); *Caligiuri*, 855 F.3d at 867 (service awards to named plaintiffs “promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits”) (quoting *Yarrington*, 697 F. Supp. 2d at 1068).

Such awards often exceed the one requested here. *See, e.g., Garcia v. Target Corp.*, No. 16-CV-2574-MJD-BRT, 2020 WL 416402, at \*2 (D. Minn. Jan. 27, 2020) (approving \$10,000.00 service award as “reasonable in light of the services performed . . . including taking on the risks of litigation, helping to achieve the compensation being made available to the Settlement class, and providing discovery”); *Bhatia v. 3M Co.*, No. 16-1340 (DWF/DTS), 2019 WL 4298061, at \*3 (D. Minn. Sept. 11, 2019) (awarding \$25,000.00 service awards to two plaintiffs and \$10,000.00 each to sixteen other class representatives); *In re Target Corp. Customer Data Sec. Breach Litig.*, No. MDL 14-2522 (PAM), 2016 WL 2757692, at \*2 (D. Minn. May 12, 2016) (awarding \$20,000.00 to each of the five financial institution class representatives); *Reynolds*, 2024 WL 2270585, at \*3 (\$5,000.00 service award to single class representative approved by this Court from \$800,000.00 common fund).

In this case, Plaintiffs Vriezen, Lockrem, and Tapp as Class Representatives, stepped up to lead this litigation on behalf of all class members nationally and to provide valuable services for the benefit of the Class. *See* Declarations of Class Representatives attached as **Exhibit C**. They also worked extensively with Class Counsel to respond to numerous inquiries regarding their individual facts and circumstances as the litigation proceeded, including extensive investigation into communications to and from Defendant’s Website to their personal Facebook account. They responded to discovery and also

provided information relevant to the prosecution of the lawsuit. They actively monitored the litigation through continuous communication with Class Counsel and were available for mediation and subsequent settlement discussions. Class Counsel Decl. ¶ 36.

Because Plaintiffs devoted time and resources in service to the class, service awards in the amount of \$2,500.00 each (\$7,500.00 total) to recognize the time, expense, and valuable contributions to this litigation should be awarded as fair and reasonable.

## V. CONCLUSION

Class Counsel, on behalf of Plaintiffs and the Class, respectfully request that the Court award: (1) reasonable attorneys' fees in the amount of \$2,000,000.00, inclusive of litigation expenses; and (2) service awards to each Class Representative in the amount of \$2,500.00 (totaling \$7,500.00). The requests are fair and reasonable under all applicable law.

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Respectfully submitted,

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