

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Taqueria El Primo LLC, Victor Manuel
Delgado Jimenez, Michelle Chavez Solis,
El Chinelo Produce, Inc., Virginia
Sanchez-Gomez, Benjamin Tarnowski, on
behalf of themselves and others similarly
situated,

Plaintiffs,

v.

Farmers Group, Inc., Truck Insurance
Exchange, Farmers Insurance Company,
Inc., Farmers Insurance Exchange, Illinois
Farmers Insurance Company, and
Mid-Century Insurance Company.

Defendants.

Case No. 19-CV-03071 (JRT/ECW)

**MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFFS' MOTION
FOR PAYMENT OF ATTORNEYS'
FEES, LITIGATION EXPENSES, AND
SERVICE AWARDS**

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I. INTRODUCTION

After six years of hard-fought litigation in this complex class action, and without guarantee of compensation, Class Counsel¹ have secured a settlement with Defendants.² *See* Class Settlement Agreement (ECF No. 779-1) (“Settlement” or “Settlement Agreement”). Under the terms of the Settlement Agreement, Defendants will pay \$1,950,000.00 (the “Settlement Amount”) into escrow for the benefit of the Settlement Class³ and make valuable disclosures to the Minnesota Department of Commerce. *See* Settlement Agreement at 8-9.

This Settlement reflects the skill, expertise, and hard work of Class Counsel. The benefit to Settlement Class members is substantial, real, and concrete compared to the significant litigation risks this case presented, including the risks that flow from the decision of the Eighth Circuit last year in *Taqueria El Primo LLC et al. v. Illinois Farmers Insurance Company, et al.*, No. 23-3129, Judgment at 2, (8th Cir. 2023). As such, Class Plaintiffs (“Plaintiffs”) respectfully that the Court (a) award Class Counsel 33% of the Settlement Gross Fund (equal to \$643,500.00) as payment of attorneys’ fees, (b) approve

¹ The Court appointed Lockridge Grindal Nauen PLLP, The Court appointed LGN, Helmuth & Johnson PLLC, and Sawicki & Phelps, PA as Class Counsel as Class Counsel for the certified Damages Class and Injunctive Class in this litigation. (*See* ECF No. 318 at 62.)

² The Defendants in the class action are Farmers Group, Inc., Truck Insurance Exchange, Farmers Insurance Company, Inc., Farmers Insurance Exchange, Illinois Farmers Insurance Company, and Mid-Century Insurance Company.

³ The Settlement Agreement defines the term “Settlement Class” to mean the Damages Class and Injunctive Class certified by this Court on December 28, 2021 (*see* ECF No. 318) and subsequently modified on January 17, 2023 (*see* ECF No. 539). (Settlement Agreement at 4-5.)

reimbursement of \$670,200.00 of incurred litigation expenses and reserve \$100,000.00 for on-going litigation expenses related to class notice and settlement and claims administration, and (c) award service awards of \$5,000.00 each to the Class Representatives Benjamin Tarnowski, Mitchelle Chavez Solis, Virginia Sanchez-Gomez, and Named Plaintiff Victor Delgado Jimenez. This is Plaintiffs' first request for attorneys' fees, litigation expenses, or service awards in this litigation.

All Settlement Class members have received notice of this Motion and their objections, if any, will be heard by the Court. In the Court-approved notice documents regarding the Settlement and claims process, Class Counsel informed Class members that Class Counsel would seek payment of attorneys' fees not to exceed 33 1/3% of the Settlement Fund, reimbursement of incurred expenses not to exceed \$670,200.00, and service awards for Class Representatives not to exceed \$20,000.00. *See* Long Form Notice (ECF No. 783-1) ("Long Form Notice") § 10. At the same time, Class Counsel informed Class members that qualified members would receive a *pro rata* payment from the Settlement Fund after payment of certain identified costs, including administrative costs such as issuance of notice to the Class and Settlement Administrator fees and expenses. *Id.* at § 6. Class members were also informed that the Settlement Administrator would post additional information about the payments on the case website, www.FarmersInsuranceMinnesotaClassAction.com. *Id.* Class Counsel also informed Class members that, ultimately, the Court will determine the amount of attorneys' fees, litigation expenses, and service awards to be paid in this case. *Id.* at § 10. Class Counsel will post a copy of this Motion on the case website as soon as it is filed with the Court

Finally, the last day for Settlement Class members to object to this Motion is June 20, 2025. *See* ECF No. 783. As of this date, there have been no objections. Asp Decl. ¶ 21. Class Counsel will file an update with the Court regarding any objections to this Motion on August 5, 2025. *Id.*

II. CLASS COUNSEL DEDICATED TREMENDOUS RESOURCES TO THIS MATTER AND FACED SIGNIFICANT RISKS TO SUCCESSFULLY RESOLVE THIS CASE

Since 2019, Class Counsel dedicated tremendous time, effort, and expense to this litigation. They have done so entirely on a contingent-fee basis with no guarantee of compensation or even reimbursement of expenses. Summaries of Class Counsel’s time, effort, and expense are provided below.

A. Class Counsel Dedicated Tremendous Resources to Resolve Plaintiffs’ Claims Against Defendants

Since the inception of this litigation through June 6, 2025, Class Counsel invested 9,597.0 hours of attorney and other legal professional time. *See* Decl. of David W. Asp (“Asp Decl.”) ¶ 29. Class Counsel worked diligently to ensure that throughout the case, counsel’s efforts have been coordinated, detailed, vigorous, and efficient. The result of these efforts is monetary relief of \$1,950,000.00 and valuable disclosures to the Minnesota Department of Commerce. *See* Settlement Agreement §§ 2-3.

Class Counsel’s efforts in the litigation included:

- Class Counsel filed the initial Complaint in this case on November 8, 2019, in Minnesota state court, against Farmers Insurance Exchange and Illinois Farmers Insurance Company alleging violations of the Minnesota No-Fault Automobile Insurance Act (Minn. Stat. § 65B.41-.71), the Minnesota Consumer Fraud Act (Minn. Stat. § 325D.68-.70), the Minnesota Deceptive Practices Act (Minn. Stat. § 25D.43.48), breach of

contract, and seeking money damages and injunctive relief. The complaint was the product of Class Counsel's preparation, independent investigation, and research. It included one issue of first impression under Minnesota law. *See* Asp Decl. ¶ 4.

- Class Counsel developed numerous case management plans and worked cooperatively with Defendants to implement those plans. *Id.* at ¶ 5.
- Class Counsel prepared and filed comprehensive memoranda of law (a) regarding numerous discovery issues; (b) in support of class certification, including expert reports and other exhibits; (c) in support of Plaintiffs' summary judgment motion; (d) in opposition to Defendants' *Daubert* and summary judgment motions; (e) opposing Defendants' Rule 23(f) appeal; (f) opposing Defendants' injunction appeal; and (g) seeking approval of settlement. *Id.* at ¶ 6.
- Class Counsel conducted extensive fact and expert discovery, including preparing for and conducting over eight (8) depositions of Defendants' fact witnesses and four (4) depositions of Defendants' expert witnesses, preparing for and defending depositions of class representatives and third-party witnesses, reviewing thousands of documents utilized in support of depositions and pleadings, and fulfilling Plaintiffs' own discovery obligations in response to aggressive discovery by Defendants. *Id.* at ¶ 7.
- Class Counsel litigated numerous non-dispositive motions. *Id.*
- Class Counsel consulted with experts during their pre-suit investigation and discovery phase of this case, including Michael Rothman, Akshay Rao, and Allan Schwartz who prepared reports in support of class certification and in relation to the parties' motions for summary judgment. Asp Decl. at ¶ 8.
- Class Counsel successfully moved for class certification of the Injunctive Class's claims and the Damages Class's Minnesota Consumer Fraud Act Claims. This motion involved work by numerous attorneys and staff in crafting descriptions for the factual and legal bases for certification of the Injunctive and Damages Classes. Once Plaintiffs filed their motion, Defendants vigorously opposed class certification. Defendants challenged Plaintiffs' case factually, procedurally, and legally. Moreover, Defendants presented their own experts to bolster their arguments and sought to discredit Plaintiffs' experts. Despite Defendants' efforts, the Court certified the Injunctive and Damages Classes and did not exclude Plaintiffs' experts. *Id.* at ¶ 9.

- Class Counsel successfully opposed Defendants’ appeal of this Court’s class certification order under Rule 23(f). Plaintiffs provided a fulsome response to this appeal, and the Court of Appeals ultimately denied Defendants’ petition. *See Taqueria El Primo LLC et al. v. Farmers Group, Inc. et al.*, No. 22-8002, Judgment at 1, (8th Cir. 2022). *Id.* at ¶ 10.
- The parties conducted extensive discovery. After voluminous briefing regarding the parties’ hotly contested cross-motions for summary judgment and *Daubert* motions and a hearing on those same motions, the Court denied Defendants’ summary judgment motion except as to Plaintiffs’ breach of contract claim. *See* ECF No. 663. The Court also denied Defendants’ *Daubert* challenges. The Court granted summary judgment for the Injunctive Class. Asp Decl. at ¶ 11.
- Defendants appealed this Court’s summary judgment order enjoining Defendants from enforcing limitations in certain agreements with health care providers in Minnesota. After extensive briefing and oral argument, and shortly before trial, the Court of Appeals entered an order vacating the Court’s injunction. *See Taqueria El Primo LLC et al. v. Illinois Farmers Insurance Company. et al.*, No. 23-3129, Judgment at 2, (8th Cir. 2023). *Id.* at ¶ 13.
- Class Counsel engaged in extensive arm’s-length negotiations and two separate mediation sessions with Defendants and ultimately negotiated the Settlement Agreement with Defendants. Asp. Decl. at ¶ 14. Class Counsel have prepared and executed the Court-approved Class Notice and Settlement Administration programs, and in the process of administering the Court-approved Claims Process. *Id.*
- In accordance with the Court’s Jury Trial Notice (ECF No. 704), Class Counsel engaged in extensive preparations for trial. This preparation included drafting witness and exhibit lists, drafting objections to Defendants’ witness and exhibit lists, and drafting jury instructions, motions *in limine*, and other trial documents. *Id.* at ¶ 12.

In addition to the 9,597.0 hours of attorney and other legal professional time invested in this case from inception through to June 6, 2025, Class Counsel have also incurred litigation expenses in the amount of \$670,200.00 through June 6, 2025. These expenses, discussed in more detail in Section IV below, are reasonable and necessary to

the prosecution of the case. They were required to carefully frame the complex issues of fact and law in the pleadings, to undertake well-organized discovery against enormous and wealthy Defendants, to support class certification and summary judgment, and to prepare for trial.

Finally, Class Counsel will continue to supervise all aspects of the Settlement and claims administration and will supervise the final distribution of the Settlement proceeds to qualified Settlement Class members. In connection with this work, Class Counsel have anticipated on-going litigation costs of up to \$100,000.00. *See* Asp. Decl. ¶ 38.

B. Class Counsel Faced Significant Risk of Nonpayment

As discussed in more detail below, Class Counsel faced a significant risk of nonpayment. Plaintiffs alleged violations of the Minnesota No-Fault Automobile Insurance Act (Minn. Stat. § 65B.41-.71), the Minnesota Consumer Fraud Act (Minn. Stat. § 325D.68-.70), the Minnesota Deceptive Practices Act (Minn. 25D.43.48), and breach of contract. Plaintiffs' allegations included one issue of first impression under Minnesota law. Plaintiffs sought money damages and injunctive relief. Asp Dec. ¶ 4. Class Counsel believed in Plaintiffs' case; invested extensive time, effort, and resources; and prosecuted it vigorously. *Id.* at ¶ 22. Class Counsel also conceived of the case without the benefit of any government enforcement action. *Id.* at 4. Class Counsel took these actions at the risk of zero recovery and turned away other opportunities because of the complexity and high level of time and expense the case demanded. *Id.* at ¶ 22. In the face of this, Class Counsel risked tremendous time and resources and have achieved a significant recovery on behalf of the Settlement Class after almost six years of litigation. *Id.* at ¶ 14.

III. CLASS COUNSEL SHOULD BE AWARDED ATTORNEYS' FEES IN THE AMOUNT OF 33% OF THE SETTLEMENT FUND

A. The Court Should Employ the “Percentage-of-the Fund” Method in Determining Fees for this Non-Reversionary Common Fund Settlement

It has long been held that attorneys who bring and maintain a suit that creates a benefit in which others have a common interest may be awarded a fee from the common benefit. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“A litigant or a lawyer who recovers a Settlement 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”); *see also Sprague v. Ticonic Nat’l Bank*, 307 U.S. 161 (1939); *Central R.R. & Banking Co. v. Pettus*, 113 U.S. 116 (1885).

Courts utilize two main approaches to analyzing a request for attorney fees...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...Another method, the ‘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...It is within the discretion of the district court to choose which method to apply.

Huyer v. Buckley, 849 F.3d 395, 398 (8th Cir. 2017)(quoting *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 244 (8th Cir. 1996)). While “[t]he Court must “provide a concise but clear explanation of its reasons for the fee award, ...it is within the discretion of the district court to choose which method to apply, as well as to determine the resulting amount that constitutes a reasonable award of attorney’s fees in a given case.” *In re CenturyLink Sales Pracs. & Sec. Litig.*, No. CV 17-2832, 2020 WL 7133805, at *10 (D.

Minn. Dec. 4, 2020) (citing *Keil v. Lopez*, 862 F.3d 685, 701 (8th Cir. 2017)) (additional citations omitted).

Where, as here, the class settlement obtains a fixed common fund for the Settlement Class, the preferred approach is the percentage method.

Courts within the Eighth Circuit traditionally award attorneys' fees using the percentage-of-the-benefit method drawn from the common fund... This is often 'preferable' to the lodestar method when determining the reasonableness of fees in cases where the fees and the class benefits are derived from a single fund. A salutary benefit of the percentage method is that it aligns the interests of counsel and the class members by providing an incentive to maximize the class's recovery.

PHT Holding II LLC v. N. Am. Co. for Life & Health Ins., 2023 WL 8522980, at *6 (S.D. Iowa Nov. 30, 2023) (citing *Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019)) (additional citations omitted); *see also In re Guidant Corp. Implantable Defibrillators Prod. Liab. Litig.*, No. MDL 05-1708, 2008 WL 682174, at *6 (D. Minn. Mar. 7, 2008), *amended in part*, No. MDL 05-1708, 2008 WL 3896006 (D. Minn. Aug. 21, 2008) ("Generally, the percentage-of-fund method is used in common fund cases. This method involves a routine calculation of fees that is based on a percentage of the common fund recovered.") (citations omitted); *Roeser v. Best Buy Co.*, No. CIV. 13-1968, 2015 WL 4094052, at *8 (D. Minn. July 7, 2015) ("The percentage-of-the-benefit method is used 'to evaluate attorneys' fees in a common- fund settlement.'") (citation omitted); *In re UnitedHealth Grp. Inc. PSLRA Litig.*, 643 F. Supp. 2d 1094, 1104 (D. Minn. 2009) ("The Court finds the percentage method is appropriate in a common-fund settlement such as this"); *Cleveland v. Whirlpool Corp.*, No. 20-CV-1906, 2022 WL 2256353, at *9 (D. Minn.

June 23, 2022) (“A typical calculation of attorneys’ fees in a class action involves the common-fund doctrine, which is based on a percentage of the common fund recovered”).

Conversely, the lodestar approach may be preferable where the settlement is not readily capable of simple valuation. *See, e.g., Roeser*, 2015 WL 4094052 at *10 (“When there is a dispute as to the value of the relief provided by a settlement, a court may use its discretion to apply the lodestar approach instead of the percentage method.”) (citation omitted). The lodestar may also be used as a secondary “cross-check” on the reasonableness of a percentage award. *Huyer*, 849 F.3d at 399–400.

Plaintiffs believe the percentage-of-the-benefit method for determining an appropriate award for attorneys’ fees is appropriate here because the Settlement creates a concrete, non-reversionary common fund. The requested fee of \$643,500.00, which represents 33% of the gross Settlement Amount, is well within the typical range in the Eighth Circuit.⁴ *See Huyer*, 849 F.3d at 399 (noting the Eighth Circuit frequently awards attorneys’ fees between 25% and 36% of a Settlement Fund); *Koenig v. U.S. Bank N.A. (In re U.S. Bancorp Litig.)*, 291 F.3d 1035, 1038 (8th Cir. 2002) (approving award of 36% of settlement fund); *Feldman v. Star Trib. Media Co. LLC*, No. 22-CV-1731 (ECT/TNL), 2024 WL 3026556 (D. Minn. June 17, 2024) (awarding 32.6% of the settlement fund);

⁴ Plaintiffs’ request is consistent with the terms of the parties’ Settlement Agreement. (*See* Settlement Agreement (ECF No. 779-1) (“Settlement Agreement”) § 13(a) (“Class Counsel may apply to the Court for a fee award to be paid from the proceeds of the Settlement Fund in an amount not to exceed one-third of the Settlement Fund.”).) Defendants have not paid the Settlement Amount into the Escrow Account because the Effective Date triggering payment and described in the Settlement Agreement has not yet occurred. *See id.* at §§ 2(b), 14.

Khoday v. Symantec Corp., No. 11-CV-180 (JRT/TNL), 2016 WL 1637039 (D. Minn. Apr. 5, 2016), *report and recommendation adopted*, No. 11-CV-0180 (JRT/TNL), 2016 WL 1626836 (D. Minn. Apr. 22, 2016), *aff'd sub nom. Caligiuri v. Symantec Corp.*, 855 F.3d 860 (8th Cir. 2017) (awarding attorney's fees in the amount of one-third of the settlement fund); *see also In re Xcel Energy, Inc., Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980, 998 (D. Minn. 2005) (collecting case awarding attorneys' fees of between 25-36% of common fund).

B. The Relevant Factors Support Plaintiffs' Request for Attorneys' Fees

"Courts in this District routinely approve attorneys' fees in class actions of at least one-third of the common fund created for the settlement class." *In re Cattle & Beef Antitrust Litig.*, No. 22-3031, 2023 WL 8098644, at *3 (D. Minn. Nov. 21, 2023) (collecting cases). "When determining whether a percentage of the common fund is reasonable, courts may consider several factors, including the benefit conferred on the settlement class; the risks to which plaintiffs' counsel were exposed; the novelty and difficulty of the issues; the time, labor and skill required; the reaction of the class; and the comparison between the requested percentage and percentages awarded in similar cases." *Cleveland v. Whirlpool Corp.*, No. 20-CV-1906, 2022 WL 2256353, at *9 (D. Minn. June 23, 2022); *see also, Griffin v. Jim Jamison*, 188 F.3d 996, 997 (8th Cir. 1999) ("[it is not] necessary for district courts to examine exhaustively and explicitly, in every case, all of the factors that are relevant to the amount of a fee award."); *Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1062 (D. Minn. 2010) ("not all of the individual factors will

apply in every case, affording the Court wide discretion in the weight to assign each factor.”). Each of the relevant factors supports Plaintiffs’ request here.

1. The Benefit to the Class

On March 6, 2025, Plaintiffs and Defendants entered a Settlement that provided for payment of \$1,950,000.00 and certain disclosures to the Minnesota Department of Commerce. Asp Decl. ¶¶ 14-15. The Court granted preliminary approval to this Settlement on March 31, 2025, preliminarily determining the Settlement “to be fair, reasonable, adequate, and in the best interests of the Settlement Class.” *See* ECF No. 783 at 2. Settlement Class members have until July 21, 2025, to object to the Settlement. *See* ECF No. 783 at 7.

It is the opinion of Class Counsel that the monetary benefit, combined with the agreed upon disclosures to the Minnesota Department of Commerce, provides the Settlement Class with substantial value in the face of the significant risks to the Settlement Class, including the risks that flow from the Eighth Circuit order last year vacating this Court’s order granting Plaintiffs’ request for injunctive relief at summary judgment. *See* Asp Decl. ¶¶ 13-15. Moreover, the required disclosures to the Minnesota Department of Commerce will provide a benefit to all Minnesota consumers. *Id.* at ¶ 16. This factor supports Plaintiffs’ fee request.

2. Class Counsel’s Exposure to Risk

“Courts have recognized that the risk of receiving little or no recovery is a major factor in awarding attorneys’ fees.” *In re Xcel*, 364 F. Supp. 2d at 994. Here, Counsel undertook this litigation on a contingent basis, where they invested their effort, time, and

resources in a case that included an issue of first impression under Minnesota law without guarantee of recovery. Asp Decl. ¶ 4. This exposed Class Counsel to significant risk as they covered the costs of litigation, bringing the case to a trial-ready state, and settlement without any guarantee of compensation. *Id.* at ¶¶4-14, 22. This factor supports Plaintiffs’ fee request.

3. Complexity of the Legal Issues

Class action lawsuits are inherently complex. *See, e.g., Cleveland*, 2022 WL 2256353, at *10 (citing *Marshall v. Green Giant Co.*, 942 F. 2d 539, 549 (8th Cir. 1991) (“It goes without saying that class actions are very complex[.]”). This case is no different. Moreover, it involves, *inter alia*, interpretation of complex Minnesota state statutes, a claim of first impression under Minnesota law, a complicated factual record, and two appeals. The legal, factual, and procedural complexity of the case weighs in favor of Plaintiffs’ fee request. Finally, the Court has presided over this case for almost six years and is aware of the complexity and uncertain nature of the litigation. In particular, this case involved a matter of first impression under Minnesota law—specifically, the interpretation of Minn. Stat. § 65B.44—as well as issues relating to the interpretation of the Minnesota Consumer Fraud Act and Deceptive Trade Practices Act. Class Counsel’s work on this matter warrants the requested fee.

4. Quality of the Representation

This Court has previously recognized the quality of Class Counsel. *See* Class Certification Order (ECF No. 318) (appointing Class Counsel). Moreover, “courts have repeatedly recognized that the quality of the opposition counsel should also be taken into

consideration.” *Khoday*, 2016 WL 1637039, at * 10; *see In re Xcel*, 364 F. Supp. 2d at 995-96; *Yarrington*, 697 F. Supp. 2d at 1063. Here, Defendants in this case are represented by the sophisticated law firm Stoel Rives LLP. Asp Decl. ¶ 5. In pursuing this hard-fought litigation for almost six years, there can be no doubt that counsel for all parties represented their clients skillfully and zealously. The quality of the representation favors Plaintiffs’ fee request.

5. Time and Labor Involved

Since the inception of this case through June 6, 2025, Class Counsel dedicated 9,597.0 hours to efficiently and expeditiously litigate and resolve Plaintiffs’ claims. Asp. Decl. ¶¶ 25-30, Ex. 1-4. Class Counsel’s efforts in this litigation are listed above, *see supra* Section II(A), and in the Declaration of David W. Asp filed contemporaneously with this motion. *See* Asp. Decl. ¶¶ 4-14. All the work performed by Class Counsel was necessary, performed without duplication, and successfully advanced this litigation toward trial and settlement. *Id.* at ¶ 22. Although not required, courts in this District sometimes use the lodestar as a “cross-check” against the requested fee. *See Keil v. Lopez*, 862 F.3d 685, 701 (8th Cir. 2017); *see also Hashw v. Dep’t Stores Nat’l Bank*, 182 F. Supp. 3d 935, 950 (D. Minn. 2016) (“Cross-checking the requested fees using the lodestar method buttresses the Court’s conclusion.”). “This cross-check need not entail ‘mathematical precision [or] bean counting,’ but is intended to provide an approximation of a reasonable fee in order to ‘alert the trial judge’ if a percentage award is ‘too great.’” *Id.* (citations omitted). Class Counsel’s base lodestar, based on historical rates, from the inception of the case through June 6, 2025, is \$7,179,165.75. *See* Asp Decl. ¶ 29, Ex. 4. The requested fee of \$643,500.00 results in a

negative multiplier of approximately 11.16. Asp Decl. ¶31. Class Counsel will not recover all the fees that they incurred during the course of this litigation. *Id.* This factor favors Plaintiffs' fee request.

6. Reaction of the Class

The Settlement Class was informed that Plaintiffs would seek up to one-third (33 1/3%) of the Settlement Fund in attorneys' fees. *See* Long Form Notice § 10. In fact, Class Counsel are seeking 33%. To date, there have been no objections to the fee request. Asp Decl. ¶ 21. The deadline for objection is June 20, 2025, two weeks from the date of this filing. The absence of objections by Settlement Class members further supports the reasonableness of the requested fee. *See DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995) ("The fact that only a handful of class members objected to the settlement similarly weighs in [class counsel's] favor."); *see also In re Xcel*, 364 F. Supp. 2d at 1002 ("[S]ilence can be read as an endorsement of the results received and the services rendered by plaintiff's counsel."). Finally, the Class Representatives for the Settlement Class support the request for attorneys' fees. *See* Exs. 6-9, Asp. Decl.

7. Consistency of Award with other Cases

As mentioned above, Plaintiffs' request for 33% of the Settlement Fund is an award within the typical range approved of in the Eighth Circuit and in this District. *See supra* Section IV(A). This factors favors Plaintiffs' fee request.

Applying these factors to the instant case shows that Plaintiffs' request for attorneys' fees is reasonable. As such, Plaintiffs request the Court award Class Counsel \$643,500.00 in attorneys' fees to be paid from the Settlement Fund.

IV. CLASS COUNSEL ARE ENTITLED TO BE REIMBURSED FOR THE REASONABLE LITIGATION EXPENSES

In a certified class action, the Court may award reasonable nontaxable costs authorized by law or the parties' agreement. Fed. R. Civ. P 23(h). "It is well established that counsel who create a common fund like the one at issue are entitled to the reimbursement of litigation costs and expenses, which include such things as expert witness costs, mediation costs, computerized research, court reports, travel expenses, and copy, telephone, and facsimile expenses." *Krueger v. Ameriprise Fin., Inc.*, No. 11-2781, 2015 WL 4246879, at *3 (D. Minn. July 13, 2015). Class Counsel informed the Settlement Class that they would seek reimbursement for incurred litigation costs not to exceed \$670,200.00. *See* Long Form Notice § 10.

Here, Class Counsel have incurred \$670,200.00 in past expenses to resolve Plaintiffs' claims. Asp Decl. ¶ 33; Exhibits 1-3, 5. These expenses were incurred for certain categories of expenses that were reasonable and necessary to resolve Plaintiffs' claims *e.g.*, experts and consultants, document scanning and copying services, an electronic discovery database vendor, mediators, deposition costs, court fees and service costs, online legal research (*e.g.*, Westlaw), shipping, and mailing. Asp Decl. ¶ 37. Due to the risk that they might never be recovered, Class Counsel have endeavored to keep expenses to a minimum. *Id.* at ¶ 32.

Additionally, Class Counsel requests the Court establish a set aside fund from the Settlement Fund of \$100,000.00 for on-going litigation expenses related to ongoing class notice and settlement and claims administration expenses that have yet to be incurred. Asp

Decl. ¶ 38. This is consistent with notice to the Settlement Class that costs related to class notice and settlement and administration would be paid out of the Settlement Fund. *See* Long Form Notice § 6. These funds will only be used for reasonable expenses that are necessary to support resolution of Plaintiffs' claims *i.e.*, class notice and settlement and claims administration expenses. *Asp* Decl. ¶ 38.

“Allowing a portion of class settlement funds to be used for future expenses is a well-accepted practice.” *In re Pork Antitrust Litig.*, No. CV 18-1776 (JRT/JD), 2022 WL 18959155, at *1 (D. Minn. Oct. 19, 2022) (granting request to establish a fund for future litigation expenses in the amount of \$2.1 million and collecting cases establishing such future expense funds). As such, Plaintiffs ask the Court to approve reimbursement of Class Counsel's incurred litigation expenses of \$670,200.00 to be paid from the Settlement Fund. Further, Plaintiffs ask the Court to establish the set-aside fund for on-going litigation expenses and authorize Class Counsel to pay on-going litigation expenses related to ongoing class notice and settlement and claims administration costs, up to \$100,000.00, from the set-aside fund.

V. THE CLASS REPRESENTATIVES SHOULD RECEIVE SERVICE AWARDS

Courts in this District regularly grant service awards to class representatives in recognition of the time and effort they invested in the case. *See Khoday*, 2016 WL 1637039, at *12 (“Courts in this District routinely grant serviced awards for named plaintiffs.”) ((citing *Yarrington*, 697 F. Supp. 2d at 1068 (upholding service awards and recognizing 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, courts consider the following factors: “actions plaintiff[s] took to protect the class's interests, [the] degree to which the class has benefited from those actions, and [the] amount of time and effort [the named] plaintiff[s] expended in pursuing litigation.” *Zillhaver*, 646 F. Supp. 2d at 1085 (quoting *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Circ. 2001.)). Moreover, service awards also compensate representative plaintiffs who “participated and willingly took on the responsibility of prosecuting the case and publicly lending their names to this lawsuit, opening themselves up to scrutiny and attention from both the public and media.” *In re CenturyLink Sales Pracs. & Sec. Litig.*, No. CV 17-2832, 2020 WL 7133805, at *13 (D. Minn. Dec. 4, 2020).

Here, the Court should authorize a service award of \$5,000.00 for each of the following individuals who are Named Plaintiffs and/or Class Representatives in this litigation: Benjamin Tarnowski, Mitchelle Chavez Solis, Victor Delgado Jimenez, and Virginia Sanchez-Gomez. These individuals significantly contributed to advancing the litigation in numerous ways, including by advising attorneys; approving pleadings and settlements; reviewing and responding to written discovery; preparing for and sitting for depositions; search for, collecting, and producing documents. Asp Decl. ¶¶ 39-45, Exs. 6-9. They were never promised that they would receive any additional compensation for leading the case. *Id.* at ¶ 41. Rather, they devoted their own time and efforts solely to recover some portion of their own overcharges and to enable other Settlement Class

members to recover theirs. *Id.* This lawsuit would not have been possible without the courage of these individuals and their service to the Settlement Class. Plaintiffs' respectfully submit that they are deserving of these service awards. *Id.* at ¶ 39. As with the other uses of settlement funds, the long-form notice informed the Settlement Class of the request for service awards. *See* Long Form Notice § 10.

VI. CONCLUSION

For these reasons, Plaintiffs' respectfully request this Court (a) award attorneys' fees in the amount of \$643,500.00, which is equivalent to 33% of the Gross Settlement Fund; (b) approve reimbursement of incurred litigation costs of \$670,200.00 and authorize Class Counsel to pay on-going litigation expenses related to class notice and settlement and claims administration from the Settlement Fund set aside fund of up to \$100,000.00; and (c) approve service awards for Benjamin Tarnowski, Michelle Chavez Solis, Victor Delgado Jimenez, and Virginia Sanchez-Gomez in the amount of \$5,000.00 each (\$20,000.00 in total).

Respectfully submitted,

Dated: June 6, 2025

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