

IN THE IOWA DISTRICT COURT FOR LINN COUNTY

BRANDI BELL individually, and BRANDIE
KEEGAN, individually and on behalf of her
minor child, E.S., both on behalf of all others
similarly situated,

Plaintiffs,

v.

C.R. PHARMACY SERVICES, INC. d/b/a
CAREPRO HEALTH SERVICES,

Defendant.

Case No. CVCV104303

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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Plaintiffs Brandi Bell, individually, and Brandie Keegan, individually and on behalf of her minor child, E.S., (“Plaintiffs”) submits this Memorandum in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement.

I. INTRODUCTION

This case arises from a data breach that Plaintiffs allege compromised their private and protected health information, and the private and protected health information of the putative Class.

II. CASE SUMMARY

a. The Data Breach

Defendant C.R. Pharmacy Services, Inc. d/b/a CarePro Health Services (“CarePro” or “Defendant”) is an Iowa-based health care company that “offers a wide variety of medical services,” including pharmacy services to its patients. *See* Decl. of Lynn A. Toops in Supp. of Pl.’s Mot. for Prelim. Approval (“Toops Decl.”) ¶ 16.a, attached hereto.

In the ordinary course of receiving treatment and health care services from CarePro, patients may provide various sensitive personal and private information such as: names, contact information, dates of birth, health insurance information, Social Security numbers, and other sensitive information. *Id.* ¶ 16.b.

Plaintiffs allege that, on or around November 16, 2023, CarePro became aware of a network disruption incident which affected its ability to access certain systems (the “Data Breach” or “Data Incident”). *Id.* ¶ 16.c. CarePro launched an investigation into this suspicious activity and determined that certain information in its systems was acquired by an unauthorized individual on or around November 14, 2023. *Id.* ¶ 16.d. Plaintiffs allege that, as a result of the Data Breach, Plaintiffs and approximately 148,254 Class Members suffered ascertainable losses. *Id.* ¶ 16.e.

On or around January 11, 2024, CarePro sent written notice letters to individuals affected by

the Data Breach. Subsequently, this lawsuit was filed asserting claims against CarePro relating to the Data Incident. Toops Decl. ¶ 17.

b. Plaintiffs' Petition

Plaintiff Bell initiated her putative Class Action by filing her Class Action Petition in the Iowa District Court for Linn County on March 11, 2024. Plaintiff Keegan initiated her putative Class Action by filing her Class Action Petition in the Iowa District Court for Linn County on June 6, 2024. Plaintiffs filed their Amended Petition in the Iowa District Court for Linn County on July 25, 2024.

In their Amended Petition, Plaintiffs alleged ten causes of action: (1) negligence, (2) negligence per se, (3) breach of implied contract, (4) invasion of privacy, (5) breach of fiduciary duty, (6) breach of confidence, (7) invasion of privacy – intrusion upon seclusion, (8) violation of the Iowa Consumer Fraud Act (“ICFA”), (9) violation of the Iowa Personal Information Security Breach Protection Act (“PISBPA”), and (10) unjust enrichment. Plaintiffs’ Complaint sought monetary, punitive, actual damages and/or restitution as well as declaratory and equitable relief to enjoin CarePro from continuing their unlawful practices. Additionally, Plaintiffs’ Complaint also sought costs, expert’s fees and attorney fees related to the prosecution of this action.

On August 14, 2024, Defendant filed a motion to dismiss Plaintiffs’ petition. Toops Decl. ¶ 19. In response, Plaintiffs voluntarily dismissed their claims for invasion of privacy, but opposed the remainder of CarePro’s motion. *Id.* On October 29, 2024, this Court denied Defendant’s motion to dismiss. *Id.* ¶ 20.

c. History of Negotiations

From approximately January 2025 to April 2025, the Parties through their respective counsel, engaged in arm’s length negotiations on behalf of the Settlement Class as defined Section III of this Motion. To facilitate those negotiations, the Parties agreed to mediate Plaintiffs’ claims Bennett Picker of Stradley Ronon. Mr. Picker is a widely-respected mediator with extensive experience settling cases.

Toops Decl. ¶ 22. The Parties exchanged informal discovery related to the merits of Plaintiffs’ claims and class certification, and discussed their respective positions on the merits of the claims and class certification. *Id.* ¶ 23. This informal exchange of information, combined with Plaintiffs’ individual research, and the relevant experience of Class Counsel, allowed counsel to fully evaluate the strengths and weaknesses of Plaintiffs’ case, and to conduct informed settlement negotiations. *Id.* ¶ 24. On April 24, 2025, the Parties attended a full-day mediation via Zoom Video Conference with Mr. Picker. *Id.* ¶ 25. After a full day of arms’ length negotiations, and with the assistance of Mr. Picker, the Parties agreed to a memorandum of understanding setting forth the essential terms of the settlement agreement. *Id.* ¶ 26. Over the next several weeks, the Parties diligently drafted, negotiated, and finalized the settlement agreement, notice forms, and agreed upon a claims administrator. *Id.* ¶ 27.

Despite the grounds that exist for each of Plaintiffs’ claims—which CarePro denies—none are certain to resolve in Plaintiffs’ favor on the merits. *Id.* ¶ 28. Further litigation would subject Plaintiffs to numerous risks, including the risk that they and the other Class Members obtain no recovery at all. *Id.* ¶ 29. Settlement Class Counsel¹ have been able to utilize their extensive experience in healthcare data breach class actions, results of their internal investigations and discovery produced by CarePro to effectively negotiate Settlement terms that are fair, adequate and reasonable. *Id.* ¶ 30.

The Settlement Agreement was finalized by the Parties in July 2025. *See* Toops Decl. Ex. 1 (“Agr.”).

III. SUMMARY OF SETTLEMENT

a. Settlement Benefits

Plaintiffs, individually, and on behalf of the Settlement Class, and CarePro have entered into a Settlement to resolve Plaintiffs’ claims on a class-wide basis. The Settlement provides significant relief

¹ Lynn A. Toops of CohenMalad, LLP and John J. Nelson of Milberg, Coleman, Bryson, Phillips, Grossman, PLLC

for the Settlement Class, including a non-reversionary cash \$1,300,000.00 Settlement Fund and Business Practice Adjustments. *See generally* Settlement Agreement at Toops Decl. Ex. 1 (“Agr.”). The Settlement Class is defined as: “all individuals whose Personal Information was potentially compromised in the Data Incident.” Agr. ¶ 1.28.

The Settlement specifically excludes: (i) CarePro, and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the presiding judge, and his or her staff and family; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge. *Id.* at ¶ 1.28.

i. Documented Monetary Losses

Under the terms of the Settlement Agreement, Settlement Class Members may submit a Claim for a cash payment under this section for up to \$5,000.00 per Settlement Class Member upon presentation of documented losses related to the Data Incident. Agr. ¶¶ 2.4.1. To receive a payment for Documented Monetary Losses, a Settlement Class Member must attest that the losses or expenses were incurred as a result of the Data Incident. Settlement Class Members will be required to submit reasonable documentation supporting the losses. *Id.* Documented Monetary Losses may include, but are not limited to; (i) out of pocket credit monitoring costs that were incurred on or after November 16, 2023, through the date of Claim submission; (ii) unreimbursed losses associated with actual fraud or identity theft; and (iii) unreimbursed bank fees, long distance phone charges, postage, or gasoline for local travel. *Id.* Settlement Class Members may make claims for any documented unreimbursed out-of-pocket losses reasonably related to the Data Incident or to mitigating the effects of the Data Incident. *Id.*

ii. Pro Rata Cash Payment

In addition to or instead of Documented Monetary Losses, a Settlement Class Member may claim a pro rata cash payment in the estimated amount of \$100.00. Agr. ¶¶ 2.4.2. The payments shall be calculated by dividing remaining funds in the Settlement Fund, after payment of Settlement Administration Fees, Attorneys' Fees Costs and Expenses, Credit Monitoring and Identity Restoration Services, and Documented Monetary Losses, by the number of eligible claims. *Id.* The Pro Rata Cash Payments will be adjusted upwards or downwards based upon the number of valid claims filed. *Id.*

iii. Credit Monitoring

In addition to electing any of the other benefits, Settlement Class Members may claim two years of three-bureau Credit Monitoring that will provide the following benefits: three-bureau credit monitoring, dark web monitoring, identity theft insurance coverage for up to \$1,000,000, and fully managed identity recovery services. Agr. ¶ 2.4.3.

iv. Business Practices Changes

The Parties agree that as part of the settlement consideration, CarePro, has adopted, paid for, implemented, and will maintain certain business practice changes related to information security to safeguard personal information on its systems. CarePro will detail these business practice changes to Class Counsel in a confidential declaration. Agr. ¶ 2.4.5.

v. Release.

Following the Effective Date², the Parties and the Settlement Class Members shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims including Unknown Claims, against each of the Released Parties. *See* Agr. ¶¶ 7.1, 7.2. Consequently, their right to recourse shall be limited to benefits, rights, and remedies provided in the Settlement Agreement.

² The term is defined in Section 10.1 of the Settlement Agreement

b. The Notice and Claim Process

i. Notice.

Subject to the approval of this Court, the Parties have agreed to use Eisner Advisory Group, LLC (“EAG”) to administer the class claims of Settlement Class Members (“Claims Administrator”)³. Agr. ¶¶ 1.3, 2.5. The proposed Claims Administrator is experienced in administering class claims involving data breach lawsuits. Costs of providing Notice and Claims Administration to Class Members will be paid from the Settlement Fund. *Id.* ¶ 4.3.

Parties have agreed upon a notice plan whereby Settlement Class Members shall be provided a direct notice of the Settlement Agreement and their rights via U.S. mail. Agr. ¶ 4.2. Within seven (7) Days of the entry of the Preliminary Approval Order and engagement of a Claims Administrator, CarePro shall provide the Claims Administrator with the names and mailing addresses of the Settlement Class Members whose mailing addresses are known to CarePro. *Id.* ¶ 4.2.1. The Claims Administrator shall, by using the National Change of Address (“NCOA”) database maintained by the United States Postal Service (“Postal Service”), obtain updates, if any, to the mailing addresses of Settlement Class Members. *Id.* ¶ 4.2.2

Within thirty (30) Days of the entry of the Preliminary Approval Order (the “Notice Deadline”), the Claims Administrator shall send the Notice⁴ to all Settlement Class Members whose addresses are known to CarePro by First Class U.S. Mail. Agr. ¶ 1.16. If any Notice is returned by the Postal Service as undeliverable, the Claims Administrator shall re-mail the Notice to the forwarding address, if any, provided by the Postal Service on the face of the returned mail. *Id.* ¶ 4.2.2.

The Claims Administrator will also establish a dedicated Settlement Website. Agr. ¶¶ 4.2.3.

³ Parties agree that the Claims Administrator shall be either EAG or another mutually agreed upon company experienced in administering class action claims generally and specifically those of the type provided for and made in Lawsuit, if jointly agreed upon by the parties and approved by the Court.

⁴ Attached as Exhibit A to the Settlement Agreement.

The Settlement Website will be maintained and updated throughout the Claims Period, and will provide the forms of Short Notice, Long Notice, and Claim Form approved by the Court. *Id.* ¶¶ 4.2.3; *see also* Agr. Exs. A, B and C. Settlement Class Members will be able to submit Claim Forms⁵ through the Settlement Website. *See* Agr. ¶ 4.1.

ii. Claims.

The timing of the claims submission process is structured to ensure that all Class Members have adequate time to review the terms of the Settlement Agreement, compile documents supporting their claim, and decide whether they would like to opt-out or object. Toops Decl. ¶ 41. The Settlement provides Claim Forms shall be returned or submitted on or before 60 days after the date Notice is mailed to Settlement Class Members, to the Claims Administrator, via U.S. Mail or the Settlement Website. Agr. ¶ 1.4. The Claim Form, attached to the Settlement Agreement as **Exhibit C**, is written in plain language to facilitate Settlement Class Members' ease in completing it. *See* Agr. Ex. C. Claim Forms must be verified by the Settlement Class Members with a statement that: his or her claim is true and correct to the best of his or her knowledge and belief; and his or her claim is being made under the penalties of perjury. *Id.* The Settlement Class Members must however submit reasonable documentation to support any claims for out-of-pocket expenses and charges arising from the Data Incident. *Id.* Ex. C. The Parties have agreed to a dispute resolution process that allows the Claims Administrator to request supplemental information/documentation and accept or reject Class Members' requests for reimbursement. *Id.* ¶ 4.8.

iii. Requests to Opt-Out and Objections.

The Parties recommend an opt-out period of sixty (60) days after the Notice Deadline to allow Settlement Class Members the opportunity to request exclusion from the Settlement ("Opt-Out Period"). Agr. ¶ 1.19. This Opt-Out period is structured to give Settlement Class Members sufficient

⁵ Attached as Exhibit C to the Settlement Agreement and discussed in more detail in Section III(b)(ii) of this Motion.

time to access and review the Settlement documents—including Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Service Awards, which will be filed prior to the Final Approval Hearing. *See* Agr. Ex. D.

Any Settlement Class Member who wishes to exclude him/herself from the Settlement must make submit a written request including their signature and a statement clearly manifesting their intent to be excluded from the Settlement. Agr. ¶ 5.1. The request must: be postmarked by the Opt-Out Date. *Id.* ¶¶ 5.1. Any Settlement Class Member who elects to be excluded shall receive no benefits or compensation under this Settlement Agreement, shall gain no rights from the Settlement Agreement, shall not be bound by the Settlement Agreement, and shall have no right to object to the Settlement or proposed Settlement Agreement or to participate at the Final Approval Hearing. *Id.* ¶ 5.2.

Any Settlement Class Member who wishes to object to the Settlement Agreement must submit a timely written notice of his or her objection (“Objection”) by the Objection Date. Agr. ¶ 6.1. Such notice shall state: (i) the objector’s full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of notice, copy of original notice of the Data Incident); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any and all counsel representing the objector in connection with the objection; (vi) a statement as to whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; (vii) a list of all settlements to which the objector and/or their counsel have objected in the preceding three (3) years; and (viii) the objector’s signature and the signature of the objector’s duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation).

To be timely, written notice of an objection to the designated Post Office box established by the Claims Administrator by the Objection Date. *Id.*

c. Fees, Costs, and Service Awards

The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or incentive award to Representative Plaintiffs, until after the substantive terms of the settlement had been agreed upon, other than that CarePro would pay reasonable attorneys' fees, costs, expenses, and a service award to Representative Plaintiffs as may be agreed to by CarePro and Proposed Settlement Class Counsel and/or as ordered by the Court, or in the event of no agreement, then as ordered by the Court. Agr. ¶ 8.1.

Settlement Class Counsel will petition the court for a service award for the Plaintiffs not to exceed \$2,500 to each of the named Plaintiffs. Agr. ¶ 8.2. The award is intended to recognize Plaintiffs for their efforts in the litigation and commitment on behalf of the Settlement Class ("Service Award"). *Id.* If approved by the Court, CarePro or its insurer will pay the Service Award to an account established by Settlement Class Counsel no later than 7 Days after the Effective Date.

Settlement Class Counsel will petition the Court on notice to CarePro for an award of attorneys' fees not to exceed one-third of the Settlement Fund, and an award of any costs and out-of-pocket litigation expenses. Agr. ¶ 8.2. If approved by the Court, CarePro or its insurer will pay the Court-approved amount for attorneys' fees and expenses to an account established by Settlement Class Counsel no later than 7 Days after the Effective Date. *Id.* ¶ 8.4.

IV. LEGAL AUTHORITY

Iowa District Courts can only approve class action settlement agreements that are fair, adequate and reasonable. *City of Dubuque v. Iowa Tr.*, 587 N.W.2d 216, 222 (Iowa 1998). Certification of class actions in Iowa is primarily governed by Iowa Rules of Civil Procedure 1.261 through 1.264 *Bankr. Estate of Vangilder v. MidwestOne Bank*, 822 N.W.2d 745 (Iowa Ct. App.

2012).

One or more members of a class may sue or be sued as representative parties on behalf of all in a class action if both of the following occur:

- (1)** The class is so numerous or so constituted that joinder of all members, whether or not otherwise required or permitted, is impracticable.
- (2)** There is a question of law or fact common to the class.

Iowa R. Civ. P. 1.261.

In determining under rule 1.262 (2) that the representative parties fairly and adequately will protect the interests of the class, the court must find all of the following:

- a.** The attorney for the representative parties will adequately represent the interests of the class.
- b.** The representative parties do not have a conflict of interest in the maintenance of the class action.
- c.** The representative parties have or can acquire adequate financial resources, considering rule 1.276, to ensure that the interests of the class will not be harmed.

Iowa R. Civ. P. 1.262(2).

In determining whether the class action should be permitted for the fair and efficient adjudication of the controversy, the court shall consider and give appropriate weight to the following and other relevant factors:

- a.** Whether a joint or common interest exists among members of the class.
- b.** Whether the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for a party opposing the class.
- c.** Whether adjudications with respect to individual members of the class as a practical matter would be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interests.
- d.** Whether a party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the class as a whole.

e. Whether common questions of law or fact predominate over any questions affecting only individual members.

f. Whether other means of adjudicating the claims and defenses are impracticable or inefficient.

g. Whether a class action offers the most appropriate means of adjudicating the claims and defenses.

h. Whether members who are not representative parties have a substantial interest in individually controlling the prosecution or defense of separate actions.

i. Whether the class action involves a claim that is or has been the subject of a class action, a government action, or other proceeding.

j. Whether it is desirable to bring the class action in another forum.

k. Whether management of the class action poses unusual difficulties.

l. Whether any conflict of laws issues involved pose unusual difficulties.

m. Whether the claims of individual class members are insufficient in the amounts or interests involved, in view of the complexities of the issues and the expenses of the litigation, to afford significant relief to the members of the class.

Iowa R. Civ. P. 1.263(1).

The pre-requisites for approving class actions under Iowa law closely track the requirements under Rule 23 of the Federal Rules of Civil Procedures. In fact, the factors listed under Iowa R. Civ. P. 1.263(1) are routinely used for analysis of Rule 23 class action pre-requisites. Moreover, the rules are so similar that Iowa courts are permitted to rely on federal authorities construing the federal class action rules when interpreting local Iowa class action rules. *Bankr. Estate of Vangilder*, 822 N.W.2d 745 (Iowa Ct. App. 2012) (interpretation of class action law in Iowa is scant and for that reason federal authorities may be consulted if necessary).

Courts strongly encourage settlements, particularly in class actions and other complex matters where inherent costs, delays, and risks of continued litigation might otherwise outweigh any potential benefit the individual Plaintiff—or the Class—could hope to obtain. *See Cohn v. Nelson*, 375 F. Supp. 2d 844, 852 (E.D. Mo. 2005) (“The law favors settlement, particularly in class actions and other

complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995)); see also *In re Charter Commc’ns, Inc.Secs. Litig.*, No. 4:02-CV-1186 CAS, 2005 WL 4045741 (E.D. Mo. June 30, 2005); *Liddell v. Bd.of Educ. of St. Louis*, No. 4:72CV100 SNL, 1999 WL 33314210, at *4 (E.D. Mo. Mar. 12, 1999) (noting policy in favor of settlement); *Little Rock Sch. Dist. v. Pulaski Cnty. Special Sch. Dist.*, 921 F.2d 1371, 1383 (8th Cir. 1990) (same). Because cases like the one at issue here, if handled on an individual basis, would heavily tax the court system, and cause large and unwarranted expenditures of both public and private resources, the proposed Settlement is the best vehicle for Settlement Class Members to receive relief in a prompt and efficient manner.

At the first, or preliminary approval stage, trial courts typically first certify the class for settlement purposes, and then consider the fairness of the settlement. *Briles v. Turban*, No. 8:15CV241, 2016 WL 4094866, at *5 (D. Neb. Aug. 1, 2016) (citing 4 *Newberg on Class Actions* § 11.26). “[T]he ‘fair, reasonable, and adequate’ standard is lowered, with emphasis only on whether the settlement is within the range of possible approval due to an absence of any glaring substantive or procedural deficiencies.” *Schoenbaum v. E.I. Dupont De Nemours Co.*, No. 4:05CV01108 ERW, 2009 WL 4782082, at *2 (E.D. Mo. Dec. 8, 2009). “The purpose of preliminary evaluation of proposed class action settlements is to determine whether the settlement is within the “range of reasonableness” such that notice should be issued to the class.” *Briles v. Turban*, 2016 WL 4094866, at *5 (citing 4 *Newberg on Class Actions* § 11.26) (internal quotations omitted). If the Court finds preliminary approval is warranted, Notice of the Settlement will be disseminated to Settlement Class Members who will have the opportunity to make a claim, object, or exclude themselves prior to the second—or final approval—stage of the Settlement.

As set forth below, the proposed Settlement Class warrant certification for settlement purposes

since the Settlement falls within the “range of reasonableness” under both the revised Rule 23 and the factors typically considered by Eight Circuit Courts and Iowa District Courts. Therefore, the proposed Settlement should be preliminarily approved so the Settlement Class Members can be notified and provided an opportunity to voice approval or opposition.

V. LEGAL DISCUSSION

a. The Settlement Class Should be Preliminarily Approved

Plaintiffs here seeks certification of a Settlement Class consisting of all persons whose private information was maintained on CarePro’s computer systems and/or network that was compromised in the cyberattack and who were sent notice of the data breach.

The *Manual for Complex Litigation (Fourth)* advises that in cases presented for both preliminary approval and class certification, the “judge should make a preliminary determination that the proposed class satisfies the criteria[.]” § 21.632. As previously referenced, the requisite elements for class action certification under Iowa Rules of Civil Procedure closely track the Rule 23 requirements under the Federal Rules. Therefore, this Court must undertake an assessment of the following pre-requisites to assess the feasibility of the preliminary approval of the Settlement Class: (1) the class must be so numerous that joinder of all members is impracticable; (2) there must be questions of law and fact common to the class; (3) the claims or defenses of the class representatives must typical of the claims or defenses of the class; (4) the representative parties must fairly and adequately protect the interests of the class; (5) that a common questions of law or fact predominate over any questions affecting only individual members; and (6) that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Because a court evaluating certification of a class action that settled is considering certification only in the context of settlement, the court’s evaluation is somewhat different than in a case that has not yet settled. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). In someways,

the court's review of certification of a settlement-only class is lessened: as no trial is anticipated in a settlement-only class case, the case management issues inherent in the ascertainable class determination need not be confronted. *See id.* However, other certification issues such as “those designed to protect absentees by blocking unwarranted or overbroad class definitions” require heightened scrutiny in the settlement-only class context since “a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.” *Id.*

Class actions involving data breaches are regularly certified for settlement. In fact, similar data breach cases have been certified—on a *national* basis—including the recent record-breaking settlement in *In re Equifax*. *See In re Equifax, Inc. Customer Data Sec. Breach Litig.*, No. 1:17-md-2800-TWT (N.D.Ga. July 25, 2019); *see, also, e.g., In re Target Corp. Customer Data Sec. Breach Litig.*, 309 F.R.D.482 (D. Minn. 2015); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040 (S.D. Tex. 2012). This case should be similarly certified.

i. The Proposed Class is Sufficiently Numerous.

Numerosity requires that “The class is so numerous or so constituted that joinder of all members, whether or not otherwise required or permitted, is impracticable.” Iowa R. Civ. P. 1.261. While there is no numerical requirement for satisfying the numerosity requirement, forty (40) class members generally satisfies the numerosity requirement. *Chorosevic v. MetLife Choices*, No. 4:05-CV-2394 CAS, 2007 WL 2159475, at *10 (E.D. Mo. July 26, 2007), *aff'd*, 600 F.3d 934 (8th Cir. 2010) (citing 1 Herbert Newberg & Alba Conte, *Newberg on Class Actions* § 3.5 at 247–48 (4th ed. 2002)).

Here, the Parties have identified approximately 148,254 individuals whose data was impacted by the Data Incident. *See Agr., Recitals*. The large number of persons in the Settlement Class render joinder impracticable. *See, e.g., Caroline C. ex rel. Carter v. Johnson*, 174 F.R.D. 452, 463 (D. Neb.

1996) (finding a class potentially numbering up to 1,037 sufficient to satisfy the requirement for numerosity); *Simmons v. Enter. Holdings, Inc.*, No. 4:10CV00625 AGF, 2012 WL 718640 (E.D. Mo. Mar. 6, 2012) (certifying a class in excess of 200 persons sufficiently numerous to warrant certification); *Morgan v. United Parcel Serv. Of Am., Inc.*, 169 F.R.D. 349, 355 (E.D. Mo. 1996) (finding numerosity met for class of at least 19 putative members). As such, the numerosity requirement is easily satisfied.

ii. *Questions of Law and Fact are Common to the Class.*

Commonality requires Plaintiffs to demonstrate “questions of law or fact common to the class.” Iowa R. Civ. P. 1.261. The threshold for meeting this prong is not high—commonality does not require that every question be common to every member of the class, but rather that the questions linking class members are substantially related to the resolution of the litigation even where the individuals are not identically situated. *White v. Nat’l Football League*, 822 F. Supp. 1389, 1403 (D. Minn. Apr. 30, 1993) (citing *Paxton v. Union Nat’l Bank*, 688 F.2d 552, 561 (8th Cir. 1982) (citations and quotations omitted)).

Here, the commonality requirement is met because the Plaintiffs assert they can demonstrate that numerous common issues exist. For example, whether CarePro failed to adequately safeguard the records of Plaintiffs and other Settlement Class Members is a common class-wide question. CarePro’s data security safeguards were common across the Class, and those applied to the data of one Settlement Class Member did not differ from those safeguards applied to another.

Other specific common issues include (but are not limited to):

- Whether CarePro unlawfully used, maintained, lost, or disclosed Plaintiffs’ and Settlement Class Members’ private information;
- Whether CarePro failed to implement and maintain reasonable security procedures and practices appropriate to the nature and scope of information

compromised in the Data Incident;

- Whether CarePro’s data security systems prior to and during the Data Incident complied with applicable data security laws and regulations including, *e.g.*, HIPAA; and
- Whether CarePro’s conduct rose to the level of negligence.

These common questions, and others alleged by the Plaintiffs in their Complaint, are central to the causes of action brought here and can be addressed on a class-wide basis. Thus, Plaintiffs have met the commonality requirement of Rule 23.

iii. Plaintiffs’ Claims and Defenses are Typical of the Class.

“Typicality under Rule 23(a)(3) means that there are ‘other members of the class who have the same or similar grievances as the plaintiff.’” *Alpern v. UtiliCorp United, Inc.*, 84 F.3d 1525, 1540 (8th Cir. 1996) (quoting *Donaldson v. Pillsbury Co.*, 554 F.2d 825, 830 (8th Cir. 1977)). “The burden of demonstrating typicality is fairly easily met so long as other class members have claims similar to the named plaintiff.” *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1174 (8th Cir.1995) (citation omitted). A plaintiff can meet the typicality requirement by showing that the claims of the representative and members of the class both stem from a single event. *Paxton v. Union Nat’l Bank*, 688 F.2d at 561.

Here, Plaintiffs and Settlement Class Members’ claims all stem from the same event—the cyber attack on CarePro’s systems that occurred on or around November 16, 2023. Thus, Plaintiffs’ claims are typical of the Settlement Class Members’ and the typicality requirement is satisfied.

iv. Plaintiffs and their Counsel will Provide Fair and Adequate Representation for the Class.

Representative Plaintiffs and their counsel must be able to provide fair and adequate representation for the Class. Iowa R. Civ. P. 1.263(1). The focus of the adequacy requirement is whether (1) the class representatives have common interests with the members of the class, and (2) whether class representatives will vigorously prosecute the interests of the class through

qualified counsel. *Paxton v. Union Nat'l Bank*, 688 F.2d at 562–63.

Here, Plaintiffs' interests are aligned with those of the Settlement Class in that they seek relief for injuries arising out of the same Data Incident. Plaintiffs and Settlement Class Members' data was all allegedly compromised by CarePro in the same manner. Under the terms of the Settlement Agreement, Plaintiffs and Settlement Class Members will all be eligible for reimbursement for costs and time expended in managing the personal impact that the Data Incident may have had on them as well as identity monitoring. Agr. ¶ 2.4.

Further, counsel for Plaintiffs have decades of combined experience as vigorous class action litigators and are well suited to advocate on behalf of the Class. *See* Toops Decl. ¶¶ 4-12; Decl. of John J. Nelson ("Nelson Decl."), filed herewith, ¶¶ 1–3.

v. *Because Common Issues Predominate Over Individualized Ones, Class Treatment is Superior.*

To show that common issue predominate, Plaintiffs must demonstrate that their claims can be proven on a systematic, class-wide basis. *Blades v. Monsanto Co.*, 400 F.3d 562, 569 (8th Cir. 2005); *see also Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551–57 (2011). This requirement "tests whether the proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods., Inc. v. Windsor*, 521 U.S. at 623.

In this case, the key predominating questions are whether CarePro had a duty to exercise reasonable care in safeguarding, securing, and protecting the PII of Plaintiffs and the Settlement Class, and whether CarePro breached that duty. These common questions that arise from CarePro's conduct predominate over any individualized issues. Other courts have recognized that the types of common issues arising from data breaches predominate over any individualized issues. *See, e.g., In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 312–15 (N.D. Cal. 2018) (finding predominance was satisfied because "Plaintiffs' case for liability depend[ed], first and foremost, on whether [the defendant] used reasonable data security to protect Plaintiffs' personal

information,” such that “the claims rise or fall on whether [the defendant] properly secured the stolen personal information,” and that these issues predominated over potential individual issues); *see also Hapka v. CareCentrix, Inc.*, No. 2:16-cv-02372-KGG, 2018 WL 1871449, at *2 (D. Kan. Feb. 15, 2018) (finding predominance was satisfied in a data breach case, stating “[t]he many common questions of fact and law that arise from the E-mail Security Incident and [Defendant’s] alleged conduct predominate over any individualized issues”); *In re The Home Depot, Inc., Customer Data Sec. Breach Litig.*, No.: 1:14-md-02583-TWT, 2016 WL 6902351, at *2 (N.D. Ga. Aug. 23, 2016) (finding common predominating questions included whether Home Depot failed to reasonably protect class members’ personal and financial information, whether it had a legal duty to do so, and whether it failed to timely notify class members of the data breach); *In re Heartland*, 851 F. Supp. 2d at 1059 (finding predominance satisfied in data breach case despite variations in state laws at issue, concluding such variations went only to trial management, which was inapplicable for settlement class).

Additionally, because the claims are being certified for purposes of settlement, there are no issues with manageability, and resolution of thousands of claims in one action is far superior to individual lawsuits. *Amchem*, 521 U.S. at 620 (“Confronted with a request for settlement-only certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.”).

The resolution of tens of thousands of claims in one action is far superior to litigation via individual lawsuits. Class certification—and class resolution—guarantee an increase in judicial efficiency and conservation of resources over the alternative of individually litigating tens of thousands of individual data breach cases arising out of the *same* Data Incident.

The common questions of fact and law that arise from Defendant’s conduct predominate over any individualized issues, a class action is the superior vehicle by which to resolve these

issues, and the requirements of Rule 23(b)(3) are met. Accordingly, the Class should be certified for settlement purposes.

b. The Settlement Terms Warrant Preliminary Approval

Under Federal Rule 23(e)(2), before issuing an approval of a class settlement, the Court must consider whether the proposed settlement is “fair, reasonable, and adequate after considering whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the class is adequate . . . ; and (D) the proposal treats class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(A)–(D). In determining whether the relief provided is adequate, Courts must consider: “(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3).” Fed. R. Civ. P. 23(e)(2)(C)(i)–(iv).

Before the 2018 revisions to Rule 23(e), the Eight Circuit had developed its own factors for consideration on final approval including consideration of: (1) the merits of the Plaintiffs’ case weighed against the terms of the settlement, (2) the defendant’s financial condition, (3) the complexity and expense of further litigation, and (4) the amount of opposition to the settlement. *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 932 (8th Cir. 2005).

The Settlement here falls within the range of possible approval in consideration of both the Rule 23, Eight Circuit and Iowa District Court factors. As such, preliminary approval is warranted.

i. Class Representatives and Counsel have Adequately Represented the Class.

As discussed at Section V(a)(iv), *supra*, the adequacy inquiry examines whether (1) the class representatives have common interests with the members of the class, and (2) whether class representatives will vigorously prosecute the interests of the class through qualified counsel.

Paxton v. Union Nat'l Bank, 688 F.2d at 562–63. Here, the Class Representatives, like all Class Members, have been victims of the same Data Incident, and thus have common interests with the Class. Moreover, they have ably represented the Class, maintaining contact with counsel, assisting in the investigation of the case, reviewing the material terms of the Settlement Agreement, remaining available for consultation throughout the mediation and answering counsel's many questions. Toops Decl. ¶ 60.

Proposed Class Counsel have also vigorously pursued the interests of the Class in securing a Settlement that brings immediate benefits to Class Members while avoiding the risks of continued litigation. In doing so, they leaned on their extensive experience in healthcare databreach litigation, their detailed investigation of this particular matter, and discovery exchanged during the course of their negotiations. *See generally*, Toops Decl., ¶¶ 4-12; Nelson Decl., ¶¶ 4-8. As such, this factor favors preliminary approval.

ii. The Settlement is the Product of Good-Faith Arm's Length Negotiations and is Absent of any Collusion.

Here, the Settlement was reached at mediation and after months of arm's length negotiations between counsel for the Parties. Toops Decl. ¶¶ 22-30. Proposed Class Counsel conducted an extensive investigation into the merits of the Plaintiffs' claims prior to filing their Complaints, and were well positioned throughout settlement negotiations to have a full understanding of the value of Plaintiffs' and Class Members' claims. *See White v. Nat'l Football League*, 836 F. Supp. 1458 (D. Minn. Aug. 19, 1993) (finding no evidence of collusion and concluding settlement was the result of arm's length negotiations); *Pollard v. Remington Arms Co.*, 320 F.R.D. 198, 220 (W.D. Mo. 2017) (finding a settlement reached after extensive investigation and discovery by class counsel was reached in good faith). As such, the Settlement was the product of good faith, non-collusive, and arm's length negotiations and should be approved.

iii. *The Settlement Agreement Provides Substantial Relief to the Settlement Class, Particularly in Light of the Uncertainty of Prevailing on the Merits.*

Settlement Class Members who submit valid claims are eligible to receive up to \$5,000 in reimbursements for documented monetary losses incurred as a result of the Data Incident. Agr. ¶¶ 2.4.1. Additionally, Settlement Class Members may claim a pro rata cash payment in the estimated amount of \$100.00. Agr. ¶¶ 2.4.2. Settlement Class Members may claim two years of three-bureau Credit Monitoring that will provide the following benefits: three-bureau credit monitoring, dark web monitoring, identity theft insurance coverage for up to \$1,000,000, and fully managed identity recovery services. Agr. ¶ 2.4.3.

The value achieved through the Settlement Agreement is guaranteed, where chances of prevailing on the merits are uncertain. While Plaintiffs strongly believe in the merits of their case, they also understand that CarePro will assert a number of potentially case-dispositive defenses. In fact, should litigation continue, Plaintiffs would likely have to survive a motion for summary judgment in order to proceed with litigation. Due at least in part to their cutting-edge nature and the rapidly evolving law, data breach cases like this one generally face substantial hurdles—even just to make it past the pleading stage. *See Hammond v. Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060(RMB)(RLE), 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). Class certification is another hurdle that would have to be overcome—and one that has been previously denied in other data breach cases. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013).

Plaintiffs dispute the defenses CarePro will likely assert—but it is obvious that their success at trial is far from certain. Through the Settlement, Plaintiffs and Class Members gain significant benefits without having to face further risk of not receiving any relief at all.

iv. *The Proposed Settlement Treats Settlement Class Members Equitably.*

Here, the proposed Settlement does not improperly discriminate between any segments of the

Class, as all Settlement Class Members are entitled to the same relief respectively. All Settlement Class Members are eligible to make a claim for the same amount of ordinary and extraordinary expense reimbursements. Importantly, direct Notice will be sent to Settlement Class Members, and all Settlement Class Members will also have the opportunity to object to or exclude themselves from the Settlement. And, while Plaintiffs will seek a Service Award not to exceed \$2,500 per Class Representative for their services on behalf of the Class, this award is *less than* the amount that any given Class Member can claim for documented monetary losses.

Accordingly, this factor also weighs in favor of preliminary approval.

v. *Other Factors Considered by Eight Circuit Courts Weigh in Favor of Preliminary Approval.*

The factors considered by Eight Circuit Courts prior to the amendment of Rule 23, and still considered by those Courts today, also weigh in favor of final approval.

Merits of the Plaintiffs' case weighed against the terms of the settlement: The Settlement provides for significant relief in light of the risks of proceeding with further litigation. As discussed extensively in Section V(b)(iii), *supra*, while Plaintiffs are confident in the merits of his claims, he faces significant risk in further litigation due in part to the constantly evolving nature of data breach litigation. Thus, this factor weighs in favor of preliminary approval.

The defendant's financial condition: The Defendant's financial condition is not at issue here, and thus does not weigh either for or against approval of the Settlement.

The complexity and expense of further litigation: Continued litigation is likely to be complex, lengthy, and expensive. Although Plaintiffs is confident in the merits of their claims, the risks discussed above cannot be disregarded. Aside from the potential that either side will lose at trial, the Plaintiffs anticipate incurring substantial additional costs in pursuing this litigation further. Should litigation continue, Plaintiffs would likely need to defeat a motion for summary judgement, and both gain and maintain certification of the Class. The level of additional costs would significantly increase

as Plaintiffs began their preparation for the certification argument and if successful, a near inevitable interlocutory appeal attempt. As at least one court, the Eighth Circuit has found, because the “legal issues involved in [in data breach litigation] are cutting-edge and unsettled . . . many resources would necessarily be spent litigating substantive law as well as other issues.” *In re Target Corp. Customer Data Sec. Breach Litig.*, No. 14-2522 (PAM/JJK), 2015 WL7253765, at *2 (D. Minn. Nov. 17, 2015).

The amount of opposition to the settlement: While no opposition to the Settlement is currently known, this factor is better examined after notice has been issued to the Class, and thus does not weigh either for or against preliminary approval of the Settlement.

Thus, these additional factors weigh in favor of approving a result exactly like that obtained by the Plaintiffs and Class Counsel: significant cash reimbursements for all Settlement Class Members who submit valid claims and identity monitoring services provided which will serve to better safeguard all Settlement Class Members’ PII. Accordingly, the Settlement should be preliminarily approved.

c. The Proposed Claims Administrator Will Provide Adequate Notice

Iowa law requires that “[i]f the court has certified the action . . . , notice of hearing on the proposed dismissal or compromise shall be given to all members of the class in a manner the court directs. If the court has not ruled on certification, notice of hearing on the proposed dismissal or compromise may be ordered by the court which shall specify the persons to be notified and the manner in which notice is to be given. Iowa R. Civ. P. 1.271. Furthermore, the notice

“shall include a description of the procedure available for modification of the dismissal or compromise and a full disclosure of the reasons for the dismissal or compromise including, but not limited to, the following:

- a.** Any payments made or to be made in connection with the dismissal or compromise.
- b.** The anticipated effect of the dismissal or compromise on the class members.
- c.** Any agreement made in connection with the dismissal or compromise.
- d.** A description and evaluation of alternatives considered by the representative parties.
- e.** An explanation of any other circumstances giving rise to the proposal.”

Iowa R. Civ. P. 1.271

The Notice provided for by the Settlement Agreement is designed to meet all the criteria set forth under Iowa law. *See* Agr. Exs. A–C. Here, CarePro has agreed to a direct and individual Notice Program, via U.S. mail to the last postal address provided to CarePro by the Settlement Class Members. Agr. ¶ 4.2.2. The mailing will be completed only after the Claims Administrator has run the postal addresses of Class Members through the United States Postal Service (“USPS”) National Change of Address database to update any change of address on file with the USPS, and any Notices returned as undeliverable will either be forwarded where a forwarding address is provided. *Id.* Not only has CarePro agreed to provide Settlement Class Members with individualized Notice via a direct mail, but all versions of the Settlement Notice will be available to Settlement Class Members on the Settlement Website, along with all relevant filings. Agr. ¶ 4.2.3.

The Notices themselves are clear and straightforward. *See* Agr. Exs. A–C. They define the Class; clearly describe the options available to Class Members and the deadlines for taking action; describe the essential terms of the Settlement and the alternatives considered by Class Counsel in negotiating the Settlement; provide a web address for the Settlement Agreement; provide reasons why a Settlement was a prudent option; disclose the requested service award for the Class Representatives as well as the amount that proposed Settlement Class Counsel intends to seek in fees and costs; explain procedures for making claims, objections, or requesting exclusion; provide information that will enable Settlement Class Members to calculate their individual recovery; describe the date, time, and place of the Final Fairness Hearing; and prominently display the address and phone number of Class Counsel. *Id.*

The Notice is designed to be the best practicable under the circumstances and complies with all the requirements iterated under Iowa law. Accordingly, the Notice Process should be approved by this Court.

VI. CONCLUSION

Plaintiffs have negotiated a fair, adequate, and reasonable Settlement that guarantees Settlement Class Members significant relief in the form of cost and time reimbursements and identity monitoring. For these and the above reasons, the Settlement Agreement clearly falls within the range of reasonableness and Plaintiffs respectfully request this Court grant their Motion for Preliminary Approval of Class Action Settlement.

Dated: July 30, 2025

Respectfully submitted,

/s/ J. Barton Goplerud

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing was filed on this 1st day of August, 2025 via the Court's electronic filing system, which will serve copies to all counsel of record.

/s/ J. Barton Goplerud _____
Attorney for Plaintiff