STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF RAMSEY | SECOND JUDICIAL DISTRICT

CASE TYPE: OTHER CIVIL

S.A. and A.M., individually and on behalf of all others similarly situated,

Plaintiffs,

v.

Minnesota Department of Public Safety; Bob Jacobson, in his official capacity as Commissioner of Public Safety; and Pong Xiong, in his official capacity as Director of the Minnesota Department of Public Safety Division of Driver and Vehicle Services,

Defendants.

Case No. 62-cv-23-2275
Judge Laura Nelson

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT

I. INTRODUCTION

Plaintiffs brought this case against Defendants, the Minnesota Department of Public Safety's ("DPS") Division of Driver and Vehicle Services ("DVS"), to ensure they would implement orders for expungement and seal driving records consistent with those court orders. Plaintiffs achieved exactly that result with the settlement here—it ensures that all expungement orders previously issued have been implemented by DVS and provides injunctive relief to that effect. *In addition*, the settlement secures $500,000 of direct cash relief to individuals whose records were not timely expunged. Every class member will receive funds from that settlement regardless of whether the class member can produce evidence of specific individualized damages. For class members who present evidence of individualized damages, the settlement allows for special compensation of up to $15,000.

The Court previously granted preliminary approval of this class settlement, conditionally certified the Settlement Class, appointed Plaintiffs as Class Representatives for the Settlement Class, appointed a Settlement Administrator, and appointed undersigned counsel as Class Counsel for the Settlement Class. *See* Order Granting Pls.' Mot. for Preliminary Approval of Settlement, Index No. 36. Consistent with that order, Class Counsel and the Settlement Administrator provided notice to the Settlement Class and processed claims for special compensation. Class Counsel and the Settlement Administrator received one objection to the settlement and no opt-outs. Class Counsel also filed a motion for an award of attorney's fees and expenses on September 12, 2025, in advance of the deadline to object or opt-out of the settlement.

Based on the nearly universal positive reaction to the settlement and the meaningful injunctive and monetary relief obtained for the Settlement Class, the Court should grant final approval of the settlement.

II. BACKGROUND

This case concerns the expungement of driving records held by DVS as required by court orders granting expungements under Minnesota Statutes Chapter 609A. The Class Representatives in this case, S.A. and A.M., both received statutory expungements of criminal records from a Minnesota court, but DVS did not timely seal driving records as required by those court orders and Minn. Stat. § 609A.03.[1] They brought this case on their own behalf and on behalf of all similarly situated individuals, seeking declaratory, injunctive, and monetary relief through claims under Minn. Stat. § 609A.04 and Minnesota common law—specifically, a claim for renewal of prior

[1] The full background and procedural history of this case, and the efforts of Class Counsel to prosecute the case on behalf of the class, are set forth in full in the previous memoranda filed in support of preliminary approval and Plaintiffs' application for attorney's fees and expenses. *See* Mem. in Supp. of Mot. for Att'ys Fees and Litig. Expenses, Index No. 38 at 3–10; Mem. in Supp. of Mot. for Prelim. Approval, Index No. 30 at 2–4.

expungement orders. *See* Am. Compl. ¶¶ 70–86. Plaintiffs sought to represent two classes: a class with claims for equitable relief, requiring the sealing of records consistent with prior expungement orders and a class with claims for damages and injunctive relief. *Id.* ¶¶ 57–58.

Plaintiff A.M. had received an expungement that expressly required the sealing of *both* criminal records and civil records held by DPS. Decl. of Derek C. Waller ("Waller Decl.") Ex. 3 at 9. Specifically, the expungement petition had been filed in both the criminal docket and the civil docket related to implied consent proceedings. *Id.* at 1. The order, filed on both dockets, instructed DPS to seal references to the implied consent proceeding. *Id.* at 9. DPS did not appeal the order.

On May 17, 2023, the parties agreed to stay the case to explore options for a possible resolution and exchange information. *See* Stip. To Stay Proceedings, Index No. 9. Through that process, Class Counsel obtained data and information from Defendants regarding agency policy and procedures on implementation of expungement orders. The parties also received copies of expungement orders issued to DPS, which Class Counsel used to conduct a manual review of those orders to identify potential class members. Defendants then compared the results of Class Counsel's review with their own internal systems and identified about 500 class members whose expungement orders were not timely implemented.

Following the investigation and its results, the parties attended a settlement conference in November 2024 before retired Minnesota Supreme Court Justice David Lillehaug. Through that mediation and subsequent negotiations through Justice Lillehaug, the parties reached a settlement agreement. *See* Waller Decl. Ex. 1 ("Settlement Agreement"). Defendants agreed to ensure all expungement orders were implemented, so that driving records were appropriately sealed consistent with those court orders. *Id.* ¶ 8. Defendants agreed to the entry of an injunction directing DVS to take all steps necessary to ensure that expungement orders are timely implemented in the

future. *Id.* ¶ 8. Defendants also agreed to a settlement payment of $900,000, of which $500,000 would be allocated for direct payment to class members, and up to $400,000 would cover attorneys' fees, litigation expenses, and class notice-related expenses.[2] *Id.* ¶ 6. The settlement payment will provide an opportunity for individuals who suffered specific, provable harm to recover up to $15,000 in damages, with the remaining funds distributed to the class *pro rata*. *Id.* ¶ 6.A.

The Settlement Agreement establishes a settlement class of:

> All individuals who have records held by DVS that were ordered to be sealed under Minnesota Statutes chapter 609A between January 1, 2015, and the present, but whose records DVS has not sealed or did not timely seal.

Id. ¶ 1.O. The parties subsequently amended the Settlement Agreement on May 14, 2025, to finalize the timeline and process for payment, as well as to clarify that the payment would revert to Defendants if the settlement is not approved by the Court. Waller Decl. Ex. 2 ("Amendment") at 1–2. The Settlement Agreement releases claims that "have or could have been asserted" in this case, including claims related to the alleged failure to seal criminal records. Settlement Agreement ¶ 9.B. Conditioned upon the Court's final approval of the settlement, the Plaintiffs agreed to dismiss the action with prejudice. *Id.* ¶ 9.A.

On July 28, 2025, the Settlement Administrator issued notice to the Settlement Class. Counsel for Defendants provided updated address information for most of the 482 class members based on its access to current drivers' license data. Decl. of Settlement Administrator ("Administrator Decl.") ¶ 5. The Settlement Administrator used this information and cross-

[2] Plaintiffs filed a motion for attorneys' fees and expenses, which seeks $360,000 in attorneys' fees and up to $40,000 in expenses based on expenses actually incurred through the conclusion of the settlement process.

referenced it with the U.S. Postal Service National Change of Address database to identify current addresses for the Settlement Class. *Id.* ¶ 6. After the addresses were updated, notices were mailed to the 482 class members with valid mailing addresses on July 28, 2025. *Id.* ¶ 7. Notices for some class members were returned by the U.S. Postal Service with and without forwarding addresses. *Id.* ¶¶ 10–11. For the 9 notices returned with a forwarding address, the notice was sent to the updated address. *Id.* ¶ 10. For the 64 notices returned without a forwarding address, the Settlement Administrator conducted a skip trace analysis and identified new addresses for 57 of the class members. *Id.* ¶ 11. In total, the Settlement Administrator sent notices to 475 class members, or 98.5% of the total class. *Id.* ¶ 12.

As of October 2, 2025, the Settlement Administrator received 57 claim submissions for Special Compensation and no requests for exclusion. *Id.* ¶¶ 11, 18. Of the 57 claims, 18 were filed by non-class members and were denied. *Id.* ¶ 12. The remaining 39 claims were filed by class members. Twenty-two claims stated that they did not claim to have experienced specific financial harm and did not identify an amount of monetary loss.[3] *Id.* ¶ 13. Accordingly, those claims were rejected. *Id.* Two claims were submitted but did not provide testimony or documentation to establish financial harm in connection with the failure to expunge records after the expungement order was entered. *Id.* ¶ 16. Those two claims received deficiency notices and an opportunity to cure the claim by providing additional testimony or documentation. *Id.*

Any class member who is not eligible for Special Compensation will still receive a pro rata share of the Settlement Fund, along with all other class members who did not file claims for special compensation. Based on the valid, approved claims to date, $182,000 of the Settlement Fund will

[3] It is likely these 22 class members believed a claim was necessary to obtain any recovery. These class members will still be entitled to recover a pro rata share.

be issued to individuals with claims for Special Compensation, leaving $318,000 for the remaining 467 class members. *Id.* ¶ 15. Based on those preliminary numbers, class members are likely to receive approximately $680 dollars each. The final number will change based on additional claims submitted, deficient claims that are corrected, and the actual value of the settlement fund, including the interest earned on the fund between the date the fund was created, and the date funds are distributed.

Class Counsel received one objection from Class Member G.P. ("Objector"). *See* Administrator Decl. Ex. A ("Objection").[4] The primary basis for the objection is that the settlement does not apply to civil and administrative records on driving records. Objector argues that the Settlement is insufficient, that it favors A.M. over other class members and therefore treats the class inequitably, that the fees requested are disproportionate, the release is overbroad, notice was insufficient, and that the class settlement should be reformed as a result. No other objections were filed. Administrator Decl. ¶ 17. The postmark deadline for claims to be filed is October 27, 2025.

To allow time for claims to be processed and any deficiencies to be corrected, Class Counsel requests that if final approval is granted, the Court direct counsel to file a motion for distribution of the settlement within 90 days, after the time to appeal the final approval order has passed. Minn. R. App. P. 104.01, subd. 1 (establishing 60 day approval period). That time would also allow the Settlement Administrator to distribute the settlement funds in accordance with the Settlement Agreement.

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[4] Class Counsel and the Settlement Administrator have confirmed that the G.P. is a member of the class. G.P. has requested that the Court grant permission for G.P. to proceed by initials in this case. Objection at 1. Plaintiffs agree that G.P. should be permitted to proceed by initials for the reasons Plaintiffs were permitted to proceed by initials in this action.

III. LEGAL STANDARD

"A court may approve a class action settlement if it is fair, adequate, reasonable, and not the product of collusion between the parties." *Heller v. Schwan's Sales Enters., Inc.*, 548 N.W.2d 287, 290 (Minn. Ct. App. 1996). When evaluating a settlement, "[t]he court must compare the settlement's terms with the results the plaintiffs would have likely received after a full trial." *Id.*

IV. ARGUMENT

A. The Court Should Grant Final Approval Over the Single Objection.

Plaintiffs' counsel received one objection to the class settlement from class member G.P. The objection raises several issues. G.P. objects that the settlement should apply to revocation, implied consent, and other civil and administrative entries that may appear on driving records. Objection at 1. G.P. argues that those records should be expunged because Minnesota Statutes Chapter 609A was intended to broadly erase any records related to criminal convictions and that civil and administrative infractions fall under the statute's language. *Id.* at 6. The Objector raises several related grounds for the objection. First, G.P. objects that the settlement only provides symbolic relief and is meaningless and inadequate. *Id.* at 7-9. Second, G.P. objects that the settlement provides special treatment to Plaintiff A.M. and, therefore, is unfair. *Id.* at 10-11. Third, G.P. objects to the attorney fee award as too high and disproportionate to the relief obtained for the class. *Id.* at 11-12. Fourth, G.P. objects that release is overbroad and unconscionable. *Id.* at 12. Fifth, G.P. objects that the notice was deficient and argues that the procedures for special compensation as unrealistic. *Id.* at 12-13. G.P. requests that the Court direct the parties to modify the settlement to include all collateral civil and administrative entries on driving records or deny approval of the settlement. *Id.* at 13-14.

The Court should grant final approval over this objection. First, civil and administrative entries on a driving record collateral to a criminal offense are generally not subject to expungement

under Minnesota Statutes chapter 609A and controlling precedent from the Minnesota Supreme Court. The Court must compare the relief obtained in the settlement with the relief class members would likely receive at trial. *See Heller*, 548 N.W.2d at 290. Absent a legislative change in law, the class would not be likely be entitled to expungement of collateral, non-criminal entries on their driving record. Second, A.M.'s collateral entries are situated differently because the district court order in her underlying expungement expressly required those collateral entries to be sealed in the civil case and Defendants did not appeal the order. Thus, even assuming the implied consent was not subject to expungement under Minnesota Statutes Chapter 609A, the order in her specific case was subject to renewal and enforcement, but as to her alone. Those unique circumstances justify the relief to resolve the individualized aspect of A.M.'s claim. Third, the release in this case is proportionate to the relief obtained, does not prohibit any *future* expungement proceedings, and the injunctive relief allows for enforcement of any noncompliance with any past expungement orders. If there is any legislative change or a subsequent expungement proceeding that authorizes the expungement of any civil or administrative driving records, the settlement would not release those claims based on those future developments. Finally, the remaining objections related to sufficiency of the notice and attorney's fees are based on inaccurate characterizations of the facts and should be rejected.

1. The Relief Obtained is Reasonable Because Minnesota Statutes Chapter 609A Does Not Apply to Civil or Administrative Infractions.

The primary basis for the Objection in this case is that the settlement should require Defendants to seal collateral civil and administrative entries on driving records. Objection at 1. When evaluating the reasonableness of a settlement, the Court must compare the relief obtained with the relief that would ultimately be available at trial. *See Heller*, 548 N.W.2d at 290. Here, the Settlement Class is unlikely to obtain relief in the form of sealing of civil and administrative

records at trial, because Minnesota Statutes Chapter 609A uses language the Minnesota Supreme Court has expressly said does not apply to civil and administrative infractions on driving records.

The Minnesota Supreme Court has established that a Minnesota court generally does not have authority to expunge civil or administrative records related to a revocation of a driver's license absent express, statutory authority. *Barlow v. Commissioner of Public Safety*, 365 N.W.2d 232, 233 (Minn. 1985). In *Barlow*, the petitioner sought to expunge records relating to the revocation of his driver's license pursuant to the expungement statute in effect at the time and the court's inherent authority. *Id.* at 233–34. The Court reviewed the expungement law at the time. *Id.* at 233. That expungement law stated:

> Any person [convicted of certain drug offenses] . . . may petition the court in which he was convicted to expunge from all official records, other than the nonpublic record retained by the department of public safety pursuant to section 152.13, subdivision 2, clause (5), all recordation *relating to the arrest, indictment or information, trial and conviction* of an offense more serious than a petty misdemeanor.

Minn. Stat. § 152.18, subd. 3 (1984)) (emphasis added). Analyzing this language, the Court held that "if the legislature had intended expungement of license revocation records it would have said so in no uncertain language." *Barlow*, 365 N.W.2d at 234.[5] The Minnesota Supreme Court has not modified this holding from *Barlow*. *See State v. S.L.H.*, 755 N.W.2d 271, 277 (Minn. 2008) (discussing and applying holding from *Barlow* that the judiciary lacks statutory authority to expunge a license revocation).

[5] The Court also determined that the judiciary lacked inherent authority to expungement revocation records. *Barlow*, 365 N.W.2d at 234. More recently, the Supreme Court determined that the judiciary lacks inherent authority to expunge *any* executive branch records. *State v. M.D.T.*, 831 N.W.2d 276, 284 (Minn. 2013).

Although Minnesota's expungement law has changed substantially in many respects since *Barow* was decided in 1985, the legislature has not adopted any language clearly extending expungement to license revocation or other civil and administrative proceedings. The statute describes expungements as pertaining to criminal records throughout. *See, e.g.*, Minn. Stat. §§ 609A.01 ("This chapter provides the grounds and procedures for expungement of criminal records . . . ."); 609A.015, subd. 1 ("A person who is the subject of a criminal record or delinquency record is eligible for a grant of expungement . . . ."); 609A.02, subd. 3 ("Certain criminal proceedings"); 609A.03, subd. 1 ("An individual who is the subject of a criminal record who is seeking the expungement of the record shall file a petition . . . ."); 609A.03, subd. 5 ("[E]xpungement of a criminal record under this section is an extraordinary remedy . . . .").

G.P. argues that because revocation and other notations on a driving record are among "all records relating to" the criminal proceedings described in the statute, they are encompassed by the statute. *See* Objection at 1 (citing Minn. Stat. § 609A.02, subd. 1 ("A petition may be filed under section 609A.03 to seal all records relating to an arrest, indictment or information, trial, or verdict.")). This language is identical to the language the Minnesota Supreme Court analyzed in *Barlow. Compare* Minn. Stat. § 609A.02, subd. 1 ("A petition may be filed under section 609A.03 to seal all records *relating to an arrest, indictment or information, trial,* or verdict . . . .") *with* Minn. Stat. § 152.18, subd. 3 (1984) ("Any person . . . may petition the court in which he was convicted to expunge . . . all recordation *relating to the arrest, indictment or information, trial* and conviction . . . .") (emphasis added to matching language).

Based on the binding precedent in *Barlow*, which analyzed identical language, it is unlikely a court would determine that all revocation and similar proceedings are subject to expungement on a class-wide basis. "It is well settled that implied-consent proceedings are civil in nature." *State*

v. Wagner, 637 N.W.2d 330, 337 (Minn. Ct. App. 2001) (describing differences between civil implied-consent related proceedings and criminal proceedings). Minnesota courts interpreting the expungement law have consistently noted that it does not apply to civil proceedings. For example, when the court of appeals reviewed an order denying an inherent authority expungement for a civil restraining order, the court noted that "[u]nlike a motion for the expungement of criminal or eviction records, there is no statutory basis for a petitioner to seek expungement of HRO [harassment restraining order] records." *Grant Cnty. Social Servs. v. S.J.M.*, A14-1109, 2015 WL 13891787, at *2 (Minn. Ct. App. May 4, 2015). The court of appeals affirmed, concluding that the civil order was not subject to statutory expungement or expungement under the court's inherent authority. *Id.* at *2.

In addition, the legislature has separately addressed mechanisms for addressing revocations and related proceedings on driving records. *See* Minn. Stat. § 171.12. Specifically, the alcohol concentration after a revocation or resulting from a DUI violation must be recorded on the individual's driving record "and must be kept for the period of time specified." Minn. Stat. § 171.12, subd. 2a. The statute further specifies the time periods for retention of records. Minn. Stat. § 171.12, subd. 3. Notwithstanding those retention periods, the statute specifies that certain records must be removed when the order for revocation, suspension, or cancellation is rescinded. Minn. Stat. § 171.12, subd. 3a. Revocations, suspensions, cancellations, and disqualifications can be challenged in court through proceedings established by Minn. Stat. § 171.19.

G.P. argues that the purpose of the legislature's amendments to Minnesota Statutes Chapter 609A was to broaden expungements, including to DUI-related convictions, and that any conflict with Minn. Stat. § 171.12 could be resolved by allowing courts to seal but not destroy those

records. Objection at 6-7. G.P. notes that these records cause further harm to individuals that the expungement law was intended to correct. Objection at 9-10.

These policy arguments may be persuasive to the legislature, but they do not change the analysis this Court must conduct under the statute's plain language and stare decisis. Under Minnesota's principles of statutory interpretation, "when a court of last resort has construed the language of a law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language." Minn. Stat. § 645.17(4). The Minnesota Supreme Court has emphasized: "[T]he doctrine of stare decisis has *special force* in the area of statutory interpretation because the Legislature is free to alter what we have done." *Else v. Auto-Owners Ins.*, 980 N.W.2d 319, 329 (Minn. 2022). Once the Minnesota Supreme Court has "interpreted a statute, that prior interpretation 'guides [the Court] in reviewing subsequent disputes over the meaning of the statute.'" *Id.* (quoting *Hagen v. Steven Scott Mgmt., Inc.*, 963 N.W.2d 164, 174 (Minn. 2021)). "[J]udicial construction of a statute becomes part of the statute as though written therein." *Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222, 230 (Minn. 2020) (quotation omitted).

These principles apply in full force here. In *Barlow*, the Minnesota Supreme Court interpreted that language "relating to indictment or information, trial and conviction" to exclude sealing of civil and administrative revocation proceedings on driving records. 365 N.W.2d at 233. The legislature subsequently maintained this same language when it enacted Minnesota Statutes Chapter 609A, and when it later made substantial revisions to the statute. *See* Minn. Stat. § 609A.02, subd. 1. Even though a new law was enacted, the legislature "intend[ed] the same construction" to be placed on the same language in the "subsequent law[] on the same subject matter." Minn. Stat. § 645.17(4).

Therefore, because a class-wide expungement of all civil and administrative entries is unlikely to be obtained at trial, the settlement is not unreasonable.

2. Plaintiff A.M.'s Individualized Relief Is Appropriate and Reasonable.

In the settlement, Defendants agreed to seal records related to a revocation for Plaintiff A.M. only. Settlement Agreement ¶ 7. That issue is individualized for Plaintiff A.M. because of unique language that is specific to her expungement order. Because of this unique language, the additional consideration for A.M. is reasonable under the circumstances and does not reflect differential treatment.

A.M.'s order for expungement was filed in *both* the criminal case and the civil case containing the implied consent proceedings. *See* Waller Decl. Ex. 3 at 1. In A.M.'s case, the implied consent petition was withdrawn and the matter dismissed. *Id.* at 2. A.M. specifically asked the court to seal the records related to the revocation proceedings and DPS did not object to the expungement. *Id.* at 3. In the final order, the court directed DPS to "seal or otherwise remove references contained in its files related to Petitioner's charging and subsequent proceeding." *Id.* at 9. Separately, the court ordered DPS to "*also* seal or otherwise remove references contained in its files related to Petitioner's charging and subsequent proceedings including proceedings related to the revocation of Petitioner's driving privileges." *Id.* (emphasis added). DPS did not appeal this order.

The analysis for A.M.'s individual claim as it relates to revocation proceedings thus differs from the analysis for any class members who also had revocation proceedings but did not have the unique language present in their order for expungement. A.M.'s likelihood of success at trial on her individual claim is higher because, although Minn. Stat. § 609A.02 does not grant statutory authority to expunge revocation proceedings, DPS's failure to challenge that determination makes it more likely she would succeed in enforcing the specific language in that court order at trial. Even

where a court commits error, courts do not reverse or alter those orders absent an appeal by the adverse party under the party presentation principle. *See, e.g.*, *Greenlaw v. United States*, 554 U.S. 237, 246-47 (2008) (applying the party presentation principle to hold that there is no plain-error exception to the cross-appeal rule). The Minnesota Supreme Court adheres to this principle. *See, e.g.*, *Leuthard v. Ind. Sch. Dist. 912 – Milaca*, 958 N.W.2d 640, 650 (Minn. 2021) (holding that the lower court erred as a matter of law by vacating a ruling on grounds that were not the basis for appeal); *State v. Foster*, 20 N.W.3d 6, 28 (Minn. 2025) (Gaïtas, J., concurring) (discussing party presentation principle and applying it consistent with the approach articulated in this brief). Here, the individual relief for A.M. is reasonable because, unlike the Settlement Class, she was likely to succeed at trial on the specific issue related to sealing revocation proceedings.

G.P. argues that the relief for A.M. is proof that the settlement must seal similar records for the entire Settlement Class. Objection at 10-11. First, this assumes that the Settlement Class are all similarly situated with respect to revocation proceedings. But only class members who had certain convictions would have collateral civil proceedings on their driving record. Second, G.P. essentially seeks relief for a different class. This case seeks to correct Defendants' failure to timely expungement criminal records *at all*. If there were a legal basis to certify a class of all individuals whose revocation proceedings were not expunged, it would be different class to include those individuals with revocation proceedings related to DUI convictions where the criminal expungement order *was* implemented by DVS. This would include a different (and substantially larger) group of individuals, some of whom may overlap with the Settlement Class here.

To resolve A.M.'s individual claim as it relates to revocation proceedings based on the unique language in her order for expungement, the parties agreed to resolve that individualized aspect of A.M.'s claim in the Settlement Agreement. Settlement Agreement ¶ 7.

3. The Release is Reasonable and Proportionate to the Relief Obtained.

The release in this case is tailored to the claims at issue and does not preclude any class member from future expungement proceedings, including proceedings seeking to obtain an expungement of civil or administrative entries on driving records. G.P. argues that the release in this case is unconscionable because the Settlement Agreement does not require civil and administrative entries on driving records to be sealed, but releases the rights of any class member related to any claim that those entries should be expunged.

The release applies to "all claims against the Released Parties that have or could have been asserted in this Action, including all claims under Minnesota Statutes section 13.08 and 609A.04 and all other claims relating to the Released Parties' alleged failure to seal criminal convictions expunged pursuant to Minnesota Statutes chapter 609A." Settlement Agreement ¶ 9.B. G.P. argues that "class members could find themselves forever prohibited from seeking expungement or any remedy for those DPS records that remain public." Objection at 12. This argument misunderstands the terms of the release.

First, by its terms, the release applies to entries that have *already* been ordered expunged because those are the only claims that have been or could have been asserted in this case. In other words, the release does not limit the rights of any class member to seek a new expungement order via the petition process in the first instance. For example, if a class member had a 2005 conviction on their driving record that was ordered expunged and a 2017 conviction that had not been expunged, nothing would preclude the class member from filing a new expungement petition and obtaining an expungement order to seal the driving records for the 2017 conviction. If there is a change in the law or a class member files a new expungement petition specifically to seal the civil records related to an implied consent, and that petition is successful, DPS would be subject to that future order and any action to enforce compliance with that future order is not released.

Second, the Objection does not acknowledge the scope of the injunctive relief in this case. For example, if a class member discovers that, even after this settlement, DVS still failed to expunge the criminal records subject to the prior order, they may enforce the Settlement Agreement and injunctive relief obtained in this case. *See* Settlement Agreement ¶ 8.

4. The Attorney Fee Award Is Reasonable in Proportion to the Relief Obtained for the Class.

G.P. objects to the attorney fee award as disproportionate on the grounds that nearly 50% of the settlement goes to the attorneys and characterizes the injunctive relief as worthless. Objection at 11. The Court should reject these arguments.

First, the Settlement agreement allocates up to $400,000 of the to cover fees and litigation expenses. Settlement Agreement ¶ 6.B. As described in Plaintiffs' motion for attorneys' fees, they are seeking 40% of the fund for the time invested in this case. The negative lodestar multiplier of .85 confirms that the fee award here is reasonable, as Class Counsel are not recovering the full value of the time invested in this case. *See* Mem. in Supp. of Application for Fees and Expenses at 18. The remaining $40,000 is allocated to reimburse litigation expenses and to compensate the Settlement Administrator for its work in notifying the class, processing claims for special compensation, and other administrative work necessary to provide the settlement here.

Second, the Objection mischaracterizes the relief here, which provides substantial monetary relief to every class member. For individuals who can meet a minimal showing of proof of harm, they can obtain up to $15,000 in compensation—a substantial amount.[6] For individuals who cannot establish proof of individualized harm, they will obtain at least $200 and, based on the

[6] The fact that no class member chose to opt-out of the Settlement Class and attempt to prove their own damages in a higher amount suggests that this amount was reasonable.

claims for special compensation approved to date, will likely receive about $680 in direct, cash compensation. Absent specific proof of harm, these individuals may not have been able to recover *any* monetary compensation at trial. In comparison to typical cash payments in class actions, the direct payments to class members are substantial and will be well-above the 75th percentile of class action recoveries. *See* FTC, Consumers and Class Actions: A Retrospective and Analysis of Settlement Campaigns 21–23 (Sept. 2019), https://www.ftc.gov/reports/consumers-class-actions-retrospective-analysis-settlement-campaigns (analyzing class action settlement data and noting the median amount of compensation of $69, and the 75th percentile amount as $200).

Third, the Objection mischaracterizes the injunctive relief here as "meaningless." The basis for this objection is that some class members may have collateral civil entries that are not expunged as a result of this settlement. For the reasons discussed above, that is not relief the class members would be able to obtain at trial, so cannot render the injunctive relief wholly inadequate. In addition, if there was a legal basis for that relief on a class-wide basis, that relief would require a different class to include individuals with only certain convictions and individuals who had criminal expungement orders followed.

Without this case, and the settlement here, it is possible Defendants would have never addressed the issue. Plaintiffs alleged that Defendants were notified about the issue, but did not correct its internal processes until after this case was filed, including through extensive negotiations with Plaintiffs' Counsel. *See* Am. Compl. ¶¶ 50-56. The injunctive relief obtained thus resolves the central issue that has been at the heart of this case.

5. The Class Notice and Claims Procedures Are Not Inadequate or Misleading.

G.P. objects that the notice issued to the class was inadequate and misleading because it does not state that the settlement does not apply to civil convictions. The notice accurately describes the terms of the settlement and discloses the maximum amount of attorney's fees and

expenses that could be sought by Class Counsel. *See* Simmons Decl. Ex. C ("Long Form Notice"), Index No. 32 at 5. The Notice states that individuals are members of the class if they had records ordered to be expunged by a court, but where DPS failed to timely seal records consistent with those orders. Long Form Notice at 4. Driving records that are not subject to expungement under Minnesota Statutes Chapter 609A or that were not ordered to be expunged by a court are not covered by the settlement.

G.P. also objects that the procedures for submitting a claim for special compensation are confusing because the notice did not state "if you lost a job or housing due to your DWI record, you may submit a letter or documentation of that loss by X date to claim additional compensation." Objection at 13. G.P. speculates that due the notice, class members may not have submitted a claim for special compensation. Contrary to G.P.'s assertions, the Notice stated:

> The Settlement allows for Special Compensation for any individual who experienced specific financial harm as a result of Defendants' failure to expunge entries from their driving record. For example, you may be able to request Special Compensation if you lost a specific job opportunity because of a violation on a driving record that DVS had previously been ordered to expunge. To be eligible, you must submit documentation and an affidavit attesting to the amount and circumstances of the financial harm you experienced.

Long Form Notice at 4. This language plainly states what is required and provides an example. The Long Form Notice with this language was made available on the settlement website, and was directly referenced in the Short Form Notice mailed to the class. Administrator Decl. ¶ 6. To date, G.P. has not submitted a claim for special compensation, nor argued that they would have been entitled to special compensation if the procedures were articulated differently. The notice here, including notice of the special compensation procedures, satisfies the requirements of Rule 23. *See Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1153 (8th Cir. 1999) (overruling objections that notice

was insufficient where the notice described the settlement with sufficient particularity, including injunctive relief and terms of monetary relief).

6. The Court Cannot Modify the Terms of the Settlement.

The Objector in this case asks the Court to mandate Defendants to seal all civil and administrative records in addition to the criminal records. Objection at 14. However, the court lacks authority "to require parties to comply with a 'settlement' different from their own agreement." *In re Airline Ticket Comm'n Antitrust Litig.*, 953 F. Supp. 280, 284 (D. Minn. 1997) (quoting *Little Rock Sch. Dist. v. Pulaski Cnty. Spec. Sch. Dist.*, 921 F.2d 1371, 1384 (8th Cir. 1990)). A settlement is the product of compromise and often does not achieve everything the parties would prefer. *See George v. Uponor Corp.*, 2015 WL 5255280, at *7 (D. Minn. Sept. 9, 2015) (approving settlement terms that "reflect reasonable compromises"). Here, the Objector seeks relief that the parties would not be able to win at trial under binding precedent from the Minnesota Supreme Court. The Court should grant final approval over the Objection.

B. The Notice and Claims Process Provided Sufficient Notice to Class.

Minnesota Rule of Civil Procedure 23.02(b)(2) requires the court to direct "the best notice practicable under the circumstances, including individual notice to all member who can be identified through reasonable effort." This rule generally follows the standard established by the Federal Rules of Civil Procedure. *See* Minn. R. Civ. P. 23, advisory committee comment—2006 amendment. To satisfy the requirements of due process, "the notice must describe the action and class members' rights including their right to exclude themselves from the class," but it "need not provide every detail of the case, particularly when the notice provides methods for class members to receive additional information about the case." *Taqueria El Primo LLC v. Ill. Farmers Ins.*, 630 F. Supp. 3d 1121, 1125 (D. Minn. 2022). The notice "need not be perfect." *Hashw v. Department Stores Nat'l Bank*, 182 F. Supp. 3d 935, 946 (D. Minn. 2016).

Here, the class consists of 482 individuals, 475 of whom (or 98.5%) received direct notice in this case. *See* Administrator Decl. ¶¶ 3, 10. The notice consisted of the Short Form postcard notice. *See* Simmons Decl. Ex. B ("Short Form Notice"), Index No. 32 at 5; Administrator Decl. ¶ 5. Defendants provided data identifying each class member along with their last known address, as recorded by DVS. *Id.* ¶ 3. For notices that were returned with a forwarding address, the Settlement Administrator reissued those notices to the new address. *Id.* ¶¶ 4, 8. For notices that were returned without a forwarding address, the Settlement Administrator conducted a skip trace analysis and was able to identify addresses for the 57 of the 64 class members whose notice was returned without a forwarding address. *Id.* ¶ 9. This notice rate of 98.5% far exceeds notice rates court have held satisfies due process requirements. *See, e.g.*, *Feldman v. Star Tribune Media Co.*, No. 22-cv-1731 (ECT/TNL), 2024 WL 3026556, at *7 (D. Minn. June 17, 2024) (approving notice program where 78% of the class was reached, noting that was within the range of guidelines issued by the Federal Judicial Center); *Khoday v. Symantec Corp.*, Case No. 11-cv-180 (JRT/TNL), 2016 WL 1637039, at *7 (D. Minn. Apr. 5, 2016) (approving notice program with a roughly 92% successful notice rate); *In re CenturyLink Sales Practices and Securities Litig.*, MDL No. 17-2795 (MJD/KMM), 2020 WL 7133805, at *16 (D. Minn. Dec. 4, 2020) (approving notice rate of approximately 95%).

The Short Form Notice described the case and options to class members in plain language. The notice provided information about how the class members could obtain the Long Form Notice online and included a toll-free number that allowed class members to ask questions about the settlement. The Settlement Administrator created a website for class members to view key documents from the case, including the court's order on preliminary approval, Plaintiffs motion for attorney's fees, and the Settlement Agreement. Courts have approved notice programs with

similar procedures. *See, e.g.*, *Khoday*, 2016 WL 1637039 at *4; *In re CenturyLink*, 2020 WL 7133805, at *4.

To date, the Settlement Administrator has received 57 claims for special compensation. Of those, 15 have been approved for a total of $182,000 in special compensation relief.

C. The Settlement Obtains Meaningful Relief for the Class and Satisfies the Standard for Final Approval.

The Settlement Agreement here provides meaningful relief to the class, was the product of arms'-length negotiations, and avoids the risks of continued litigation.

1. The Settlement was Negotiated at Arms'-Length.

Courts consistently find that a Settlement Agreement is reasonable where the parties, represented by experienced counsel, have engaged in extensive negotiation at an appropriate stage in the litigation, and can evaluate the strengths and weaknesses of the case. *See, e.g.*, *In re Emp. Benefit Plans Sec. Litig.*, No. 3-92-708, 1993 WL 330595, *5 (D. Minn. June 2, 1993) (noting that "intensive and contentious negotiations likely result in meritorious settlements"); *In re Zurn Pex Plumbing Prods. Liab. Litig.*, No. 08-MDL-1958, 2013 WL 716088, at *6 (D. Minn. Feb. 27, 2013) (observing that "[s]ettlement agreements are presumptively valid, particularly where a 'settlement has been negotiated at arm's-length, discovery is sufficient, [and] the settlement proponents are experienced in similar matters'" (citation omitted)).

Here, the settlement was negotiated before a qualified neutral and experienced jurist, retired Justice David Lillehaug. *See Fath v. Am. Honda Motor Co.*, Case No. 18-cv-1549 (NEB/LIB), 2019 WL 6799796, at *3 (D. Minn. Dec. 13, 2019) (finding the experience of counsel and presence of qualified mediator "weighs in favor of approving the proposed settlement on a preliminary basis"); *In re UnitedHealth Grp. Inc. S'holder Derivative Litig.*, 631 F. Supp. 2d. 1151, 1156 (D. Minn. 2009) ("[A] court also may consider whether a settlement resulted from

arm's length negotiations, and whether a skilled mediator was involved."). In addition, the parties had exchanged substantial amounts of information and Class Counsel had analyzed thousands of expungement orders to identify class members and understand typical language of expungement orders.

2. The Settlement Provides Substantial Relief to the Class.

Courts routinely find injunctive relief provides substantial value to a settlement class. *See, e.g.*, *In re Target Corp. Customer Data Security Breach Litig.*, 892 F.3d 968, 974 n.6 (8th Cir. 2018) (approving settlement in data breach case with injunctive relief to implement data-security measures); *Keil v. Lopez*, 862 F.3d 685, 703 (8th Cir. 2017) (noting valuable injunctive relief for all class members weighs in favor of award of attorney's fees); *Marshall v. Nat'l Football League*, 787 F.3d 502, 509 (8th Cir. 2015) (noting all class members receive value when benefiting from injunctive relief); *Soderstrom v. MSP Crossroads Apartments LLC*, Civil No. 16-233 (ADM/KMM), 2018 WL 692912, at *6, 9 (D. Minn. Feb. 2, 2018) (finding that a settlement with injunctive relief to stop the challenged conduct was "central to resolving [the] litigation" and weighing that in approving attorney fee award).

The settlement here provides substantial injunctive and monetary relief to every member of the class. Until this case was filed, Defendants had not timely implemented expungement orders. Each class member had previously proven they were entitled to an expungement of certain criminal records, but many class members were likely unaware their driving records were not expunged. Some class members, including the named plaintiffs, lost job opportunities. Without this case, each class member would have needed to reopen their sealed criminal record and ask the court to enforce the order, file a new action to renew the expungement, or file a civil action under Minn. Stat. § 609A.04. The injunctive relief in this case allows each class member to avoid that burdensome process.

The injunctive relief also establishes an additional enforcement mechanism. To the extent any class member has not had driving records expunged consistent with their expungement order after entry of final approval in this case, the class member can enforce the settlement agreement and injunction entered by the Court in this case. Thus, the injunction allows for enforcement without the burden of reopening the sealed records and filing a separate, individual action.[7] This injunction also creates a deterrent effect to ensure Defendants comply with future expungement orders. *See Khoday v. Symantec Corp.*, Case No. 11-cv-180 (JRT/TNL), 2016 WL 1637039, at *16 (D. Minn. Apr. 5, 2016) (finding injunctive relief appropriate at noting deterrent effect of injunctive relief in the future).

In addition, class members will receive monetary relief. Individuals who can establish proof of direct financial harm resulting from unsealed driving records will have an opportunity to recover up to $15,000. This process—using a claims process for individuals with special damages—has been approved by courts in other cases. *See, e.g.*, *In re Target Corp. Customer Data Security Breach Litig.*, 892 F.3d at 972 (approving settlement over objections where "class members with documented proof of loss" can recover "up to $10,000 per claimant"); *In re Equifax Inc. Customer Data Security Breach Litig.*, 999 F.3d 1247, 1258 (11th Cir. 2021) (approving class settlement where individuals could receive reimbursement of up to $20,000 in "documented, out-of-pocket losses fairly traceable to the data breach"). This process for special compensation aligns with the damages available to the class members for documented losses for claims. *See* Minn. Stat.

[7] While class members bound by the settlement will have released claims related to failure to seal criminal records, *see* Settlement Agreement ¶ 9.B, the injunctive relief in the Settlement Agreement will provide class members a basis to enforce the terms of the settlement, which requires sealing criminal records, *id.* ¶ 8.

§ 13.08, subd. 1 (allowing for compensatory damages resulting from the statutory violation); Minn. Stat. § 609A.04 (incorporating the remedies available in Minn. Stat. § 13.08 by reference).

Under the settlement, even those individuals who did not have records timely expunged will receive a *pro rata* share of the remaining settlement funds after claims for special compensation are paid. Based on the number of claims approved to date, class members who do not receive special compensation will receive at least approximately $200. This recovery is substantial for a class action case. *See* FTC, Consumers and Class Actions: A Retrospective and Analysis of Settlement Campaigns 21–23 (Sept. 2019), https://www.ftc.gov/reports/consumers-class-actions-retrospective-analysis-settlement-campaigns (analyzing class action settlement data and noting the median amount of compensation of $69, and the 75th percentile amount as $200).

When compared to what the class members would receive at trial, the injunctive and monetary relief in this case is substantial.

3. The Settlement Eliminates Risks of Continued Litigation for the Class.

Continued litigation in this case would introduce risks due to the novel legal issues presented and the standard of proof necessary to obtain monetary relief for all class members. The primary statute at issue, Minn. Stat. § 609A.04, has never been interpreted by a Minnesota court. In addition, for class members who do not have proof of individualized harm, they could only obtain monetary recovery through punitive damages by proving willful violations of law. Minn. Stat. § 13.08, subd. 1 (providing that, for "a willful violation," the government entity is liable for "exemplary damages of not less than $1,000, nor more than $15,000 for each violation."). This is a high standard of proof and would require substantial discovery into Defendants' practices over the years. Given the high standard, there is a real risk that class members who no longer have the documentation or evidence necessary to prove individual harm recover nothing.

For individuals who can prove individual harm, no court has considered the standard of proof necessary to demonstrate harm caused by a failure to follow expungement orders. The claims process here allows for a more flexible standard with sworn testimony and relevant documentation that shows a financial loss was likely due to a conviction on their driving record. At trial, Defendants may raise individualized defenses or otherwise challenge damages. Through this settlement, class members with harm can recover through a minimally burdensome process.

4. The Class Overwhelmingly Supports the Settlement.

Of the 482 class members, none of opted out and only one objected. "While not dispositive, '[t]he fact that only a handful of class members objected to the settlement similarly weighs in its favor.'" *In re Uponor, Inc., F1807 Plumbing Fittings Prods. Liab. Litig.*, No 11-MD-2247 (ADM/JJK), 2012 WL 2512750, at *8 (D. Minn. June 29, 2012) (quoting *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995)). Where the vast majority of class member object or opt-out, courts will weigh that fact in favor of final approval. *See, e.g.*, *Khoday*, 2016 WL 1637039, at *11 (D. Minn. Apr. 5, 2016) (finding reaction of the class weighs in favor of award of attorney's fees); *In re Xcel Energy, Inc. Securities, Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980, 998 (D. Minn. 2005) (approving settlement over objections of small number of class members). Because the vast majority of the class of 482 individuals has not objected or opted out of the class, the reaction of the class overwhelmingly supports final approval.

V. CONCLUSION

This settlement resolves a years-long issue regarding the timely implementation of expungement orders by Defendants and provides meaningful relief to a class of 482 individuals. When compared to the results the class was likely to obtain at trial, this settlement provides an excellent outcome for the class with a combination of direct cash relief and, importantly, injunctive relief that ensures prior expungement orders will be followed. Plaintiffs respectfully request that

the Court approve the Settlement Agreement, certify the class for settlement purposes, and direct Class Counsel to file a motion for distribution of settlement funds after all claims for special compensation are processed.

Dated: October 21, 2025

s/Derek C. Waller

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ACKNOWLEDGMENT

The party upon whose behalf this pleading is submitted, by and through the undersigned, hereby acknowledge that costs, disbursements, and reasonable attorney fees and witness fees may be awarded to the party against whom the allegations in this pleading are asserted, pursuant to Minn. Stat. § 549.211.

Dated: October 21, 2025

By: *s/Derek C. Waller*
Derek C. Waller (MN #0401120)