

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF
NORTH CAROLINA

MICHAEL SWEAT, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

NUCOR CORPORATION,

Defendant.

Case No: 3:25-cv-00478-MOC-SCR

**PLAINTIFF'S MEMORANDUM OF
LAW IN SUPPORT OF UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

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I. INTRODUCTION

This case involves claims by Plaintiff Michael Sweat, on behalf of an alleged class, that a cybersecurity incident affecting Defendant Nucor Corporation caused information personally identifying him and others to be acquired by an unauthorized third party. The Parties have now reached an agreement to resolve this class action on a claims-made basis pursuant to terms set forth in the Parties' Settlement Agreement (the "Settlement" or "S.A.").¹ The Settlement provides that Settlement Class Members may submit a claim for one of the following settlement benefits: up to \$700 for reimbursement of documented losses (including up to three hours of lost time at \$25/hour), or up to \$7,500 for extraordinary losses. Further, Settlement Class Members who did not enroll in the two-years of credit monitoring offered by Nucor shortly after the Data Incident are eligible to receive two-years of credit monitoring. Finally, as part of its remediation efforts, Nucor has worked with its outside cybersecurity experts to further reinforce its information technology systems and to prevent future unauthorized access.

The Settlement represents an especially outstanding result considering some of the legal and practical hurdles Plaintiff would have faced had the case proceeded further into litigation. Defendant Nucor denies liability, and Plaintiff recognizes the outcome of the Action and the claims asserted in the Complaint are uncertain, and that pursuing the Action to judgment would entail substantial cost, risk and delay. Accordingly, Plaintiff respectfully requests that the Court preliminarily approve the terms and conditions of the Settlement and permit notice to the Settlement Class.

¹ The Settlement is attached as **Exhibit A** to the Declaration of Scott Edward Cole ("Cole Decl."). Unless otherwise indicated, capitalized terms herein shall have the same definition as set forth in the Settlement.

II. FACTUAL BACKGROUND

A. The Litigation

On approximately May 13, 2025, Nucor identified a cybersecurity incident involving unauthorized third-party access to certain data contained in information technology systems used by Nucor (the “Data Incident”). Nucor immediately took steps to contain, assess, and remediate the incident, including activating its incident response plan, proactively taking potentially affected systems offline, restoring affected data, and implementing other containment, remediation, and recovery measures. Nucor also engaged leading external cybersecurity experts to assist with its investigation and recovery efforts and notified federal law enforcement authorities. The investigation found that between May 3, 2025 and May 13, 2025, an unauthorized third party accessed and acquired certain data stored in the Nucor environment. Nucor determined that some of the data accessed and acquired without authorization likely included private information such as names, dates of birth, Social Security numbers and driver’s license numbers. Cole Decl. ¶ 3. Nucor then undertook a thorough and time-intensive review of that data to confirm that certain personal information was impacted. This review was completed on approximately June 16, 2025. Shortly thereafter, on or about June 24, 2025, Nucor began sending individuals who are now part of the Settlement Class, including Plaintiff, written notice of the incident. Cole Decl. ¶ 4. In this notice, Nucor offered two years of complimentary credit monitoring.

On July 2, 2025, Plaintiff Michael Sweat filed a Class Action Complaint. Thereafter, Class Counsel conducted research on how the incident occurred, the type of information involved, the size of the Settlement Class, Nucor’s response to the incident and other related issues. Cole Decl. ¶ 5.

B. Settlement Negotiations

The Parties came to an agreement after multiple rounds of arms-length negotiations. Class

Counsel has thoroughly investigated the key facts of this case. Cole Decl. ¶ 6. Class Counsel's investigation, combined with the information exchanged, provided Class Counsel with sufficient understanding about the relative strengths and weaknesses of the various claims and defenses at issue in this case to reach an informed decision and a fair resolution.

The Settlement was fully executed on November 5, 2025, and Plaintiff now respectfully requests that the Court grant this Motion for Preliminary Approval and allow Notice to be sent to the Settlement Class.

III. THE PROPOSED SETTLEMENT

A. The Settlement Class

The proposed Settlement Class is defined as follows:

“All individuals to whom Nucor sent notice relating to the Data Incident and the recipients' personal information.”

Excluded from the Settlement Class are all those persons who timely and validly request exclusion from the Settlement Class, as well as: (i) officers and directors of Nucor and/or the Related Entities; and (ii) the members of the judiciary who have presided or are presiding over this matter and their families and staff. S.A. ¶¶ 45-46.

B. Compensation to Settlement Class Members

The Settlement will be on a claims-made basis in which Settlement Class Members who submit a Valid Claim can receive reimbursement for various types of documented losses. Settlement Class Members who did not enroll in the two-years of credit monitoring offered by Nucor on its own initiative shortly after the Data Incident are eligible to receive two-years of credit monitoring services upon submission of a Valid Claim, regardless of whether they can establish documented losses. S.A. ¶¶ 51-52. Nucor's obligation to pay Valid Claims for the Settlement Class Member Benefits shall not exceed \$200,000, in the aggregate, for all Settlement Class Members.

If the total amount of otherwise valid claims exceeds \$200,000, all valid claims shall be reduced *pro rata*. S.A. ¶ 53.

i. Ordinary Losses and Attested Time

Settlement Class Members may submit a claim for Ordinary Losses seeking up to \$700 per person for expenses and time expended addressing the Data Incident that were incurred between June 24, 2025 and the Claim Form Deadline. S.A. ¶52(a). Such expenses may include up to three hours of lost time spent remedying issues fairly traceable to the Data Incident at a rate of twenty-five dollars (\$25.00) per hour. S.A.¶ 52(a)(iii). Settlement Class Members will have to attest that any lost time was spent remedying issues fairly traceable to the Data Incident and submit a short supporting description of those efforts. *Id.*

ii. Extraordinary Losses

Settlement Class Members may also seek to recover for Extraordinary Losses, meaning an actual documented and unreimbursed monetary loss associated with identity theft. Compensation for extraordinary Losses shall not exceed seven thousand five hundred dollars (\$7,500.00) per Settlement Class Member. Settlement Class Members may recover for these losses by submitting a timely and Valid Claim form along with the required documentation proving their entitlement to Extraordinary Losses. S.A. ¶52(b).

C. The Release

In exchange for the Settlement Class Member Benefits provided for under the Settlement, Settlement Class Members will release claims against Nucor and the Released Parties as set forth in the Settlement. The release is tailored to cover the claims that were asserted or that could have been asserted by Settlement Class Members related to the Data Incident. S.A. ¶¶ 49, 92.

D. The Notice and Claim Process

The Parties selected RG/2 Claims Administration LLC (“RG/2”) as the Settlement

Administrator. RG/2 is a nationally recognized and respected claims administrator. All costs of the Class Notice and Settlement Administrator will be paid separately from, and therefore will not reduce, the payments to Settlement Class Members. Cole Decl. ¶ 19. S.A. ¶ 58. The Notice Program provides for individual Notice to Settlement Class Members by direct U.S. Mail. S.A. ¶ 63. The Settlement Administrator will send the direct-mail notices after taking steps to ensure that notice reaches a percentage of the class consistent with due process.

The Settlement Administrator will also establish a dedicated Settlement Website that will include a means for the Settlement Class Members to submit Claim Forms and obtain notice and information about the Settlement, including hyperlinked access to the Settlement, the Preliminary Approval Order, Long Form Notice, Claim Form, Motion for Final Approval, Application for Attorneys' Fees, Costs, and Service Awards, and Final Approval Order, as well as other documents as the Parties agree to post or the Court orders posted. S.A. ¶ 60(c).

The Settlement Administrator will also create a toll-free help line so Settlement Class Members can obtain additional Settlement information. S.A. ¶ 60(d).

The timing of the claims process is structured to ensure that all Settlement Class Members have adequate time to review the terms of the Settlement, compile documents supporting their claim, and decide whether they would like to opt-out or object. Settlement Class Members will have until sixty (60) days after the Notice Date to complete and submit their Claim Form to the Settlement Administrator. S.A. ¶ 10. The Claim Form is written in plain language to facilitate Settlement Class Members' ease in completing it. S.A. at **Exhibit 3** (Claim Form). The Settlement Administrator will review the Claim Forms and determine if they are complete and valid. S.A. ¶ 52.

Settlement Class Members will have sixty (60) days from the Notice Date to object to or submit a request for exclusion from the Settlement. S.A. ¶¶ 31-32. Similar to the timing of the

claims process, the timing with regard to objections and requests for exclusion is structured to give Settlement Class Members sufficient time to access and review the Settlement documents.²

E. Attorneys' Fees, Costs and Service Award

As part of the Settlement, Plaintiff will separately file a motion for an award of \$100,000 in attorneys' fees and litigation costs. S.A. ¶ 87; Cole Decl. ¶ 15. Any approved Attorneys' Fees and Cost Award will be paid separately from, and will not reduce, payments to Settlement Class Members. S.A. ¶ 88. Plaintiff will also request a Service Award of \$2,000, which will also be paid separately from, and not reduce, payments to Settlement Class Members. S.A. ¶ 86. The Attorneys' Fees and Costs Award and Service Awards were not negotiated until after all material terms of the Settlement were agreed to. S.A. ¶ 89.

³ As required by Rule 23(c)(2)(B), the proposed Long Form Notice attached as **Exhibit 2** to the Settlement "clearly and concisely state[s] in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." It also describes the terms of the Settlement, including requests for a service award for the Class Representative and for an award of attorneys' fees and reimbursement of expenses; informs Settlement Class Members about their right to object to the Settlement (and how to do so); provides the date, time, and place of the Final Approval hearing and the procedures for appearing at the hearing; and provides contact information for Class Counsel and the Settlement Administrator.

The Notice Program will inform Settlement Class Members of the deadlines for objecting to the Settlement and excluding themselves from the Class. The deadlines themselves are reasonable. *See Turner v. Nat'l Football League*, 301 F.R.D. 191, 203 (E.D. Pa. 2014) ("It is well-settled that between 30 and 60 days is sufficient to allow class members to make their decisions to accept the settlement, object, or exclude themselves.").

IV. ARGUMENT

Federal Rule of Civil Procedure Rule 23(e), as amended in 2018, explicitly discusses the requirements for class settlements. First, the parties “provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.” FED. R. CIV. P. 23(e)(1)(A). The court then decides whether “giving notice is justified by the parties’ showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” FED. R. CIV. P. 23(e)(1)(B).

In determining whether to approve the Settlement, the Court should be guided by the principle that “[t]here is a strong judicial policy in favor of settlements, particularly in the class action context.” *Reed v. Big Water Resort, LLC*, No. 2:14-cv-01583-DCN, 2016 WL 7438449, at *5 (D.S.C. May 26, 2016); see also *Covarrubias v. Captain Charlie’s Seafood, Inc.*, No. 2:10-cv-10-F, 2011 WL 2690531, at *2 (E.D.N.C. July 6, 2011) (“There is a strong judicial policy in favor of settlement, in order to conserve scarce resources that would otherwise be devoted to protracted litigation.”); *Crandell v. U.S.*, 703 F.2d 74, 75 (4th Cir. 1983) (“Public policy, of course, favors private settlement of disputes.”). Indeed, “[t]he voluntary resolution of litigation through settlement is strongly favored by the courts and is ‘particularly appropriate’ in class actions.” *In re LandAmerica 1031 Exch. Servs. Inc. Internal Revenue Service §1031 Tax Deferred Exch. Litig.*, MDL No. 2054, 2012 WL 13124593, at *4 (D.S.C. July 12, 2012) (quoting *S.C. Nat’l Bank v. Stone*, 749 F. Supp. 1419, 1423 (D.S.C. 1990)). Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources. *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977).

A. The Settlement is “Fair, Reasonable, and Adequate” and Satisfies the Rule 23(e)(2) Factors for Preliminary Approval.

Rule 23(e)(2) sets forth the factors a court must consider in determining the fairness of a class action settlement. The factors include 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, taking into account (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); and (D) the proposal treats class members equitably relative to each other.” FED. R. CIV. P. 23(e)(2).

Under Rule 23, a settlement falls within the “range of possible approval” if there is a conceivable basis for presuming that the standard applied for final approval—fairness, adequacy and reasonableness—will be satisfied. In the Fourth Circuit, this requirement is satisfied when a settlement meets overlapping criteria including “consideration of the fairness of settlement negotiations and the adequacy of the consideration to the class.” *Gaston v. LexisNexis Risk Sols. Inc.*, No. 5:16-cv-0009-KDB-DCK, 2021 WL 244807, at *5 (W.D.N.C. Jan. 25, 2021) (quoting *Jiffy Lube*, 927 F.2d at 158-59). “However, at the preliminary approval stage, the Court need only find that the settlement is within ‘the range of possible approval.’” *Id.* As discussed below, the proposed Settlement satisfies each of the factors identified under Rule 23(e)(2), as well as the Fourth Circuit’s “fairness” and “adequacy” analysis, and the standard for certification of a class for settlement purposes is met, such that Notice of the proposed Settlement should be sent to the Settlement Class in advance of a Final Approval Hearing.

The Settlement here, as explained below, exceeds the preliminary approval threshold.

Plaintiff, without opposition from Nucor, respectfully requests that this Court preliminarily approve the proposed Settlement.

B. The Proposed Settlement Was Negotiated at Arm's Length

The Settlement resulted from arm's-length negotiations. Even after the general terms of a Settlement were reached, the Parties thereafter spent significant amounts of time revising drafts and negotiating details. Cole Decl. ¶ 7. Class Counsel, who negotiated the Settlement, is an experienced and respected class action litigator with significant experience in data breach cases. *Id.*, ¶¶ 20-24. Whether a settlement arises from arm's-length negotiations is a key factor in assessing preliminary approval. (*In re NeuStar, Inc. Sec. Litig.*, No. 1:14cv885 (JCC/TRJ), 2015 WL 5674798, at *10 (E.D. Va. Sept. 23, 2015)) (stressing the importance of arm's-length negotiations and considerable weight given to the views of experienced counsel).

C. The Relief Provided for the Settlement Class is Adequate

This Action and the proposed Settlement are the product of significant investigation of Plaintiff's and Settlement Class Members' claims. Class Counsel investigated various issues such as the demographics of the Settlement Class, the information affected by the Data Incident, Nucor's response to the incident and notification of Settlement Class Members. Cole Decl. ¶ 5. Plaintiff's and Class Counsel's preparation for settlement negotiations further informed Plaintiff's assessment of the relative strengths and weaknesses of their claims. Cole Decl. ¶ 6. Based on Class Counsel's independent investigation of the relevant facts and applicable law, and broad experience with other data breach cases, Class Counsel determined that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class. Cole Decl. ¶ 26.

D. The Settlement Accounts for the Costs, Risks and Delay of Trial and Appeal

The immediate benefits that the Settlement provides stand in contrast to the risks, uncertainties, and delays of continued litigation. Class Counsel thoroughly assessed those

contingencies in considering the terms of the Settlement. Cole Decl. ¶ 12.

If the litigation were to continue, Plaintiff and the Settlement Class would face a number of delays and challenges, including seeking class certification, briefing motions for summary judgment, defending expert opinions, maintaining certification through trial, and prevailing at trial. *See Clark v. Duke Univ.*, No. 1:16-cv-1044, 2019 WL 2588029, at *6 (M.D.N.C. June 24, 2019) (noting the significant risks to continued litigation posed by “recent dismissals in similar actions”). *Wallace*, 301 F.R.D. 144 at *161 (“The more risks that Plaintiffs may face during litigation the stronger this factor favors approving a settlement”). The settlement provides for an effective method of distributing relief to the Settlement Class, including through a simplified claims process.

The Settlement creates a straightforward procedure for Settlement Class Members to make a claim. It also provides for effective notice to Settlement Class Members using direct mailing. This factor supports the fairness of the settlement. *See In re Canon U.S.A. Data Breach Litig.*, No. 20-cv-6239, 2023 WL 7936207, at *4 (E.D.N.Y. Nov. 15, 2023) (granting preliminary approval to data breach settlement under which class members could claim ordinary losses, extraordinary losses, and credit monitoring).

E. The Proposed Attorneys’ Fee Award is Reasonable

Class Counsel has devoted significant time and financial resources to the litigation despite the uncertainty of prevailing as to class certification and the merits and establishing damages. Class Counsel did not broach the topic of attorneys’ fees until *after* agreeing on all substantive settlement terms with Nucor. Cole Decl. ¶ 15. Plaintiff will seek an award for attorneys’ fees and reimbursement of costs amounting to \$100,000, subject to Court approval and to be paid separately from payments to Settlement Class Members. S.A. ¶ 87.

F. There are no additional agreements

Rule 23(e)(2)(C)(iv) requires courts to consider any agreement among the parties outside

of the settlement agreement. “The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.” FED. R. CIV. P. 23(e)(3). No such agreement exists in this case. Cole Decl. ¶ 16.

G. The Settlement Treats Settlement Class Members Equitably Relative to Each Other

Finally, as discussed supra, the Settlement treats all Settlement Class Members equitably and provides all Settlement Class Members with the same convenient means to recover. The task of validating those claims will be delegated to Settlement Administrator RG/2, a neutral party which has significant experience processing these claims in similar cases. Additionally, the Claim Period will be sufficiently long to enable all eligible Settlement Class Members to collect any necessary information before submitting their claims. For these reasons, the plan of distribution is both equitable and effective.

H. Factors Traditionally Evaluated by Fourth Circuit Courts Weigh in Favor of Preliminary Approval

To determine whether a settlement is fair, the Court considers the four factors set forth by the Fourth Circuit in *In re Jiffy Lube Secs. Litig.*, 927 F.2d 155, 158–59 (4th Cir. 1991): “(1) the posture of the case at the time settlement was proposed; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations; and (4) the experience of counsel.” *In re Jiffy Lube*, 927 F.2d at 158–59. To determine whether a settlement is adequate, the courts also look to: “(1) the relative strength of the plaintiffs’ case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement.” *Id.*

Evaluation under both these factors and those enumerated in Rule 23 confirms that the

proposed Settlement is fair, adequate, and reasonable; accordingly, the Court should issue notice of the Settlement to the Settlement Class.

i. The Settlement Meets Traditional Criteria for Fairness

Factors set forth by the Fourth Circuit in *Jiffy Lube* pertaining to the fairness of a given settlement support preliminary approval here. *See In re Jiffy Lube*, 927 F.2d at 158– 59.

First, Plaintiff contends that the posture of the case supports approval of settlement. Though early in litigation, Class Counsel has conducted an investigation of the claims, both Parties have evaluated liability and damages issues, and the Parties engaged in informal information-sharing that allowed the Parties to fully evaluate the claims, defenses, and litigation risks at issue.

Second, the extent of discovery conducted supports approval. Such discovery includes an exchange of information including information regarding the Data Incident (its causes, effects, and Nucor’s response) and the approximate number of individuals affected by the Data Incident. Formal discovery is not a necessary prerequisite to approval. *See Domonoske v. Bank of Am., N.A.*, 790 F. Supp. 2d 466, 473 (W.D. Va. June 14, 2011) (finding “burdensome, expensive discovery that seems to plague so many class actions” unnecessary to support approval where case is straightforward and the record was adequately developed).

And finally, the extensive experience of counsel supports a finding of fairness. Counsel here has deep experience in both class actions generally and data breach class actions in particular, and support the settlement as fair, reasonable, and adequate. *see Strang v. JHM Mortg. Sec. Ltd. P’ship*, 890 F. Supp. 499, 501–02 (E.D. Va. June 8, 1995) (opining class counsel’s “wealth of experience and knowledge” supported finding of fairness).

ii. The Settlement Meets Traditional Criteria for Adequacy

An analysis of factors pertaining to the adequacy of a settlement also support preliminary approval here. *See In re Jiffy Lube*, 927 F.2d at 158–59.

The first, second and third factors set forth by the Fourth Circuit pertaining to adequacy—the relative strength of Plaintiff’s case on the merits, the existence of difficulties presented by proof and/or defenses, and the anticipated duration and expense of additional litigation—all support a finding of adequacy. While the Class Representative strongly believes in the merits of his case, he also understands that Nucor will assert a number of potentially dispositive defenses. 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 Fed R. Civ. P. 12 (b)(6) or Rule 56 stage). Further, class certification is another hurdle that would have to be met—and one that has been 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).

Moreover, while early settlement has allowed costs to stay modest and the Settlement provides for such costs to be paid for separate and apart from the funds available to the class, protracted litigation would only serve to increase costs and have a potentially negative effect on class recovery, which is itself far from certain. Continued litigation would also increase the burden on the Court, without any guaranteed benefit to the Class Representative or Settlement Class Members. “Complex litigation . . . ‘can occupy a court’s docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive.’” *Woodward v. NOR-AM Chem. Co.*, No. Civ-94- 0870, 1996 WL 1063670, at *21 (S.D. Ala. May 23, 1996) (quoting *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992)). Where a settlement, like here, “will alleviate the need for judicial exploration of . . . complex subjects [and] reduce litigation costs” this factor weighs in favor of approval. *See Lipuma v. Am. Express Co.*, 406 F. Supp. 2d, at 1324 (S.D.

Fla. Dec. 2005).

The fourth factor set forth by the Fourth Circuit, the solvency of the defendants and the likelihood of recovery on a litigated judgment, has not been placed at issue here and thus neither weighs for or against approval of settlement.

I. The Settlement Class Satisfies the Rule 23 Criteria.

“In addition to reviewing the terms of settlement, a court at the preliminary approval stage may conditionally certify the class for purposes of providing notice, with the final certification decision to be made at the subsequent fairness hearing.” *Checchia v. Bank of Am., N.A.*, No. 21-cv-3585, 2023 WL 2051147, at *2 (E.D. Pa. Feb. 16, 2023). Courts may certify settlement classes that satisfy the requirements of Rule 23(a) and at least one provision of Rule 23(b). *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620-22 (1997). Plaintiff believes that the Settlement Class meets the applicable criteria for conditional certification.

i. The Settlement Class is Sufficiently Numerous

The Settlement Class consists of approximately 3,000 putative members, indisputably rendering individual joinder impracticable. *See Jeffreys v. Commc’ns Workers of Am. AFL–CIO*, 212 F.R.D. 320, 322 (E.D. Va. 2003) (noting that “where the class numbers twenty-five or more, joinder is generally presumed to be impracticable”).

ii. There are Questions of Law or Fact Common to the Settlement Class

“Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury” such that all their claims “can productively be litigated at once.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349–50 (2011) (internal citations omitted). This requires that the determination of the common question “will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* at 350 “Even a single common question will do.” *Id.* at 359 (internal quotations omitted). Plaintiff maintains that all Settlement Class Members suffered the

same injury—theft of their personal data in the Data Incident— and are asserting the same legal claims. Accordingly, Plaintiff believes that common questions of law and fact abound. See, e.g., *Abubaker v. Dominion Dental USA, Inc.*, No. 1:19-cv-01050, 2021 WL 6750844 (E.D. Va. Nov. 19, 2021), at *3; *Equifax*, 2020 WL 256132, at *11– 12; *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299 (N.D. Cal. 2018) at 309.

iii. The Class Representative’s Claims are Typical of the Claims of the Settlement Class

Typicality under Fed. R. Civ. P. 23 (a)(3) requires an inquiry into the “representative parties’ ability to represent a class” *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2006). “The premise of the typicality requirement is simply stated: as goes the claim of the named plaintiff, so go the claims of the class.” *Broussard v. Meineke Disc. Muffler Shops, Inc.*, 155 F.3d 331, 340 (4th Cir. 1998) (citation and quotations omitted). In other words, the “plaintiff’s claim cannot be so different from the claims of absent class members that their claims will not be advanced by plaintiff’s proof of his own individual claim.” *Deiter*, 436 F.3d at 466–67. Plaintiff contends that this requirement is readily satisfied here. Specifically, Plaintiff maintains that the Class Representative’s claims are typical of other Settlement Class Members because they arise from the same Data Incident and involve the same overarching legal theories, including the theories that Nucor breached its common law and statutory duties and implied contracts to protect Settlement Class Representatives’ and class members’ personal information. See, e.g., *Dominion*, 2021 WL 6750844, at *3; *Equifax*, 2020 WL 256132, at *12.

iv. The Settlement Class Representative and Class Counsel Will Fairly and Adequately Represent the Class

Rule 23(a)(4) tests whether the “representative parties will fairly and adequately protect the interests of the class.” *Wallace*, 301 F.R.D. 144, at *156 (citations and internal quotation marks omitted). “The adequacy inquiry . . . serves to uncover conflicts of interest between named parties

and the class they seek to represent.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997) . Plaintiff contends that the Settlement Class Representative has no interests antagonistic to other class members and has retained lawyers who are abundantly qualified and experienced, satisfying the adequacy requirement. Here, Plaintiff has been actively involved in the litigation of this case, and has assisted throughout the process, answering Counsel’s many questions and providing documents pertaining to the Action when requested. Cole Decl. ¶¶ 17-18. Plaintiff believes that his interests and those of the other Settlement Class Members are aligned: all are equally interested in proving the factual averments in the Complaint, establishing Nucor’s liability, and obtaining compensation from Nucor.

v. Common Issues Predominate over any Individual Issues and a Class Action is Superior to Other Available Methods of Adjudicating the Controversy

Rule 23(b)(3) requires that “questions of law or fact common to class members predominate over any questions affecting only individual members,” and that class treatment is “superior to other available methods for fairly and efficiently adjudicating the controversy.” One part of the superiority analysis—manageability—is irrelevant for purposes of certifying a settlement class. *Transurban*, 318 F.R.D. at 569.

Fed. R. Civ. P. 23(b)(3)’s predominance requirement tests whether a proposed class is “sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. 591, 623. The predominance inquiry measures the relative weight of the common questions as against individual ones. *Amchem*, 521 U.S. at 624. “If the ‘qualitatively overarching issue’ in the litigation is common, a class may be certified notwithstanding the need to resolve individualized issues.” *Soutter v. Equifax Info. Servs., LLC*, 307 F.R.D 183, 214 (E.D. Va. 2015) (citing *Ealy v. Pinkerton Gov’t Servs.*, 514 F. App’x 299, 305 (4th Cir. 2013)). Common liability issues often predominate where class members “all assert injury from the same action.” *Gray v. Hearst Commc’ns, Inc.*, 444 F.

App'x 698, 701–02 (4th Cir. 2011); *see also Stillmock v. Weis Mkts., Inc.*, 385 F. App'x 267, 273 (4th Cir. 2010) (finding common issues predominated where class members were exposed to “the identical risk of identity theft in the identical manner by the repeated identical conduct of the same defendant.”).

Plaintiff contends that common questions predominate because all claims arise out of a common course of conduct by Nucor. *See, e.g., Dominion*, 2021 WL 6750844, at *3; *Equifax*, 2020 WL 256132, at *13; *Anthem*, 327 F.R.D. at 311–16. In the context of settlement, courts have found that the focus on a defendant’s security measures in a data breach class action “is the precise type of predominant question that makes class-wide adjudication worthwhile.” *Anthem*, 327 F.R.D. at 312.

“[T]he purpose of the superiority requirement is to assure that the class action is the most efficient and effective means of resolving the controversy . . . ” 7AA, Charles Wright, Arthur Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1779 (3d ed. 2005). Plaintiff maintains that litigating the same claims of approximately 3,000 persons through individual litigation would obviously be inefficient. And, thus, for purposes of settlement, the superiority requirement is satisfied. *See Equifax*, 2020 WL 256132, at *14; *Anthem*, 327 F.R.D. at 315–16.

V. THE COURT SHOULD APPOINT SETTLEMENT CLASS COUNSEL

When certifying a class, Rule 23 requires a court to appoint class counsel that will fairly and adequately represent the class members. Fed. R. Civ. P. 23 (g) (1)(B). In making this determination, the Court considers counsel’s work in identifying or investigating potential claims; experience in handling class actions or other complex litigation and the types of claims asserted in the case; knowledge of the applicable law; and resources committed to representing the class. Fed. R. Civ. P. 23 (g)(1)(A)(i–iv).

Throughout this case, proposed Class Counsel—Scott Edward Cole of Cole & Van Note—has demonstrated the hard work, legal scholarship, experience, and resources Cole & Van Note brings to bear, ultimately resulting in the Settlement now before the Court. Cole Decl. ¶¶ 20-24. The Court should thus appoint him as Class Counsel under Rule 23(g).

VI. CONCLUSION

For the reasons set forth set forth above, Plaintiff requests that the Court (a) enter the Order proposed by the Parties directing the Settlement Class to be notified of the proposed Settlement in the manner set forth in the Notice Plan, and (b) schedule a Final Approval Hearing.

Dated: November 6, 2025

Respectfully Submitted,

/s/ Ruth Sheehan

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**Pro Hac Vice forthcoming*