STATE OF NORTH CAROLINA COUNTY OF DURHAM	IN THE GENERAL COURT OF JUSTICE BUSINESS COURT DIVISION SUPERIOR COURT FILE NO. 22-CVS-3533
DANIEL GREEN, as an individual and on behalf of all others similarly situated, Plaintiff v. EMERGEORTHO, P.A., Defendant.	**MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiff DANIEL GREEN, individually and on behalf of all others similarly situated, submits the following memorandum and exhibits in support of his unopposed motion for preliminary approval of class action settlement. The Settlement[1] reached by the Parties should be preliminarily approved because it provides meaningful and substantial benefits to Settlement Class Members and is based upon Plaintiff's good faith assessment of the strengths and weaknesses of the claims.

In determining whether to preliminarily approve the Settlement, the Court need only determine whether the Settlement appears to fall within a range of reasonableness. Such a finding justifies the Court to order that notice be provided to Settlement Class Members and allow them to comment on the Settlement at the Final Approval Hearing. The Settlement exceeds this standard. Accordingly, preliminary approval should be granted and notice of the Settlement and Final Approval Hearing should be disseminated to Settlement Class Members.

[1] The capitalized terms used in this Motion shall have the same meaning as defined in the Settlement Agreement (attached hereto as Exhibit 1), except as may otherwise be indicated.

I. SUMMARY OF THE LITIGATION

This class action arises out of Defendant EmergeOrtho, P.A.'s ("EmergeOrtho" or "Defendant") alleged failure to safeguard the personally identifiable information ("PII") that it maintained regarding Plaintiff Daniel Green ("Plaintiff," and, together with Defendant, the "Parties") and Settlement Class Members. Plaintiff alleges that, in May 2022, Defendant was the target of a cyberattack on its network (the "Data Incident").

On September 12, 2022, Plaintiff Daniel Green filed a class action lawsuit (Case No. 22CVS3533) against EmergeOrtho based on the Data Incident, alleging claims of negligence, invasion of privacy, breach of fiduciary duty, breach of implied contract, violation of the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 et seq., and for unjust enrichment. Defendant denies any wrongdoing and liability in connection with the Data Incident, and maintains that it complied with all applicable laws.

In January 2023, the Parties began discussing the potential for early resolution, and agreed to attend a mediation with Hon. Wayne Andersen (Ret.) of JAMS. Prior to the mediation, the parties exchanged initial discovery. On April 26, 2023 the Parties attended a mediation via Zoom with Hon. Wayne Andersen (Ret.) of JAMS. After a full day of vigorous, arms'-length negotiations, the Parties were unable to reach a resolution. The Parties continued discovery, exchanging multiple rounds of document requests and interrogatories. On October 10, 2023, Plaintiff appeared for his deposition as noticed by Defendant. Defendant's deposition was noticed to proceed on October 30, 2023. Throughout this time, the Parties' settlement negotiations

continued at arms'-length between Counsel. On October 26, 2023 the Parties reached an agreement on the central terms of a settlement.

Plaintiff and his counsel believe that, in consideration of all the circumstances, and after prolonged and serious arms'-length settlement negotiations with Defendant, the proposed settlement embodied in the Settlement Agreement is fair, reasonable, and adequate, and is in the best interests of all members of the Settlement Class.

In the months following the agreement on the Settlement terms, the Parties continued to negotiate the finer points of the Settlement Agreement and accompanying notice documents. The Settlement Agreement and various exhibits (the "S.A.") were finalized and signed in February 2024. Plaintiff strongly believes the Settlement is favorable to the Settlement Class.

The terms of the proposed Settlement are fair, adequate, and reasonable, the proposed Class meets all requirements for certification for purposes of settlement, and the proposed Notice provides the best practicable notice and comports with due process. Accordingly, Plaintiff requests that the Court enter the proposed Preliminary Approval Order, which: (1) grants preliminary approval of the proposed Settlement; (2) certifies the Settlement Class contemplated by the Settlement Agreement; (3) appoints Milberg Coleman Bryson Phillips Grossman, PLLC and Mason LLP as Class Counsel; (4) orders the proposed Notice be sent to the Settlement Class; and (5) schedules a Final Approval Hearing to consider final approval of the proposed Settlement Agreement as well as approval of a Fee Award and Expenses, and a Service Award to the Class Representative.

II. TERMS OF THE PROPOSED SETTLEMENT

The Settlement's key terms are as follows:

A. Certification of Settlement Class

The Settlement provides for certifying the Settlement Class for settlement purposes only. The "Settlement Class" is defined as "the individuals identified on the Settlement Class List whose Private Information may have been involved in the Data Incident." S.A.¶ 59. Excluded from the Settlement Class are: (1) the Judge presiding over this Litigation, and members of his direct family; (2) the Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers and directors; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline. *Id.* The Settlement Class includes approximately 72,5000 individuals (each, a "Settlement Class Member").

B. Settlement Benefits to the Settlement Class

The Settlement provides for the creation of a $550,000 non-reversionary Settlement Fund, to cover benefits to Settlement Class Members, Notice and Administration Expenses, and court-approved Fee Award and Expenses and Plaintiff Service Award. Various forms of relief are available to Settlement Class Members, including the following:

1. Compensation For Documented Out of Pocket Losses. All members of the Settlement Class who submit a valid and timely Claim Form and supporting documentation are eligible for documented Out-of-Pocket Losses incurred as a result of the Data Incident, not to exceed $10,000 per member of the Settlement Class,

including, without limitation, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after the Data Incident through the date of claim submission; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges. S.A.¶ 70(i). Settlement Class Members with Out-of-Pocket Losses must submit documentation supporting their claims. *Id.* This can include receipts or other documentation not "self-prepared" by the claimant that document the costs incurred. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation. *Id.*

2. Compensation for Lost Time. Members of the Settlement Class are also eligible to receive compensation for up to six (6) hours of Lost Time spent mitigating the effects of the Data Incident (calculated at the rate of $25 per hour). S.A.¶ 72(ii). Members of the Settlement Class claiming Lost Time need only submit an attestation demonstrating that they spent the claimed time responding to issues raised by the Data Incident. *Id.* This attestation may be completed by checking a box next to the sentence: "I swear and affirm that I spent the amount of time noted in response to the EmergeOrtho data security incident." Claims for Lost Time can be combined with claims for Out-of-Pocket Losses but are subject to the $10,000.00 cap. *Id.*

3. Credit Monitoring and Identity Theft Protections: Under the Settlement, Settlement Class Members will be eligible to claim two years of three bureau credit monitoring, including $1 million of identity theft insurance.

4. Cash Compensation (Pro Rata Cash Payment). After the distribution of Fee Award and Expenses, Notice and Administrative Expenses, a Service Award, Compensation for Out-of-Pocket Losses and Lost Time, and distribution of credit monitoring codes, the Settlement Administrator will make pro rata settlement payments of any remaining funds to each Class Member who submits an Approved Claim. Any Class Member may make a claim for a pro rata cash payment regardless of whether the member made claim reimbursements for Lost Time or Out-of-Pocket Losses or not. This may pro rata increase or decrease the cash payment.

5. Remediation Efforts. All Settlement Class Members will benefit from Defendant's improvements to its cybersecurity since the Data Incident, regardless of whether they file a claim for any other Settlement Benefits. EmergeOrtho has taken steps to implement additional security measures and has provided training to its employees to protect against similar incidents.

C. Appointment of Class Representative and Class Counsel

Plaintiff and his counsel are adequate under Rule 23. There are no conflicts between their interests and the interests of the proposed Settlement Class. Defendant does not oppose Plaintiff's appointment as Class Representative. Defendant does not oppose appointment of Milberg Coleman Bryson Phillips Grossman, PLLC, and Mason LLP as class counsel ("Class Counsel").

D. Administration of Notice and Claims

Eisner Amper ("EAG" or "Settlement Administrator") will act as the Settlement Administrator to oversee the administration of the Settlement. EAG, formerly Postlewaithe and Netterville, has extensive experience in administering class action settlements for similar matters. The costs of administration will be paid for out of the Settlement Fund.

The Settlement Administrator will administer the Settlement, including: (1) providing postcard notification to the Settlement Class; (2) creating and hosting a website (the "Settlement Website"), publicly accessible through the Claims Deadline, dedicated to providing information related to this Lawsuit and access to relevant publicly available court documents relating to this Lawsuit, the Settlement, and the Settlement Agreement, including the "Short Form Notice" and "Long Form Notice" of the Settlement, and offering Settlement Class Members the ability to submit Claim Forms and supporting documentation for compensation; (3) maintaining a toll-free telephone number and mailing address by which Settlement Class Members can seek additional information regarding the Settlement Agreement; (4) processing Claim Forms and supporting documentation submissions, and the provision of Settlement Payments for Approved Claims to Settlement Class Members; (5) processing Request for Exclusion forms from Settlement Class Members; and (6) any other provision of the Settlement Agreement that relates to settlement administration (collectively "Settlement Administration"). S.A.¶ 82.

As set forth in the Settlement Agreement, Defendant will generate and furnish a class list with Class Members' information to the Settlement Administrator within

seven (7) days of the entry of the Preliminary Approval Order. S.A.¶ 80. Within 30 days after preliminary approval, the Settlement Administrator will use this information to send Notice of the Settlement to the Settlement Class Members identified on the Settlement Class List. S.A.¶ 80.

E. Attorneys' Fees and Service Awards

Defendant has agreed to not oppose Class Counsel's fee request for attorneys' fees in an amount not to exceed 33.33% of the Settlement Fund or $183,315.00, and litigation expenses not to exceed $25,000. S.A.¶ 99. In addition, Class Counsel will apply for, and Defendant has agreed not to oppose, a service award of $5,000 to Plaintiff. S.A.¶ 97. The Parties did not discuss the issue of attorneys' fees and expenses or service award until after reaching agreement on the Settlement Class Member benefits. Declaration of Danielle L. Perry, attached hereto as Exhibit 2 ("Perry Dec.") ¶29. Plaintiff will file a separate motion for approval of attorneys' fees and costs in accordance with the proposed schedule discussed *infra.*

F. Release

The Parties have negotiated a Release, the terms of which are set forth in the Settlement Agreement. *See* S.A. ¶ 92. Upon reaching the Effective Date, Plaintiff and each Settlement Class Member who has not timely opted out shall have released Defendant from the Released Claims. S.A.¶ 92.

III. THE COURT SHOULD APPROVE THE SETTLEMENT

Under Rule 23(c) of the North Carolina Rules of Civil Procedure, a "class action shall not be dismissed or compromised without the approval of the judge." Courts considering a proposed settlement under Rule 23, or its federal law counterpart,

typically engage in a three-step process. First, the Court determines whether the proposed settlement merits preliminary approval. Second, the Court directs that notice of the proposed settlement be distributed to the settlement class, thereby providing class members with the opportunity to object to the settlement. Third, the Court evaluates whether final approval of the settlement is warranted and, if so, grants final approval. *See* Manual for Complex Litigation, Fourth Ed. ("MCL 4th") § 21.632; N.C. Gen. Stat. § 1A-1, Rule 23(c); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 622 (1997).

A. The Settlement Merits Preliminary Approval

1. Legal Standard for Preliminary Approval

The preliminary approval process is the Court's initial assessment of the proposed settlement, the purpose of which is to determine (1) whether the proposed settlement is within the range of reasonableness; (2) whether it is worthwhile to provide notice to the class of the terms and conditions of the settlement; and (3) whether to schedule a final approval hearing. 4 Alba Conte & Herbert Newberg, Newberg on Class Actions §11.25 (4th ed. 2002). The question at the preliminary approval stage is thus whether the settlement appears to be within the range of possible approval and was "[t]he result of good-faith bargaining at arm's length, without collusion." *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 159 (4th Cir. 1991); *see also Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975). This standard has been adopted in North Carolina. *See Ehrenhaus v. Baker*, 216 N.C. App. 59, 73, 717 S.E.2d 9, 19 (2011) (stating that the purpose of preliminary approval is "to determine whether the proposed settlement is within the range of possible approval or, in other

words, whether there is probable cause to notify the class of the proposed settlement") *citing Horton v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 827 (E.D.N.C. 1994) (internal quotation omitted).

2. The Proposed Settlement Meets the Standard for Preliminary Approval

In granting preliminary approval, a court may consider a number of factors, no one of which is determinative. The relevant factors include: whether the settlement has no obvious deficiencies and otherwise falls within the range of possible approval, whether it unreasonably grants preferential treatment to the plaintiff or segments of the class, and whether it appears to be the product of serious, informed and non-collusive negotiations. MCL 4th § 21.632. If the settlement survives scrutiny under these criteria, the Court should direct that notice of a final approval hearing be given to class members, at which time arguments and evidence may be presented in support of and (to the extent there are any objectors) in opposition to the settlement. *Id.*, §§ 21.632, 21.633.

i. *The Settlement Has No Obvious Deficiencies and is Within the Range of Reasonableness*

It is well-established that the public interest favors settling litigation. *See Hardin v. KCS Int'l, Inc.*, 682 S.E.2d 726, 737–38 (N.C. Ct. App. 2009). Not only do settlements conserve judicial resources, but they are the preferred method of resolving legal disputes because they reflect the collective judgment of the litigants, who are in the best position to evaluate the strengths and weaknesses of their legal positions. *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982) (quotation omitted). Indeed, most courts recognize that the opinion of experienced counsel supporting the settlement is entitled to considerable weight. *See, e.g.*, *Reed v. GMC*, 703 F.2d 170,

175 (5th Cir. 1983) ("In reviewing proposed class settlements, a trial judge is dependent upon a match of adversary talent because he cannot obtain the ultimate answers without trying the case."). Against this backdrop, preliminary approval of a settlement is warranted when there is "probable cause" to believe that the settlement is fair, reasonable and adequate and that the Class should be notified. *Ehrenhaus*, 216 N.C. App. at 73, 717 S.E.2d at 19.

The Settlement resolves the Parties' legal disputes in a reasonable manner. The Settlement provides for the fair and adequate relief outlined above, which is tailored to address the actual injuries and damages claimed to have been sustained by the Plaintiff and Settlement Class Members. These benefits include the ability to claim significant cash for Out-of-Pocket Losses reasonably incurred as a result of the Data Incident, compensation for Lost Time, added identity theft protection, and remediation efforts designed to improve Defendant's cybersecurity.

Settlement Class Members will be able to obtain their benefits relatively quickly, rather than waiting several more years to see whether this litigation, if not settled, would provide any relief. Further, the Settlement reflects Class Counsel's assessment of the strengths and weaknesses of the case, as well as the amount of damages Class Members could expect to receive from a favorable verdict. Therefore, the Settlement is within the range of reasonableness.

ii. *The Settlement Does Not Unreasonably Treat Segments of the Class Differently*

The Settlement provides reasonable benefits to all of the Settlement Class Members. All Settlement Class Members can claim the same benefits. Notably, the named Plaintiff can also claim the same amounts, and is not being treated differently

than any other Settlement Class Member, with the exception of a small Service Award to compensate him for his time and efforts in pursuing this matter on behalf of the Settlement Class. Perry Dec. ¶ 30.

iii. *The Settlement is the Product of Non-Collusive Negotiations*

The Settlement was unquestionably "the result of good-faith bargaining at arm's length, without collusion." *Jiffy Lube*, 927 F.2d at 159. Plaintiff's counsel has extensive experience in litigating claims similar to those asserted in this case. *See* Perry Dec., ¶¶ 2-13, Exs. A, B. Defendant is represented by highly capable outside counsel with experience in both data privacy law and class action litigation. While the Parties were always professional and collegial in their dealings with one another, there is no question that each side zealously advocated its respective clients' position in an adversarial posture.

Prior to reaching an agreement, each side was able to independently assess and weigh the costs and risks of proceeding to trial, as well as the relative strengths and weaknesses of their respective claims and defenses. At each step of the action the Parties' relationship has always been adversarial. The Settlement itself was the product of protracted arms' length negotiations. The proposed Settlement was clearly the product of non-collusive negotiations between competent counsel for all Parties.

IV. THE COURT SHOULD PRELIMINARILY CERTIFY THE SETTLEMENT CLASS

In order to certify a class under Rule 23 of the North Carolina Rules of Civil Procedure, Plaintiff must establish: (1) the existence of a class (i.e. that shared issues of law or fact predominate over individual issues); (2) the named representatives are adequate representatives (i.e. they will fairly and adequately represent the class,

there is no conflict of interest between the named representatives and the class, and the named parties have a genuine personal interest in the outcome of the case); (3) class members are so numerous to make joinder impractical; (4) adequate notice can be given to the class; and (5) a class action is superior to individual actions. *Crow v. Citicorp Acceptance Co., Inc.*, 319 N.C. 274, 282, 354 S.E.2d 459, 465 (1987); *see also Faulkenbury v. Teachers' and State Employees' Retirement Sys. of North Carolina*, 345 N.C. 683, 697, 483 S.E.2d 422, 431 (1997). These class certification requirements are properly considered when determining whether to certify a class for settlement purposes. *See, e.g.*, *Nakatsukasa v. Furiex Pharms., Inc.*, 2015 NCBC 68, at ¶¶ 10-15 (N.C. Super Ct. July 1, 2015); *In re Newbridge Bancorp S'holder Litig.*, 2016 NCBC 87, at ¶ 37 (N.C. Super Ct. Nov. 22, 2016).

Plaintiff's proposed Settlement Class satisfies all requirements under Rule 23. The Settlement Class Members share similar issues of fact and law. Here, all Settlement Class Members suffered the same alleged injury—potential access of their personal data through the Data Incident—and are asserting the same legal claims. These raise a number of common questions, such as whether Defendant failed to adequately safeguard the records of Plaintiff and other Settlement Class Members. Defendant's data security safeguards were common across the Settlement 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 Defendant had a duty to use reasonable care to safeguard Plaintiff's and Class Members' PII;

- Whether Defendant failed to use reasonable care and commercially reasonable methods to safeguard and protect Plaintiff's and Class Members' PII from unauthorized release and disclosure, and;

- Whether proper data security measures, policies, procedures, and protocols were in place and operational within Defendant's computer systems to safeguard and protect Plaintiff's and Class Members' PII from unauthorized disclosure.

These common questions, and others alleged by Plaintiff in the Complaint, are central to the causes of action brought here and can be addressed on a class-wide basis.

The common issues here also predominate. 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 Markets, 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.").

Here, as in other data breach cases, common questions predominate because all claims arise out of a common course of conduct by Defendant. *See, e.g., Abubaker v. Dominion Dental USA, Inc.,* No. 1:19-cv-01050, 2021 WL 6750844 at *3 (E.D. Va. Nov. 19, 2021); *In re: Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-md-2800, 2020 WL 256132 at *13 (N.D. Ga. March 17, 2020); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 308 (N.D. Cal. 2018). 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. Other courts have recognized that the types of common issues arising from data breaches predominate over any individualized issues. *See, e.g., Hapka v. CareCentrix, Inc.*, 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.*, 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 Payment Sys. Inc. Customer Data Sec. Breach Litig.,* 851 F. Supp. 2d 1059 (S.D. Tex. 2012) (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). The first factor for class certification is thereby satisfied here.

Plaintiff is an adequate class representative. Plaintiff received a Notice of Data Breach stating that his private information could have been accessed in the Data Incident. As such, he has a genuine personal interest in the outcome of the case. Plaintiff participated in Class Counsel's pre-suit investigation and remained in contact throughout the settlement negotiations. Moreover, Plaintiff appeared for a full-day deposition to provide testimony in support of his claims and those of the class.

As such, Plaintiff has demonstrated his devotion to the prosecution of this case and to the Settlement Class.

Settlement Class Members are too numerous to make joinder possible, and a class action is superior to individual litigation in this context. There are approximately 68,000 Settlement Class Members, making them too numerous for joinder. *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"). Additionally, given the relatively low actual damages figure, it is unlikely that, absent a class action, these claims would be pursued as individual cases. Indeed, Class Counsel is aware of no other attorney prosecuting any other case arising from this Data Incident. Perry Dec. ¶ 18.

As outlined below, counsel for the Parties have, with the assistance of the Claims Administrator, developed a Notice Plan that will provide actual, direct notice to nearly all members in the class. In addition, the direct notice here will be bolstered by information available on the Settlement Website. S.A.¶ 84.

Finally, a class action is superior in this instance. "[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). Litigating the same claims of approximately 68,000 people through individual litigation would obviously be inefficient. The superiority requirement thus is satisfied. *See Equifax*, 2020 WL 256132, at *14; *Anthem*, 327 F.R.D. at 315-16.

V. THE COURT SHOULD APPROVE THE NOTICE PLAN

A. The Notice Plan Will Provide the Best Practicable Notice to Settlement Class Members

Under Rule 23(c) of the North Carolina Rules of Civil Procedure, notice of a proposed settlement "shall be given to all members of the class in such manner as the judge directs." The rule does not set forth the contents of the notice, which are "dictated by 'fundamental fairness and due process.'" *Frost v. Mazda Motor of Am., Inc.*, 353 N.C. 188, 197, 540 S.E.2d 324, 330 (2000) (quoting *Crow*, 319 N.C. at 283, 354 S.E.2d at 463). "The trial court should require that the best notice practical under the circumstances be given to class members. Such notice should include individual notice to all members who can be identified through reasonable efforts, but it need not comply with the formalities of service of process." *Crow*, 319 N.C. at 283-84, 354 S.E.2d at 466.

Settlement Class Members will receive the best notice practicable under the proposed notice plan because Settlement Class Members will receive direct notice of the Settlement through U.S. Mail. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175 (1974) ("the express language and intent of [Federal Rule of Civil Procedure] 23 (c)(2) leave no doubt that individual notice must be provided to those class members who are identifiable through reasonable effort.").

The Settlement Notice and Claim Form will adequately apprise Settlement Class Members of the Settlement and provide the means for them to apply for its benefits. The proposed Long Form Settlement Notice (attached to the Settlement Agreement here as Exhibit B) sets forth a summary of the settlement terms; an explanation of the persons and claims being released under the Settlement; a description of the Settlement Class; the date, time, and location of the Final Approval

Hearing; a statement of Settlement Class Members' rights to appear and object and the procedures that must be followed to be heard; a statement that Class Counsel intends to petition for a payment of attorneys' fees and expenses; and whom to contact for more information about the Settlement. The proposed Claim Form is written in a short and plain manner that can be easily followed, and will be in substantially the same form as Exhibit C to the Settlement Agreement. The Settlement Notice will be in a substantially similar form as those attached as Exhibits A and B to the Settlement Agreement.

In addition to the direct notice discussed above, the Claims Administrator will create a website which provides key information about the Settlement. Class members will be able to use the Settlement Website to access the Settlement Notice and the Claim Form. The Notice Plan's blend of direct notice and the establishment of a Settlement Website will achieve the best notice practicable to Settlement Class Members as required by Rule 23 of the North Carolina Rules of Civil Procedure.

B. A Final Approval Hearing Should be Scheduled

This Court should schedule a Final Approval Hearing because the Settlement is within the range of reasonableness and the Notice Plan provides the best practicable notice to Settlement Class Members.

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court: (1) preliminarily approve the proposed Settlement set forth in the Settlement Agreement; (2) preliminarily certify the Settlement Class; (3) approve the form and manner of notice set forth herein; (4) appoint Milberg Coleman Bryson Phillips

Grossman, PLLC, and Mason LLP as Class Counsel, and; (5) set a hearing date for final approval of the proposed Settlement and corresponding interim deadlines for dissemination of notice and for objections by class members; and to grant such other and further relief as the Court deems just and proper.

Dated: February 9, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH BUSINESS COURT RULE 7.8

The undersigned, in accordance with Business Court Rule 7.8, certifies that the foregoing brief (exclusive of the case caption, signature blocks, and required certificates) contains fewer than 7,500 words, as reported by word-processing software.

This the 8th day of February, 2024.

/s/Danielle L. Perry
Danielle L. Perry

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing has been served on all counsel of record in accordance with Business Court Rule 3.9 through electronic filing with the North Carolina Business Court.

This the 9th day of February, 2024.

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