

**STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE**

**IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
CIVIL ACTION NO: 25CV000809-100  
BUSINES NO.: 2025CVS809**

*In re Asheville Eye Associates Data Incident  
Litigation*

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**INDEX OF EXHIBITS**

Exhibit 1 – Settlement Agreement and Release

- (A) Claim Form
- (B) Long Claim Form
- (C) Post Card Single

Exhibit 2 – Declaration of Gary M. Klinger in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement

- (A) Gary M. Klinger Resume

Exhibit 3 – Proposed Preliminary Approval Order

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

**I. INTRODUCTION**

Pursuant to North Carolina Rule of Civil Procedure 23(c), Plaintiffs Robert Woodsmall, Mimi Reynolds, Dena Brito, Robert Ricchetti, and Christopher Miller (“Plaintiffs”) hereby submit this memorandum in support of unopposed motion for preliminary approval of class action settlement.<sup>1</sup>

This case arises out of a data security incident in or about November 2024, in which the Personally Identifiable Information (“PII”) and Protected Health Information (“PHI”) (collectively “Private Information”) of Plaintiffs and Settlement Class Members was compromised (the “Data Incident”). After a period of informal discovery, mutual exchange of information, a mediation before an experienced mediator, and additional negotiations after the mediation, Plaintiffs and Defendant Asheville Eye Associates PLLC (“AEA” or “Defendant,” and with Plaintiffs, the “Parties”) reached a Settlement that will make valuable benefits available to the putative class.

As stated in the motion, Plaintiffs respectfully request that the Court: (1) conditionally certify the Settlement Class for settlement purposes; (2) appoint Plaintiffs as Settlement Class Representatives; (3) appoint Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC as Class Counsel; (4) grant preliminary approval of the Settlement; (5) approve the proposed Notice and direct its distribution to Settlement Class members; (6) set deadlines for Settlement Class members to object or opt out consistent with the Settlement Agreement; and (7) schedule a

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<sup>1</sup> A copy of the Settlement Agreement and Release (“Settlement” or “SA”) is attached hereto as Exhibit 1. All capitalized terms that are not otherwise defined should be given the meaning assigned to them in the Settlement.

final approval hearing, at which time the Court can consider whether to give final approval to the Settlement.

## **II. FACTUAL BACKGROUND**

Plaintiffs allege that this lawsuit arises out of a data incident affecting AEA's systems in which, in or about November 2024, the Private Information, including names, addresses, health insurance information, Social Security Numbers, and medical treatment information, of Plaintiffs and Settlement Class Members was compromised. On February 4, 2025, AEA began notifying Plaintiffs and the Settlement Class about the Data Incident. Plaintiffs initiated separate lawsuits against AEA, individually and on behalf of a putative class, which were later consolidated by the Business Court on May 9, 2025.

Following consolidation, counsel for Plaintiffs and counsel for AEA began discussions regarding potential settlement of the matter. Declaration of Gary M. Klinger ("Klinger Decl."), attached hereto as Exhibit 2, ¶ 4. The Parties exchanged informal discovery and information to better understand the other party's positions. *Id.* On July 31, 2025, the Parties attended a mediation in person and via Zoom with experienced mediator Raymond E. Owens of Higgins & Owens, PLLC. *Id.* ¶ 5. The mediation lasted a full day and the Parties both argued their positions vigorously. *Id.* The Parties were unable to reach a full agreement but made substantial progress toward a resolution. *Id.* The Parties continued their arms-length, good-faith negotiations after the mediation and were able to reach a resolution. *Id.*

The Parties recognize and acknowledge the benefits of settling this case. Absent settlement, Plaintiffs believe that they would succeed in certifying the Class of AEA's current and former patients. Nevertheless, Plaintiffs recognize that all litigation has risks, and that discovery, class certification proceedings, and trial will be time-consuming and expensive for both parties.

Plaintiffs also recognize the potential benefits of early resolution, not the least being that Settlement Class Members will receive proper identity theft protections and compensation far sooner. Plaintiffs have, therefore, determined that the Settlement agreed to by the Parties is fair, reasonable, and adequate.

AEA has aggressively maintained its position that Plaintiffs cannot state a claim for relief, that a class could not be certified, that it would not be found liable at trial, and that Plaintiffs would not be able to prove damages resulting from the Data Breach. AEA further denies any and all liability. Nevertheless, AEA recognizes the risks and uncertainties inherent in litigation, the significant expense associated with defending putative class actions, the costs of any appeals, and the disruption to its business operations. Accordingly, AEA believes that the Settlement is likewise in its best interests.

### **III. TERMS OF THE SETTLEMENT**

#### **A. The Settlement Benefits**

The Settlement makes available three categories of benefits for Settlement Class members: Vouchers; Out-of-Pocket Expense Reimbursement; and Identity Theft Protection. *See* SA ¶ 50. The details of these benefits are as follows:

##### **1. Vouchers**

Settlement Class Members will automatically receive a \$10 voucher that can be used towards purchasing eyeglasses offered at any Asheville Eye location, except 21 Medical Park Drive, Asheville, North Carolina, 28803. SA ¶ 50(i). This benefit will be available to all Settlement Class Members regardless of whether they submit a Claim Form. *Id.* The vouchers will be made available to Settlement Class Members as part of the Notice to the Settlement Class. *Id.* The vouchers will be valid for one year from the date of issuance. *Id.*

## **2. Out-of-Pocket Expense Reimbursement**

All members of the Settlement Class who submit a valid claim for a Documented Loss using the Claim Form are eligible for the following documented out-of-pocket expenses directly caused by the Data Incident, not to exceed \$1,250 per member of the Settlement Class, including but not limited to: (i) unreimbursed bank fees; (ii) unreimbursed card reissuance fees; (iii) unreimbursed overdraft fees; (iv) unreimbursed charges related to unavailability of funds; (v) unreimbursed late fees; (vi) unreimbursed over-limit fees; (vii) unreimbursed charges from banks or credit card companies; (viii) interest on payday loans due to card cancellation or due to an over-limit situation incurred solely as a result of the Data Incident; and (ix) costs of credit report(s), credit monitoring, and/or other identity theft insurance products purchased by members of the Settlement Class in response to the Data Incident. SA ¶ 50(ii). Settlement Class Members will need to provide supporting documentation of each claimed out-of-pocket expense to receive reimbursement. *Id.*

## **3. Identity Theft Protection**

Settlement Class Members will also be provided with an enrollment code for a one-year term of Essential Monitoring with 1-bureau monitoring (a state-of-the-art identity theft protection service provided by Kroll Settlement Administration, a company that is not affiliated with Defendant). SA ¶ 50(iii). The one-year term shall be in addition to any pre-existing credit monitoring services provided by AEA. *Id.* Enrollment codes for this identity theft protection will be made available to all Class Members as part of the Notice to the Settlement Class. *Id.* Settlement Class Members will be able to activate the code after the issuance of a court Order granting final approval of the settlement. *Id.* The enrollment period will end 90 days from the Effective Date. *Id.*

## **B. Notice and Settlement Administration**

AEA will pay the entirety of the Notice and Administrative Expenses, including the cost of Notice. SA ¶ 59. The Parties have solicited competitive bids for the settlement administration fees and agree to utilize email or text message notice where practicable in order to minimize the administration costs while still providing effective notice to the Class. *Id.* After analyzing the bids, the Parties agreed to use Kroll Settlement Administration as the Settlement Administrator. *Id.* ¶ 42. The Settlement Administration Fees as agreed by the Parties and the Settlement Administrator will not exceed \$53,000. *Id.* ¶ 59.

Within seven days after the entry of the Preliminary Approval Order, AEA will provide the Settlement Class List to the Settlement Administrator. *Id.* ¶ 65. Within thirty days after the Preliminary Approval Order is entered, the Settlement Administrator will disseminate Notice to the Settlement Class Members. *Id.* Notice will be disseminated via text message, email, or U.S. mail to all Settlement Class Members, to the extent email addresses, mailing addresses, and mobile telephone numbers are known. *Id.* To the extent email addresses, mailing addresses, and mobile telephone numbers are unknown, Substitute Notice, which will be posted on AEA's website, will suffice. *Id.*

## **C. Opt-Outs and Objections**

The Notice will explain the procedure for Settlement Class Members to exclude themselves or “opt-out” of the Settlement by mailing a request for exclusion to the Settlement Administrator postmarked no later than the Opt-Out Deadline, which will be 60 days after the Notice Deadline. SA ¶ 67. The request for exclusion must include the name of the proceeding, the individual's full name, current address, personal signature, and the words “Request for Exclusion,” a comparable

statement that the individual does not wish to participate in the Settlement, or some other clear manifestation of the intent to opt-out of the Settlement in the written communication. *Id.* Each request for exclusion must request exclusion only for that one individual whose personal signature appears on the request. *Id.* The Notice will state that any Settlement Class Member who does not file a timely request for exclusion in accordance with this Paragraph will lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement. *Id.*

The Notice will also explain the procedure for Settlement Class Members to object to the Settlement or Fee and Expense Application by submitting written objections to the Court no later than the Objection Deadline, which will be 60 days after the Notice Deadline. *Id.* ¶ 69. A written objection must include (i) the name of the proceedings; (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection and a description of whether the objection applies only to the Settlement Class Member, a subset of the Settlement Class, or the entire Settlement Class; (iv) the identity of any attorneys representing the objector (if any); (v) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vi) a description and/or copies of evidence that may be introduced at the Final Approval Hearing; (vii) a list of proceedings in which the Settlement Class Member has submitted an objection during the past five years; and (viii) the signature of the Settlement Class Member or the Settlement Class Member's attorney. *Id.*

#### **D. Attorneys' Fees, Costs, Expenses, and Service Awards**

Class Counsel shall request the Court approve an award of Attorneys' Fees, Costs, and Expenses not to exceed \$500,000, as well as a Service Award of \$1,250 to each Class Representative. SA ¶¶ 83, 85. The requested Service Awards reflect the work the Class

Representatives have performed in assisting Class Counsel with this litigation and their dedication in bringing this lawsuit on behalf of the Settlement Class. Klinger Decl. ¶ 9. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the Service Awards shall constitute grounds for termination of this Agreement. SA ¶¶ 84, 86.

#### **E. Release**

In exchange for the relief described above, Settlement Class Members who do not opt out of the Settlement will fully release AEA for all claims that arise out of, are based upon, or relate in any way to the Data Incident. SA ¶ 78.

### **IV. ARGUMENT**

#### **A. The Settlement Should Be Preliminarily Approved**

Pursuant to North Carolina Rule of Civil Procedure 23(c), “[a] class action shall not be dismissed or compromised without the approval of the judge.” “A trial court evaluating a class action settlement should follow the two-step procedure generally employed by federal courts.” *Ehrenhaus v. Baker*, 216 N.C. App. 59, 73 (2011). The first step in this process is preliminary approval, where the Court should “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.” *Id.* (internal quotations and citations omitted). North Carolina courts have “a strong preference for settlement over litigation.” *Id.* at 72.

In determining whether a Settlement should be approved, North Carolina courts generally analyze the following factors:

(a) the strength of the plaintiff’s case, (b) the defendant’s ability to pay, (c) the complexity and cost of further litigation, (d) the amount of opposition to the settlement, (e) class members’ reaction to the proposed settlement, (f) counsel’s opinion and (g) the stage of the proceedings and how much discovery has been completed.

*In re Progress Energy S'holder Litig.*, 2011 NCBC 44, 38 (Sup. Ct., Wake Cty., Nov. 29, 2011) (citing *Ehrenhaus*, 216 N.C. App. at 74). Analysis of these factors demonstrates that the Settlement is fair, reasonable, and adequate.

**i. The Strength of Plaintiffs' Case Weighed Against the Settlement Results**

The North Carolina Court of Appeals has held that “the likelihood the class will prevail should litigation go forward and the potential spoils of victory, balanced against benefits to the class offered in the settlement” is one of the two most important factors relating to approval. *Ehrenhaus*, 216 N.C. App. at 74. This factor favors approval here.

Although Plaintiffs and Class Counsel are confident that their claims would survive on their merits, Plaintiffs and Class Counsel also recognize that there are substantial risks if the litigation were to continue. In the event that a settlement is not approved in this case, Defendant would likely challenge Plaintiffs' claims at every stage of litigation and would likely challenge Plaintiffs' ability to bring the case on behalf of the Class. While he disagrees with Defendant's view of the case, Class Counsel is mindful of the inherent problems of proof and possible defenses to the claims asserted in the litigation. Klinger Decl. ¶ 6. He also recognizes the difficulties in establishing liability on a class-wide basis through summary judgment or even at trial and in achieving a result better than that offered by the Settlement here. *Id.*

In contrast with the risks and length of continuing with litigation, the benefits of the Settlement are certain and immediate. Settlement Class Members will automatically be entitled to a \$10 voucher and Identity Theft Monitoring. Settlement Class Members will also be entitled to submit a claim for reimbursement for expenses that have occurred as a result of the Data Incident. The benefits obtained by the Settlement in favor of the class are fair, reasonable, and adequate when the complexity and uncertainty of further litigation is considered.

The Settlement benefits that Plaintiffs have obtained for the Class are also well within the range of possible recovery of benefits at trial. Due to the risks of data breach litigation, as well as much litigation, Class Counsel believes that it is possible that the Class could receive little or nothing if the case is litigated. Klinger Decl. ¶ 6. The Settlement instead provides immediate benefits to the Settlement Class and ensures that the Settlement Class is compensated for the injuries they have suffered as a result of the Data Incident. The Settlement recovery is fair, reasonable, and adequate and compares favorably to other data breach settlements.

**ii. Defendant's Ability to Pay**

AEA's ability to pay also factors in favor of approval of the Settlement. AEA has represented to Class Counsel that it is the largest eye clinic in the Asheville area and that a large verdict would significantly impact its operations and ability to continue providing care to its community. Klinger Decl. ¶ 7. The Settlement instead provides significant relief to the Settlement Class today without the risk of obtaining nothing due to AEA's inability to pay a verdict.

**iii. Complexity and Cost of Further Litigation**

In the absence of settlement, it is certain that the expense, duration, and complexity of the protracted litigation that would result would be substantial. Data breach cases present unique and novel issues of fact and law that are evolving. *See, e.g., Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415, 2019 U.S. Dist. LEXIS 215430, at \*3 (D. Colo. Dec. 16, 2019) ("Data breach cases . . . are particularly risky, expensive, and complex.")<sup>2</sup>; *Fulton-Green v. Accolade, Inc.*, No. 18-cv-274, 2019 U.S. Dist. LEXIS 164375, at \*21 (E.D. Pa. Sept. 23, 2019) ("This is a complex

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<sup>2</sup> North Carolina courts can look to federal court decisions regarding class actions for persuasive authority on class actions. *See Scarvey v. First Fed. Sav. & Loan Ass'n of Charlotte*, 146 N.C. App. 33, 41 (2001) ("[W]hile federal class action cases are not binding on this Court, we have held in the past that the reasoning in such cases can be instructive.").

case in a risky field of litigation because data breach class actions are uncertain and class certification is rare.”). Not only would the Parties have to undergo significant motion practice before any trial on the merits could even be contemplated, but evidence and witnesses, including costly expert witnesses, would have to be assembled as witnesses during any trial. Further, given the complexity of the issues and the amount in controversy, the defeated party would likely appeal any decision on the merits, as well as any decision on class certification. As such, the immediate and considerable relief provided to the Settlement Class under the Settlement weighs heavily in favor of its approval compared to the inherent risk and delay of a long and prolonged litigation, trial, and appellate process.

**iv. Amount of Opposition to the Settlement and the Class Members’ Reaction**

The next two factors, amount of opposition to the Settlement and the Settlement Class Members’ reaction to the Settlement, are premature to analyze, as Settlement Class Members have not been given a chance to respond to the Settlement yet. Currently, the only Settlement Class Members to respond to the Settlement are Plaintiffs, who all approve of the Settlement. Klinger Decl. ¶ 8. Accordingly, at this stage of the settlement process, these factors favor approval.

**v. Counsel’s Opinion**

Class Counsel strongly supports the proposed Settlement and asserts that it is in the best interests of the Settlement Class Members. Klinger Decl. ¶ 3. Class Counsel has experience in nearly all facets of data breach class action litigation and has achieved many favorable settlements with various defendants across the country. *Id.* ¶¶ 13–31. It is Class Counsel’s opinion that the benefits obtained far outweigh the delay and considerable risk of proceeding through a motion to dismiss, class certification, summary judgment, and trial. In addition, counsel for AEA are

experienced North Carolina attorneys who also believe that the Settlement is fair, reasonable, and adequate. *Id.* ¶ 11. Accordingly, this factor also favors approval of the Settlement.

**vi. Stage of Proceedings**

While formal discovery has not yet begun in this matter, Plaintiffs obtained sufficient informal discovery to determine whether the Settlement was in the best interests of the Settlement Class. Klinger Decl. ¶ 4. Courts often approve settlements prior to formal discovery if there was enough information exchanged through informal discovery. *See, e.g., Strang v. JHM Mortg. Sec. Ltd. P'ship*, 890 F. Supp. 499, 501 (E.D. Va. 1995) (“Although the settlement comes at an early stage in the litigation, even prior to the initiation of formal discovery, the Court finds that Plaintiffs have conducted sufficient informal discovery and investigation to fairly evaluate the merits of Defendants' positions during settlement negotiations.”); *In re Sony SXRDRear Projection TV Class Action Litig.*, No. 06-cv-5173, 2008 U.S. Dist. LEXIS 36093, at \*20 (S.D.N.Y. May 1, 2008) (“Although the parties did not engage in extensive formal discovery, such efforts are not required for the Settlement to be adequate, so long as the parties conducted sufficient discovery to understand their claims and negotiate settlement terms.”). Because Plaintiffs have obtained sufficient informal discovery to inform them of the adequacy of the Settlement, this factor also favors preliminary approval.

**B. The Court Should Approve the Notice Plan**

Rule 23(c) states, “In an action under this rule, notice of a proposed dismissal or compromise shall be given to all members of the class in such manner as the judge directs.” “[A]dequate notice is dictated by ‘fundamental fairness and due process.’” *Frost v. Mazda Motor of Am.*, 353 N.C. 188, 197 (2000) (quoting *Crow v. Citicorp Acceptance Co.*, 319 N.C. 274, 283 (1987)). Here the Parties have devised a notice plan that is in the best interests of the putative class

and will ensure that due process is met. The Parties, after a competitive bidding process, have agreed that Kroll Settlement Administration, a highly experienced class action notice provider, shall serve as the Settlement Administrator. Klinger Decl. ¶ 12. The Parties and Kroll Settlement Administration have come up with a cost-effective manner to ensure that the notice reaches as many Settlement Class Members as practicable. Pursuant to the Settlement, notice will be disseminated via text message, email, or U.S. mail to all Settlement Class Members, to the extent email addresses, mailing addresses, and mobile telephone numbers are known. SA ¶ 65. AEA will also provide substitute notice on its website for Settlement Class Members for whom AEA does not have contact information. *Id.* Settlement Class Members will be notified of their ability to opt out of the Settlement or object to the Settlement. *Id.* ¶¶ 67, 69. The notice plan is fair and meets due process and accordingly should be approved.

### **C. The Settlement Class Should Be Conditionally Certified**

For Settlement purposes only, the Court should certify the Settlement Class. The proposed Settlement Class definition is: “All individuals whose PHI/PII was compromised in the Data Incident.” SA ¶ 43. Excluded from the Settlement Class are: (a) Defendant’s officers and directors; (b) any entity in which Defendant has a controlling interest; (c) the affiliates, legal representatives, attorneys, successors, heirs, and assigns of Defendant; (d) attorneys and other legal representatives affiliated with or employed by Class Counsel, and; (e) all persons who validly Opt-Out of the Settlement. *Id.* Also excluded from the Settlement Class are members of the judiciary to whom this case is assigned, their families and members of their staff. *Id.* Defendant has been able to identify all of the Settlement Class Members and has contact information for most of them. *Id.*

North Carolina Courts analyze the following prerequisites in determining whether a class should be certified:

(1) the existence of a class, (2) that the named representative will fairly and adequately represent the interests of all class members, (3) that there is no conflict of interest between the representative and class members, (4) that class members outside the jurisdiction will be adequately represented, (5) that the named party has a genuine personal interest in the outcome of the litigation, (6) that class members are so numerous that it is impractical to bring them all before the court, (7) that adequate notice of the class action is given to class members.

*Perry v. Union Camp Corp.*, 100 N.C. App. 168, 170 (1990) (citing *Crow v. Citicorp Acceptance Co.*, 319 N.C. 274 (1987)). An analysis of these prerequisites demonstrates that class certification for the purposes of settlement is warranted here.

First, the North Carolina Supreme Court has held that a “class exists under Rule 23 when the named and unnamed members each have an interest in either the same issue of law or of fact, and that issue predominates over issues affecting only individual class members.” *Crow*, 319 N.C. at 280. This is undoubtedly met here. This litigation arises out of the Data Incident, which Plaintiffs allege affected all Settlement Class Members. Accordingly, Plaintiffs and Settlement Class Members all have a common interest in being made whole from the harms that have occurred as a result of the Data Incident. These issues predominate over individual issues. Courts have found the same in other data breach class actions. *See, e.g., In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 3:08-MD-01998, 2009 U.S. Dist. LEXIS 119870, at \*26 (W.D. Ky. Dec. 22, 2009) (finding predominance where proof would focus on data breach defendant’s conduct both before and during the theft of class members’ personal information); *In re Heartland Payment Sys.*, 851 F. Supp. 2d 1040, 1059 (S.D. Tex. 2012) (finding predominance where “several common questions of law and fact [arose] from a central issue: Heartland’s conduct before, during, and following the data breach, and the resulting injury to each class member from that conduct”). Accordingly, a class exists for the purposes of class certification here.

As to the second and third-class certification prerequisites, Plaintiffs will fairly and adequately protect the interests of the Settlement Class here and they have no interests that will conflict with the other Settlement Class Members. Plaintiffs' interests are entirely representative of and consistent with the interests of the proposed Settlement Class Members: all have allegedly had their Private Information implicated in the Data Incident. Klinger Decl. ¶ 10. Plaintiffs' pursuit of this matter has demonstrated that they have been, and will remain, zealous advocates for the Settlement Class. *Id.* Furthermore, proposed Class Counsel is a highly experienced class litigator, and has extensive experience litigating, negotiating, and settling data breach class actions. *Id.* ¶¶ 13–31. Plaintiffs and Class Counsel are adequate representatives of the proposed Settlement Class and Plaintiffs do not have any interests that conflict with the Settlement Class.

The fourth-class certification prerequisite, that individuals outside of the jurisdiction will be adequately protected, is also met. The Settlement Class here would include all persons who had their Private Information affected in the Data Incident, including persons who reside outside this state. *See* SA ¶ 43. The Settlement treats all Settlement Class Members equally. All Settlement Class Members will receive a voucher and Identity Theft Protection, and all will have the ability to obtain out-of-pocket expense reimbursement. SA ¶ 50. Individuals outside of North Carolina are protected here in the same manner as North Carolina citizens.

Fifth, Plaintiffs have a genuine personal interest in this litigation. As noted above, Plaintiffs were affected in the same manner as other Settlement Class Members by the Data Incident. Each had their Private Information affected in the Data Incident and alleges they were harmed as a result. Accordingly, each has a genuine personal interest in this case.

The sixth prerequisite, numerosity, is certainly met here. The Settlement Class contains as many as 327,756 Settlement Class Members. *See* SA ¶ 43. "There can be no firm rule for

determining when a class is so numerous that joinder of all members is impractical. The number is not dependent upon any arbitrary limit, but rather upon the circumstances of each case.” *Crow*, 319 N.C. at 283. Holding over 300,000 trials and requiring the filing of over 300,000 cases is certainly not practicable. This would drain too many judicial resources. Accordingly, the numerosity prerequisite is met here.

Finally, the Parties, as demonstrated above, have devised an adequate notice plan that will ensure the Settlement Class is provided notice of the Settlement. Notice will be disseminated via text message, email, or U.S. mail to all Settlement Class Members, to the extent email addresses, mailing addresses, and mobile telephone numbers are known. SA ¶ 65. Should a Settlement Class Member wish to opt-out of the Settlement, he or she will be given the opportunity to do so. *Id.* ¶ 67.

All class certification prerequisites are met here. Accordingly, the Court should conditionally certify the Settlement Class, appoint Plaintiffs as the Settlement Class Representatives, and appoint Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC as Class Counsel.

## **V. CONCLUSION**

For the reasons set forth above, Plaintiffs respectfully request that this Court: (i) preliminarily approve the Settlement as being within the range of possible Final Approval; (ii) conditionally certify the Settlement Class for settlement purposes, appoint Plaintiffs as Class Representatives, and appoint Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC as Class Counsel; (iii) appoint Kroll Settlement Administration as the Settlement Administrator and approve the proposed Notice Program; and (iv) schedule a Final Approval Hearing. A proposed Preliminary Approval Order is attached hereto as Exhibit 3.

DATED: October 9, 2025

Respectfully submitted,

/s/ Scott C. Harris

Scott C. Harris (SBN 35328)

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was filed using the NC Business Court eFiling document filing service and NC efile and serve, both of which will provide electronic notice of the filing to counsel of record.

Date: October 9, 2025

/s/ Scott C. Harris  
Scott C. Harris