STATE OF NORTH CAROLINA COUNTY OF WAKE	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION Case No. 24CV012197-910
CHRISTOPHER BURLESON, on behalf of himself and all others similarly situated, Plaintiff, v. NUCOR CORPORATION, Defendant.	**PLAINTIFF'S MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES**

Plaintiff, Christopher Burleson ("Plaintiff"), individually and on behalf of all others similarly situated, submits the following memorandum and exhibits in support of his motion for attorneys' fees, expenses, and service award.

I. INTRODUCTION

On August 27, 2024, this Court preliminarily approved a proposed class action settlement between Plaintiff and Defendant Nucor Corporation. ("Defendant"). The Settlement provides that Defendant will pay: Settlement Costs, reimbursement for ordinary and extraordinary losses, compensation for lost time, and credit monitoring for Settlement Class Members, Administrative Costs, a Service Award to Plaintiff, and Attorneys' Fees and Expenses. These are substantial, tangible benefits to the Class Members.

Settlement Class Counsel has zealously prosecuted Plaintiff's claims. Settlement Class Counsel achieved the Settlement Agreement only after an extensive

investigation and prolonged arms' length negotiations. Even after reaching an agreement to settle, Settlement Class Counsel worked for months to finalize the Settlement Agreement and associated exhibits pertaining to notice, preliminary approval, and final approval.

As compensation for the substantial benefit conferred upon the Settlement Class and for Settlement Class Counsel's extensive efforts, Settlement Class Counsel respectfully moves the Court for an award of attorneys' fees totaling $115,000, inclusive of costs and expenses, which represents 24.8% percent of the value of the Settlement[1], including only the benefits available to Settlement Class Members, the costs of administration[2], and the costs of attorneys' fees, and not taking in to account the costs of the business practice changes undertaken by Nucor to mitigate the risk of similar data incidents in the future. North Carolina courts have expressly and repeatedly approved fees that equal 25% to 40% of the common fund created.

Plaintiff further requests that this Court grant this motion, and in support of its request submits that: (1) the request is reasonable and appropriate in light of the substantial risks presented in prosecuting this action, the quality and extent of work conducted, and the stakes of the case; (2) the requested fees and costs were clearly delineated in the notice to the class, and no class member has objected; and (3) the costs incurred were reasonable and necessary for the litigation. Plaintiff also

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[1] The monetary value of the Settlement is $462,034, which includes the aggregate amount of $320,000 which Settlement Class Members may claim under the Settlement Agreement, plus the requested attorneys' fees and the cost of Settlement Administration.

[2] Administration costs through the completion of this case are estimated to be $27,034. *See* Declaration of Jessie Montague attached hereto as **Exhibit 2.**

respectfully moves the Court for an award of $1,000 to the Plaintiff for his work on behalf of the Settlement Class.[3]

II. INCORPORATION BY REFERENCE

In the interest of judicial efficiency, for factual and procedural background on this case, Plaintiff refers this Court to and hereby incorporates Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement filed on August 19, 2024 and the accompanying Exhibits, including the proposed Settlement Agreement, filed in conjunction therewith.

III. SUMMARY OF SETTLEMENT

The settlement's key terms are as follows:

A. Certification of the Settlement Class

The settlement provides for certifying the Settlement Class for settlement purposes only. The "Settlement Class" is defined as:

> **all persons to whom notice was sent from Nucor that their personally identifiable information was involved in the Data Incident.**

S.A.¶ 1.23. 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; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; and (iii) the members of the judiciary who have presided or are presiding over this matter and their families and staff. *Id.* The Settlement Class contains approximately 8,824 individuals (each, a "Settlement Class Member").

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[3] While Plaintiff here moves for attorneys' fees, expenses, and service awards, they will move for final approval of the settlement by separate motion, which will be filed prior to the final fairness hearing.

B. Settlement Benefits to the Settlement Class

The Settlement provides for various forms of relief specifically tailored to address the harms Plaintiff and Settlement Class Members allege they suffered as a result of the Data Incident. The relief available to Settlement Class Members under the Settlement Agreement includes:

1. Ordinary Expense Reimbursement. All members of the Settlement Class who submit a valid and timely Claim Form and supporting documentation for reimbursement for the following documented out-of-pocket expenses fairly traceable to the Data Incident, not to exceed an aggregate total of $750.00 per Settlement Class Member: (i) bank fees, (ii) long distance telephone charges; (iii) cell phone voice charges (if charged by the minute) or data charges (if charged by the amount of data used); (iv) postage; (v) gasoline for local travel; or (vi) fees for credit reports, credit monitoring, or other identity theft insurance product purchased between the date of the Data Incident (May 26, 2023) and the date of the close of the Claims Deadline (collectively, "Out-of-Pocket Expenses"). S.A.¶ 2.1. Settlement Class Members with Out-of-Pocket Losses must submit documentation supporting their claims. *Id.*

2. Compensation for Lost Time. Members of the Settlement Class are also eligible to receive reimbursement for up to four (4) hours of lost time remedying issues fairly traceable to the Data Incident (calculated at $17.50 per hour). S.A.¶ 2.2. Members of the Settlement Class claiming Lost Time need only submit an attestation under penalty of perjury that any claimed lost time was spent remedying issues fairly traceable to the Data Incident and a written description of how the claimed lost time was spent in connection with efforts to remedy issues fairly traceable to the Data

Incident. *Id.* Claims for Lost Time can be combined with claims for Out-of-Pocket Losses but are subject to the $750 cap. *Id.*

3. Extraordinary Expense Reimbursement: Settlement Class Members can also receive reimbursement for their documented extraordinary monetary out-of-pocket expenses to the extent not already covered by Out-of-Pocket Expenses if their identity was stolen as a result of the Data Incident in an amount not to exceed $7,500.00 per Settlement Class Member. S.A.¶ 2.3. Settlement Class Member are eligible to receive reimbursement for the following extraordinary out-of-pocket expenses, which include, but are not limited to: (i) documented professional fees and other costs incurred to address actual identity fraud or theft and (ii) other documented unreimbursed losses, fees, or charges incurred as a result of actual identity fraud or theft, including, but not limited to (a) unreimbursed bank fees, (b) unreimbursed card reissuance fees, (c) unreimbursed overdraft fees, (d) unreimbursed charges related to unavailability of funds, (e) unreimbursed late fees, (f) unreimbursed over-limit fees, (g) unreimbursed charges from banks or credit card companies, and (h) interest on payday loans due to card cancellations or due to over-limit situations ("Extraordinary Expenses"). *Id.* To claim Extraordinary Expenses, the Settlement Class Member must (i) provide identification of the identity theft event(s); (ii) attest under penalty of perjury that he/she believes that each claimed loss or expense was incurred as a result of the Data Incident and actual identity theft or fraud; and (iii) provide reasonable documentation of the out-of-pocket losses claimed. *Id.*

Claims for Ordinary Expense Reimbursement, Lost Time, and Extraordinary Expense Reimbursement shall be capped at $320,000 in the aggregate. S.A.¶ 2.6(b).

In the event that all payments for reimbursement exceed $320,000 all valid claims shall be reduced pro rata.

4. Credit Monitoring and Identity Theft Protections: Settlement Class Members who did not enroll in the two-years of credit monitoring offered by Nucor after the Data Incident are eligible to receiver twenty-four (24) months of credit monitoring services upon submission of a timely, Valid Claim. The credit monitoring services will be provided through Equifax, Inc. S.A.¶ 2.5.

1. Remediation Efforts. All Settlement Class Members will benefit from Defendant's systems and business practice changes designed to mitigate the risk of experiencing another data incident in the future, regardless of whether they file a claim for any other Settlement Benefits. S.A.¶ 2.7.

IV. LEGAL ARGUMENT

A. PLAINTIFF'S COUNSELS' REQUEST FOR ATTORNEYS' FEES AND EXPENSES, AND AN INCENTIVE AWARD TO THE CLASS REPRESENTATIVES SHOULD BE APPROVED

Settlement Class Counsel requests an award of attorneys' fees, inclusive of $172.25 in costs and expenses reasonably incurred in, and necessary for the, prosecution of this case, in the amount of $115,000. The amount of the requested attorneys' fees amounts to 24.8% of the total value of the Settlement and is reasonable when looked at under either the percentage of the fund method or the lodestar method, representing a negative lodestar multiplier of .93. Settlement Class Counsel also recommends and requests an award of $1,000 to the Settlement Class Representative.

1. The Fee Request Should Be Approved Under the Percentage of Common Benefit Method.

North Carolina has long approved granting attorneys' fees upon the creation of a common allocation of money. This doctrine was first recognized in *Horner v. Chamber of Commerce, Inc.*, 236 N.C. 96, 97-98 (1952), in which the Court stated the following:

> the rule is well established that a court of equity, or a court in the exercise of equitable jurisdiction, may in its discretion, and without statutory authorization, order an allowance for attorney fees to a litigant who at his own expense has maintained a successful suit for the preservation, protection, or increase of a common fund or of common property, or who has created at his own expense or brought into court a fund which others may share with him.

Plaintiffs' attorneys in a successful class action lawsuit may petition the Court for compensation relating to any benefits to the Class that result from the attorneys' efforts. *See, e.g.*, *Boeing Co. v. Van Gemert,* 444 U.S. 472 (1980). Under this "common benefit" approach, attorneys' fees are awarded as a percentage of the common benefit created by the settlement. The doctrine's foundation rests on the principle that "where one litigant has borne the burden and expense of the litigation that has inured to the benefit of others as well as to himself, those who have shared in its benefits should contribute to the expense." *Horner*, 236 N.C. at 98, 72 S.E.2d at 22.

The percentage-of-the-fund method is the preferred method of calculating attorneys' fees in cases involving common fund settlements in federal courts as well. "Indeed, there is a consensus among the federal circuit courts of appeal that the award of attorneys' fees in common fund cases may be based on a percentage of the recovery." *Ferris v. Sprint Comm'ns Co. L.P.*, No. 5:11-cv-667, 2012 WL 12914716, at *6 (E.D.N.C. Dec. 13, 2012) (quoting *Muhammad v. Nat'l City Mortgage, Inc.*, No. 2:07-0423, 2008 WL 5377783, at *7 (S.D. W. Va. Dec. 19, 2008)); s*ee also Phillips v. Triad*

Guaranty Inc., No. 1:09CV71, 2016 WL 2636289, at *2 (M.D.N.C. May 9, 2016) (noting that district courts within the Fourth Circuit "overwhelmingly" prefer the percentage-of-the-fund method in common fund settlement); *Kruger v. Novant Health, Inc.*, No. 1:14CV208, 2016 WL 6769066, at *2 (M.D.N.C. Sept. 29, 2016) (internal citations omitted) (noting that within the Fourth Circuit, the percentage-of-the-fund method "is the preferred approach to determine attorneys' fees.").

The percentage-of-the-fund method provides a strong incentive to plaintiff's counsel to obtain the maximum possible recovery in the shortest time possible under the circumstances by removing the incentive, which occurs under the lodestar method, for class counsel to "over-litigate" or "draw out" cases in an effort to increase the number of hours used to calculate their fees. *See Jones v. Dominion Res. Servs., Inc.,* 601 F. Supp. 2d 756, 759 (S.D.W. Va. 2009); *see also Ferris*, 2012 WL 12914716, at *6 (noting that the percentage method "better aligns the interests of class counsel and class members because it ties the attorneys' award to the overall result achieved rather than the hours expended by the attorneys"); *DeWitt v. Darlington Cty.*, No. 4:11-cv-00740, 2013 WL 6408371, at *6 (D.S.C. Dec. 6, 2013) ("The percentage-of-the fund approach rewards counsel for efficiently and effectively bringing a class action case to a resolution, rather than prolonging the case in the hopes of artificially increasing the number of hours worked on the case to inflate the amount of attorneys' fees on an hourly basis.").

The fundamental test for awarding attorneys' fees in class action settlements is whether the request is "fair and reasonable." *Ehrenhaus v. Baker*, 243 N.C. App.

17, 30 (2015). The Court has discretion to determine what is reasonable. *In re Hatteras Fin., Inc., Shareholder Litig.,* 286 F. Supp. 3d, 727, 735 (M.D.N.C. 2017).

The reasonableness of an attorneys' fee award is determined by a set of non-exclusive factors, including "1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent." *Ehrenhaus*, 216 N.C. App. at 96-97. No single *Ehrenhaus* factor is dispositive. However, attorney fee requests are presumptively fair and reasonable when they seek a third or less of the common fund. For example, the North Carolina Business Court in *Byers v. Carpenter*, No. 94 CVS 04489, 1998 NCBC 1, 1998 WL 34031740, at *9 (N.C. Super. Jan. 30, 1998) held that the appropriate level of compensation using a percentage-of-recovery method is typically 25% of the relief obtained if the case is settled before filing; 33% if after filing; and 40% if after an appeal has been taken. "The percentage fee is paid in addition to any expenses that the attorney has incurred on behalf of the client." *Id.*

Federal courts in North Carolina and in the Fourth Circuit often award fees equal to (or greater than) 33 percent of the settlement value. *See, e.g.*, *In re Cotton,* 3:18-cv-00499, 2019 WL 1233740, at *4 (W.D.N.C. March 15, 2019) (approving an

award of 33 percent of the total settlement value); *Neal v. Wal-Mart Stores, Inc.*, 3L17-cv-00022, 2021 WL 1108602, at *2 (W.D.N.C. March 19, 2021) (same); *McAdams v. Robinson*, 26 F. 4th 149, 162 (4th Cir. 2022) (affirming attorneys' fees award of $1,300,00 or 43% of the $3,000,000 common fund class action settlement); *Kruger*, 2016 WL 6769066, at *6 (awarding attorneys' fees of $10,666,666 comprising 1/3 of the monetary benefits made available to the class); *Chrismon v. Pizza*, No. 5:19-CV-155-BO, 2020 WL 3790866, at *5 (E.D.N.C. July 7, 2020) (noting that "[m]any courts in the Fourth Circuit have held that attorneys' fees in the amount of 1/3 of the settlement fund is reasonable.") (collecting cases)). Attorneys' fees in common fund cases typically reflect "around one-third of the recovery."[4]

Here, the request for attorneys' fees in the amount of 24.8% of the value of the Settlement represents a percentage which North Carolina courts find presumptively reasonable. Relevant federal court precedent from North Carolina and the Fourth Circuit is in accord that a one-third attorneys' fee request is reasonable. Learned treatises are in agreement as well. An examination of the *Ehrenhaus* factors further bears this out.

2. The Requested Attorneys' Fees Are Reasonable Under the *Ehrenhaus* Factors.

[4] *See* 5 NEWBERG ON CLASS ACTIONS § 15:73 (5th ed. 2016) (noting that a "33% figure provides some anchoring for the discussion of class action awards [to counsel]" and that "many courts have stated that … fee award in class actions average around one-third of the recovery."); *accord* Theodore Eisenberg & Geoffrey Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. OF EMPIRICAL LEGAL STUDIES, 27, 31, 33 (2004) (finding that courts consistently award 30–33% of the common fund).

The first and seventh *Ehrenhaus* factors—the time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the service properly, and the experience, reputation, and ability of the lawyers involved—overwhelmingly support the requested fee award. Here, Settlement Class Counsel has expended 171.5 hours on this case—not including the time dedicated to the drafting and filing of this motion—and anticipates spending approximately an additional 50 hours bringing this case through final approval and overseeing distribution of all Settlement benefits to Class Members.

The skill required to litigate data breach cases is great, in part due to the quickly evolving nature of data breach and privacy law. Here, as the supporting declaration in support of the preliminary approval motion abundantly shows, the lawyers representing Plaintiff are some of the most experienced in this area of the practice. *See Generally* Declaration of Scott Harris in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Harris MPA Dec."). Indeed, in the case of the Milberg team, North Carolina Courts previously recognized their skill and experience.[5] Settlement Class Counsel brought this established track record and experience to work in litigating Plaintiff's and Class Members' claims. The significant experience and qualifications of counsel easily justify the attorneys' fee award.

[5] *See McManus v. Gerald O. Dry, P.A.*, Case No. 22 CVS 1776, Order on Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards, May 5, 2023 (Bledsoe, C.J.) ("the Court recognizes that data breach class action litigation is a complex and novel area of the law and that Lietz and his law firm are national leaders in this field.")

Settlement Class Counsel's expertise is important because this was a case where Plaintiff faced substantial hurdles involving novel and difficult legal questions. Data breach cases, in general, are by their nature particularly risky and expensive. Such cases also are innately complex. *See, e.g.*, *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *32 (N.D. Ga. Mar. 17, 2020), *aff'd in part, rev'd in part and remanded*, 999 F.3d 1247 (11th Cir. 2021) (recognizing the complexity and novelty of issues in data breach class actions); *In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807, 2019 WL 3773737m at *7 (N.D. Ohio Aug. 12, 2019) ("Data breach litigation is complex and risky. This unsettled area of law often presents novel questions for courts. And of course, juries are always unpredictable."); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 315 (N.D. Cal. 2018) (noting that "many of the legal issues presented in [] data-breach case[s] are novel").

This case is no exception to that rule. It involves approximately 8,824 Class Members, complicated and technical facts, and a well-funded and motivated defendant. While Plaintiff believes he would have ultimately prevailed on the merits at trial or summary judgment, he is also aware that there are substantial risks inherent in bringing any case to trial. Accordingly, the fact that Class Counsel was able to navigate this case and resolve it at a relatively early stage is indicative of their skill and efficiency in litigating this matter. *See In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 262-63 (E.D. Va. 2009) (finding that Counsel's ability to resolve the case within one year of the Court's denial of Defendant's Motion to Dismiss to be indicative

of Counsel's "skill and efficiency."). Settlement Class Counsel did not run up the bill to seek additional fees.

Settlement Class Counsel devoted significant time and effort in settling this matter. Of course, Settlement Class Counsel's work was not over after negotiating the Settlement. After obtaining preliminary approval of the Settlement Agreement, Settlement Class Counsel worked diligently to ensure that Settlement Class members would be able benefit from the Settlement. The work performed by Class Counsel to date has been comprehensive, complex, and wide-ranging. Thus, the first and seventh factors amply support the requested fee award.

The second, and eighth factors – the preclusion of other employment and whether the fee was fixed or contingent – likewise support the requested fee award. Settlement Class Counsel took this case on a purely contingent basis. Declaration of Scott Harris in Support of Plaintiff's Motion for Attorneys' Fees, Expenses, and Service Award ("Fee Dec.) attached hereto as **Exhibit 1** ¶ 5. Plaintiff's Counsel, whose time is limited, also took on this case to the exclusion of other employment. *Id.* at ¶ 6,8. The retainer agreement Settlement Class Counsel has with Plaintiff does not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, attorneys' fees would only be awarded to Settlement Class Counsel if approved by the Court. *Id.* at ¶ 10. As such, attorneys' fees were not guaranteed in this case. *Id.* Settlement Class Counsel assumed significant risk of nonpayment or underpayment of attorneys' fees. *Id.* ¶¶ 9-10. In fact, the requested attorneys' fees represent a negative multiplier of Settlement Class Counsel's lodestar. Settlement

Class Counsel took on these significant risks knowing full well the potential consequences of their efforts. *Id.*

Here, Settlement Class Counsel took on significant risks. While Plaintiff believes he could prevail on his claims against Defendant, he also is aware that he would likely face several strong legal defenses and difficulties in demonstrating causation and injury. *Id.* ¶ 21. Such defenses, if successful, could drastically decrease or eliminate any recovery for Plaintiff and putative class members. *Id.* Further, given the complexity of the issues and the amount in controversy, the defeated party would likely appeal any decision on either certification or merits. The general risks of litigation are further heightened in the data breach arena. Among national consumer protection class action litigation, data breach cases are some of the most complex and involve a rapidly evolving area of law. Moreover, the theories of damages remain untested at trial and appeal. As another court recently observed:

> Data breach litigation is evolving; there is no guarantee of the ultimate result. *See Gordon v. Chipotle Mexican Grill, Inc.,* No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) ("Data breach cases ... are particularly risky, expensive, and complex.").

Fox v. Iowa Health Sys., No. 3:18-CV-00327-JDP, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021). These cases are particularly risky for plaintiffs' attorneys. Consequently, the requested fee award appropriately compensates for the risk undertaken by Plaintiff's counsel here.

Due, at least, in part to the cutting-edge nature of data protection technology and rapidly evolving law, data breach cases like this one are particularly complex and face substantial hurdles—even just to make it past the pleading stage. *See Hammond v. The Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060 (RMB)(RLE), 2010 WL 2643307,

at *1 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). Class certification is another hurdle that would have to be 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).

Another significant risk faced by Plaintiff here is the risk of maintaining class action status through trial. The class has not yet been certified, and Defendant will certainly oppose certification if the case proceeds. Thus, Plaintiff "necessarily risk[s] losing class action status." *Grimm v. American Eagle Airlines, Inc.*, No. LA CV 11-00406 JAK(MANx), 2014 WL 1274376, at *10 (C.D. Cal. Sept. 24, 2014). In one of the few significant data breach class actions that have been certified on a national basis, this risk was very real. *In re Marriott International Customer Data Securities Breach Litigation*, 341 F.R.D. 128 (D.Md. 2022), was recently decertified on appeal. *See In re Marriott Int'l, Inc.*, 78 F.4th 677, 680 (4th Cir. 2023).[6] The relative absence of trial class certification precedent in the relatively novel data breach setting adds to the risks posed by continued litigation.

This over-arching risk simply puts a point on what is true in all class actions – class certification through trial is not guaranteed and presents a significant risk for Plaintiff and his Counsel. Settlement Class Counsel, who took this matter on a wholly contingent basis, faced numerous challenges. Courts have recognized that such risk deserves extra compensation and is a critical factor in determining the reasonableness of a fee. *See, e.g.*, *Stocks v. Bowen*, 717 F. Supp. 397, 402 (E.D.N.C.

[6] To complete the story, the classes were re-certified by the district court on remand. *See In re Marriott Int'l Customer Data Sec. Breach Litig.*, No. 19-MD-2879, 2023 WL 8247865, at *1 (D. Md. Nov. 29, 2023).

1989); *Gilbert LLP v. Tire Eng'g & Distribution, Ltd. Liab. Co.*, 689 F. App'x 197, 201 (4th Cir. 2017); "Contingent fees compensate lawyers for the risk of nonpayment. The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel." Accordingly, these factors weigh in favor of approval of the attorneys' fees requested here.

The third factor – the fee customarily charged for similar services – weighs heavily in favor of approving the fee requested here. In data breach cases with similar class relief, there have been fee awards well exceeding a million dollars. *See Fox*, 2021 WL 826741 at *6 (approving attorneys' fees and costs in the amount of $1,575,000 in data breach settlement with similar class relief). The result requested here is similar to results obtained in other data breach cases, which include: *Culbertson, et al v. Deloitte Consulting LLP*, Case No. 1:20-cv-3962-LJL (S.D.N.Y. Feb. 16, 2022), ECF 139 (awarding $1,649,835.00 in attorneys' fees (33.33% of the Settlement Fund)); *Carrera Aguallo v. Kemper Corp.*, Case No. 1:21-cv-01883 (N.D. Ill. Oct. 27, 2021), ECF 33 (finally approving $2,500,000 in attorneys' fees in data breach class action involving 6 million class members); *Henderson V. Kalispell Reg'l Healthcare*, No. CDV 19-0761 (Mont. Dist. Ct., Cascade Cnty. Nov. 25 2020) (court awarded attorneys fee of 33% of the common fund of $4.2 million). A 24.8% fee is fully in line with, and is in fact below, other cases with similar results obtained for the Class.

The fourth factor – the amount involved and the results obtained – strongly favors the requested award. This is, without question, the most important inquiry. *Hensley v. Eckerhart,* 461 U.S. 424, 436 (1983) ("the most critical factor is the degree of success obtained"). As shown above, the Settlement provides real, tangible benefits

that—without the efforts of Plaintiff and Settlement Class Counsel and their willingness to take on the attendant risks of litigation—would not have been available to Settlement Class Members. Thus, this factor weighs heavily in favor of granting this fee request.

Finally, the result achieved in this Settlement is notable because the parties were able, through capable and experienced counsel, to reach a negotiated Settlement without significant involvement of the Court in managing this litigation. Fee Dec. at ¶ 25. Class Counsel worked on behalf of the Settlement Class to obtain information from Defendant regarding the Data Incident and used that information (along with their experience and the knowledge gained from other data breach class actions) to negotiate the Settlement. *Id.* at ¶ 23. The Settlement reached here is notable for the simplicity of the claims process; the relief that addresses the differing types of injuries sustained by consumers; the speed with which counsel was able to secure its benefit; and Plaintiff's counsel's cooperation in resolving this matter efficiently.

The fifth and sixth factors – the time limitations imposed by the client or circumstances and the nature and length of the professional relationship with the client – are neutral factors. Settlement Class Counsel did not have a professional relationship with Plaintiff prior to this case, and there were no time limitations.

Therefore, all the *Ehrenhaus* factors overwhelmingly support the requested fee award.

3. The Requested Fees are Reasonable Under a Lodestar Crosscheck

While Settlement Class Counsel does not believe that a lodestar cross-check is necessary for a non-reversionary common fund case such as this, the requested fees

of $115,000 are reasonable under a lodestar crosscheck. Class counsel has worked 171.5 hours on this matter, incurring a total lodestar of $122,341.50, and resulting in a negative lodestar multiplier of approximately .94 when applying Class Counsel's standard rates. In carrying out their responsibilities to the Settlement Class, Counsel took care to ensure that no duplicative or unnecessary work was performed. In spite of the novelty and complexity of data privacy litigation, Class Counsel's position as some of the nations leading experts in the field allowed them to efficiently address the issues presented in the litigation.

Courts in North Carolina regularly approve lodestar multipliers of 2-4 when conducting lodestar cross-checks. *Byers*, 1998 WL 34031740, at *11 ("A reasonable multiplier based on these factors would be 2 to 4."); *see also Kirkpatrick v. Cardinal Innovations Healthcare Sols.*, 352 F. Supp. 3d 499, 507 (M.D.N.C. 2018) (citing cases where "courts have found that lodestar multipliers ranging from 2 to 4.5 demonstrate the reasonableness of a requested percentage fee."). Further, courts around the country have held that fee requests representing a negative multiplier are reasonable and should be approved. *See, e.g.*, *Baffa v. Donaldson Lufkin & Jenrette Sec. Corp.,* 96 Civ. 0583, 2002 WL 1315603 at *2 (S.D.N.Y. June 17, 2002) (in class action resulting in $3 million settlement fund, fee award based on a negative lodestar multiplier was fair and reasonable); *In re Blech Sec. Litig.,* 94 Civ. 7696 & 95 Civ. 6422, 2000 WL 661680 at *5 (S.D.N.Y. May 19, 2000) (awarding lead counsel 30% of the settlement, and confirming that the award was reasonable because it represented a negative multiplier of lodestar). The requested fee here represents a negative lodestar multiplier utilizing rates customary to and approved by North Carolina

Courts, is reasonable under the percentage of the benefit and lodestar methods of review, and should be approved.

4. Other Factors Support the Reasonableness of the Requested Award

In addition to satisfying the *Ehrenhaus* factors, the requested fee award has been approved by the Settlement Class members themselves. Settlement Class members received direct notice of the Settlement, which provides the best possible and most practicable notice in a class settlement. The settlement notice described the amount that Settlement Class Counsel intended to request in attorneys' fees and costs in plain and clear language. As of November 11, 2024, no Settlement Class member has objected to the requested attorneys' fee, the case expenses sought, or the proposed service award. *See Varacallo v. Massachusetts Mutual Life Insurance Company*, 226 F.R.D. 207, 251 (D.N.J. 2005) (even a small number of objectors to a fee award favors approval of request). Accordingly, Settlement Class members have approved the requested award.

A. Class Counsel's Request for Expenses is Reasonable.

Included in their $115,000 fee request, Settlement Class Counsel seeks to recover reasonable litigation expenses in addition to the requested fee award in the amount of $172.25, representing fees for service of process. Courts regularly award litigation expenses in addition to attorneys' fees in class action cases. Courts in North Carolina and the federal Fourth Circuit have explained that such costs and expenses may include "those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services." *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir. 1988) (internal quotations omitted).

Counsel's very modest expenses here were all reasonably incurred in, and necessary to, pursuing this litigation. Fee Decl., ¶ 17. *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, No. CIV.A. DKC 11-1823, 2013 WL 5506027, at *17 (D. Md. Oct. 2, 2013) (awarding expenses that the court deemed were "reasonable and typical.").

Settlement Class Counsel's requested expense reimbursement is modest and sought for reimbursement of actual out-of-pocket expenses that were reasonable, typical, and necessary for the litigation and settlement of this case. The Court should award these modest expenses.

B. The Requested Incentive Award to the Class Representative is Reasonable.

Class litigation cannot proceed without the willingness of an individual to step up and litigate on behalf of others. A putative class representative must devote time and energy to carry out tasks that are far above and beyond what absent class members are asked to do. In recognition of these efforts, courts often award service awards to class representatives. Service awards are "awarded to class representatives in recognition of their time, expense, and risk undertaken to secure a benefit for the Class they represent" and such awards are "within the discretion of the Court." *Carl v. State*, No. 06CVS13617, 2009 WL 8561911 at ¶ 97 (N.C. Super. Dec. 15, 2009). The amount of the award is ultimately within the discretion of the Court, though the size of the award itself is typically commensurate with the level of activity performed and the size of the case. *See Smith v. Krispy Kreme Doughnut Corp.*, No. 1:05CV00187, 2007 WL 119157, at *4 (M.D.N.C. Jan. 10, 2007) (awarding a service award of $15,000).

Factors courts consider when awarding incentive awards include: the risk to the plaintiff in commencing suit, both financially and otherwise; the notoriety and/or personal difficulties encountered by the representative plaintiff; the extent of the plaintiff's personal involvement in the lawsuit in terms of discovery responsibilities and/or testimony at depositions and trial; the duration of the litigation; and the plaintiff's personal benefit, or lack thereof, purely in his capacity as a class member. *Perry v. Fleetboston*, 229 F.R.D. at 118. The degree to which the Class has benefited from the Class Representatives' actions is also taken into account. *See Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998).

Plaintiff here seeks a service award of $1,000 in recognition of the significant time and effort he has personally invested in this case. Plaintiff was prepared to litigate this action through trial to properly represent the class and fight for significant relief. As the sole class representative, absent his efforts, the class would have received no compensation. Plaintiff assisted in Counsel's investigation of the case, reviewing pleadings, maintaining contact with counsel, remained available for consultation during settlement negotiations, answering counsel's many questions, and reviewed the Settlement Agreement.

Accordingly, the requested service award is reasonable and commensurate with Plaintiff's efforts in the litigation. It is also in line with other, recent service awards in data breach cases before this Court. *See McManus v. Dry, P.A.*, No. 22-CVS-1776, 2023 WL 2785559, at *3 (N.C. Super. Mar. 29, 2023) (final approval granted by Bledsoe, C.J., March 29, 2023, and awarding $5000 service awards).

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant the instant motion as part of final approval of this class action settlement, award Settlement Class Counsel attorneys' fees in the amount of $115,000, inclusive of reasonable case expenses in the amount of $172.25, and award a service award in the amount of $1,000 to Plaintiff Williams for his service to the Class.

Dated: November 15, 2024

Respectfully submitted,

MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC

/s/ Scott C. Harris

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Attorney for Plaintiff and the Settlement Class

CERTIFICATE OF SERVICE

The undersigned counsel for Plaintiff hereby certifies that he has this day caused a copy of the foregoing **PLAINTIFF'S MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES** to be to be filed using the NC efile and serve document filing service and emailed to the following pursuant to Rule 5 of the North Carolina Rules of Civil Procedure:

Scott M. Tyler
scotttyler@mvalaw.com
Daniel E. Raymond
daniel.raymond@arnoldporter.com
Robert Katerberg
robert.katerberg@arnoldporter.com

This the 15th day of November, 2024.

/s/ Scott C. Harris
Scott C. Harris
MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC

EXHIBIT

1

STATE OF NORTH CAROLINA COUNTY OF WAKE	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION Case No. 24CV012197-910
CHRISTOPHER BURLESON, on behalf of himself and all other similarly situated. Plaintiff, v. NUCOR CORPORATION, Defendant.	**DECLARATION** **SCOTT C. HARRIS**

I, Scott Harris, being competent to testify, make the following declaration:

1. I am currently a senior partner of the law firm Milberg Coleman Bryson Phillips Grossman, PLLC ("Milberg"). I submit this declaration in support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them if called upon to do so.

2. The work of Settlement Class Counsel in connection with this action involved investigating the cause and effects of the Data Incident, interviewing potential clients, evaluating the potential class representatives, contributing to the evaluation of the merits of the case before filing the Complaint,; conducting legal research; conducting extensive research into data security incidents and their causes and effects, conducting further extensive research into data security practices and standards across e-Commerce platforms and industries; drafting and filing the Complaint; litigating against an well-regarded national law firm with extensive data breach litigation experience; obtaining information from Nucor Corporation

regarding the Data Incident, and engaging in informal discovery; drafting the comprehensive settlement agreement, well-crafted notices of settlement, an easy to understand claim form, the Motion for Preliminary Approval, a revised preliminary approval order, and this instant motion for attorneys' fees; communicating with defense counsel; updating and handling questions from our class representative; overseeing the successful launching and implementation of the notice program with substantial interaction between me and the Settlement Administrator; and overseeing the claims process. I conferred with my colleagues about strategy and case status while being mindful to avoid duplicative efforts within my firm and with co-counsel.

3. Based on my past experience I and my law firm expect to spend approximately another 50 hours seeking final approval, defending the Settlement from any potential objections, and supervising claims administration and the distribution of proceeds.

4. As of the date of filing, I have received no objections to the Settlement Agreement in general, and no objections to the proposed attorneys' fees (the amount of which was made known to the Class via the Court-approved notice program) in particular.

The Contingent Nature of the Case

5. Settlement Class Counsel prosecuted this case on a purely contingent basis. As such, the firm assumed a significant risk or nonpayment or underpayment.

6. This matter has required me, other attorneys at my Firm, and my co-counsel to spend time on this litigation that could have been spent on other matters.

At various times during the litigation of this class action, this lawsuit has consumed significant amounts of my time, my Firm's time, and the time of my co-counsel

7. Because Settlement Class Counsel undertook representation of this matter on a contingency-fee basis, we shouldered the risk of expending substantial costs and time in litigating the action without any monetary gain in the event of an adverse judgment.

8. If not devoted to litigating this action, from which any remuneration is wholly contingent on a successful outcome, the time Settlement Class Counsel spent working on this case could and would have been spent pursuing other potentially fee generating matters.

9. Litigation is inherently unpredictable and therefore risky. Here, that risk was very real, due to the rapidly evolving nature of case law pertaining to data breach litigation, and the state of data privacy law. Therefore, despite Settlement Class Counsels' devotion to the case and our confidence in the claims alleged against Defendant, there have been many factors beyond our control that posed significant risks.

10. The contingency fees contemplated under Settlement Class Counsels' representation agreements for cases in North Carolina and elsewhere generally fall within the one-third to 40% range. Settlement Class Counsels' fees were not guaranteed—the retainer agreement counsel had with Plaintiff did not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, approved by the court.

The Costs and Fees Incurred

11. Due to the early stage of litigation and efficiency by which Class Counsel was able to obtain this significant settlement, expenses and fees incurred by Plaintiffs are low.

12. Settlement Class Counsel have currently accrued 171.5 hours through November 11, 2024, representing $122,341.50 in lodestar. The hours Class Counsel spent litigating this matter reflect the reasonable and necessary effort required to achieve such a satisfactory result. This does not include the time spent drafting, finalizing, and filing the instant motion.

13. Additional time will be spent drafting the final approval motion, preparing for and attending the Final Approval Hearing, defending any appeals taken from the final judgment approving Settlement, and ensuring that the claims process and distribution of Settlement proceeds to Class Members is done in a timely manner in accordance with the terms of the Settlement. Based upon my past experience, I estimate that approximately another 50 hours of attorney time between the two law firms who are Settlement Class Counsel will be reasonably expended on this matter.

14. I assert that the attorneys' fees sought in the Motion for Attorneys' Fees, Costs, and Service Awards are reasonable and seek fair and reasonable compensation for undertaking this case on a contingency basis, for obtaining the substantial relief for Plaintiff and the Class in the form of a settlement valued at $462,034 in addition to valuable equitable relief in the form of business practice changes undertaken by Nucor to mitigate the risk of similar data incidents in the future.

15. Where possible, Settlement Class Counsel made efforts to carefully assign work so as to avoid duplication of efforts and have the work completed by the appropriate level of attorney.

16. All books and records in this case regarding costs expended were maintained in the ordinary course of business, from expense vouchers and check records. I have reviewed the records of costs expended in this matter.

17. My firm and co-counsel have also accrued $172.25 in out-of-pocket expenses pertaining to this litigation, which includes fees for service of process.

18. These costs are reasonable, and necessary for the litigation, and are modest in comparison to the enormous costs that likely would have been incurred if litigation had continued. Reimbursement of these costs is sought in addition to the attorneys' fees requested. Based upon my past experience, the amount of out-of-pocket case expenses will increase prior to Final Approval, and will include additional travel expenses to appear at the Final Approval Hearing.

19. The Settlement Agreement calls for reasonable service award to Plaintiff Burleson in the amount of $1,000, subject to approval of the Court. The Service Award is meant to recognize Plaintiff for his efforts on behalf of the Class, including assisting in the investigation of the case, maintaining contact with counsel, reviewing the pleadings, answering counsel's many questions, communicating with counsel during the settlement negotiations, and reviewing the terms of the Settlement Agreement. Plaintiff was not promised a service award, nor did he condition his representation on the expectation of any service or incentive award.

20. I strongly believe that the Settlement Agreement is favorable for the Settlement Class. The Settlement addresses the type of injury and repercussions sustained by Settlement Class Members in the wake of the Data Incident. In the opinion of the undersigned and other Settlement Class Counsel, the settlement is fair, reasonable, adequate, as are the attorneys' fees, expenses, and service awards requested here.

21. Although Plaintiff believes in the merits of his claims, this litigation was inherently risky and complex. The claims involve the intricacies of data breach litigation (a fast-developing area in the law), and Plaintiff would face risks at each stage of litigation. Against these risks, it was through the hard-fought negotiations and the skill and hard work of Settlement Class Counsel and the Class Representative that the Settlement was achieved for the benefit of the Settlement Class.

22. In contrast to the risks, the Settlement provides certain and substantial compensation to the Settlement Class Members. The result achieved in this Settlement is notable because the parties were able, through capable and experienced counsel, to reach a negotiated Settlement without involvement of the Court in managing this litigation or discovery disputes.

23. Settlement Class Counsel worked on behalf of the Settlement Class to obtain information from Defendant regarding the Data Incident, through both formal and informal discovery, and used that information (along with their experience and the knowledge gained from other data breach class actions) to negotiate the Settlement.

24. The relief here addresses the type of injury and repercussions sustained by consumers in the wake of a Data Incident. With a substantial common fund providing ample cash to fully fund the benefits offered, this Settlement is an exemplary settlement for cases of this type.

25. What makes this Settlement more remarkable is the speed with which counsel was able to secure a favorable settlement. This Settlement was achieved not only through hard work, but also through years of developing substantial expertise in this field.

* * * * * * * * * * * * *

I declare under penalty of perjury that foregoing is true and correct.

Executed this 15th day of November, 2024, at Raleigh, North Carolina.

MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC

/s/ Scott C. Harris
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Attorney for Plaintiff and the putative classes

EXHIBIT

2

STATE OF NORTH CAROLINA **COUNTY OF WAKE**	**IN THE GENERAL COURT OF JUSTICE** **SUPERIOR COURT DIVISION** **CIVIL ACTION NO.** **24CV012197-910**

CHRISTOPHER BURLESON, on behalf of himself and all others similarly situated,

Plaintiff,

v.

NUCOR CORPORATION,

Defendant.

DECLARATION OF JESSIE MONTAGUE

1. My name is Jessie Montague, and I am over the age of eighteen (18) years. I make this declaration under the penalty of perjury, free and voluntarily, under no coercion, threat, or intimidation, and without promise of benefit or reward, based on my own personal knowledge. If called to testify, I could and would testify consistent with the matters stated herein.

2. I am the Senior Project Manager for RG/2 Claims Administration LLC ("RG/2 Claims"), whose address is 30 South 17th Street, Philadelphia, PA 19103, the independent third-party settlement administrator retained as Claims Administrator to handle various settlement administration activities in the above-referenced matter, including, but not limited to, mailing of settlement notification packages to Class Members, Claim Form collection and review, claimant correspondence, and distribution.

3. RG/2 Claims is a full-service class action settlement administrator offering notice, claims processing, allocation, distribution, tax reporting, and class action settlement consulting services. RG/2 Claims' experience includes the provision of notice and administration services

for settlements arising from antitrust, data security breach, consumer, civil rights, employment, negligent disclosure, and securities fraud allegations. Since 2000, RG/2 Claims has administered and distributed in excess of $2 billion in class action settlement proceeds.

4. I have been actively involved and responsible for handling the administration of the settlement of the above-referenced matter.

5. As of November 13, 2024, RG/2 Claims has incurred fees and costs of $19,445 associated with Claims Administration. The fees and costs are associated with: a) preparing, printing and mailing Notices to all Settlement Class members; b) creating and maintaining a Settlement website, toll-free telephone number, mailing address and email address for Settlement Class Members; c) processing returned Notices; d) skip tracing undeliverable addresses; e) processing Claim Forms, f) tracking Exclusion Requests; and g) reviewing reasonable documentation.

6. RG/2 Claims will incur additional costs for processing Claim Forms and Exclusion Requests, reviewing reasonable documentations, issuing Claim Supplementation Notices, calculations and distributing settlement payments, and responding to inquiries. The total cost for the administration of this Settlement, including fees incurred and future costs for completion of the administration is estimated to be $27,034. To date RG/2 Claims has not received payment from Defendants.

7. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of November 2024.

Jessie Montague

Jessie T. Montague