

**IN THE STATE OF ILLINOIS  
FOURTEENTH JUDICIAL CIRCUIT FOR  
WHITESIDE COUNT, CHANCERY DIVISION**

JAY D. HEATH, BEVERLY G. STOLL,	)	
AMBER BOWER, and JOEL COURTNEY,	)	
individually and on behalf of all others	)	
similarly situated,	)	
	)	
Plaintiffs,	)	Case No. 2023-LA-000006
	)	
v.	)	
	)	
STEEL RIVER SYSTEMS, LLC,	)	
	)	
Defendant.	)	

**SETTLEMENT AGREEMENT**

This Settlement Agreement, dated as of July 12, 2023, is made and entered into by and among the following Settling Parties (as defined below): (i) Jay D. Heath, Beverly G. Stoll, Amber Bower, Joel Courtney, and Eric Liberty (“Representative Plaintiffs”), individually and on behalf of the Settlement Class (as defined below), by and through their counsel at Mason LLP and Cole & Van Note (“Proposed Class Counsel”); and (ii) Steel River Systems, LLC (“Steel River”), by and through its counsel of record, Baker & Hostetler LLP. The Settlement Agreement is subject to Court approval and is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof.

**I. THE LITIGATION**

On or about July 16, 2022, Steel River suffered a cyberattack on its computer network. Through the operation of a type of ransomware, the threat actor accessed and exfiltrated data from certain systems, including personally identifying information belonging to approximately 219,377 individuals. Subsequently, each Representative Plaintiff (other than Mr. Liberty) filed a lawsuit

asserting claims against Steel River relating to the Data Incident (as defined below). Plaintiffs Amber Bower and Joel Courtney filed a lawsuit in the Northern District of Illinois captioned *Amber Bower and Joel Courtney, individually, and on behalf of all others similarly situated v. Steel River Systems, LLC*, No. 1:23-cv-99136 (the “*Bower Action*”). Plaintiff Beverly G. Stoll filed a lawsuit in the Northern District of Illinois captioned *Beverly G. Stoll, individually, and on behalf of all others similarly situated v. Steel River Systems, LLC*, No. 1:23-cv-00151 (the “*Stoll Action*”). Plaintiff Jay D. Heath filed a lawsuit in the Northern District of Illinois captioned *Jay D. Heath, individually and on behalf of all others similarly situated v. Steel River Systems, LLC*, No. 3:23-cv-50007 (the “*Heath Action*”). The Settling Parties stipulated to the dismissal of the Stoll, Heath, and Bower Actions and the re-filing of a single action in the Fourteenth Judicial Circuit Court for Whiteside County, Illinois, Chancery Division, for the purposes of seeking approval of the settlement, as set forth herein.

Pursuant to the terms set out below, this Settlement Agreement provides for the resolution of all claims and causes of action asserted, or that could have been asserted, against Steel River and the Released Persons (as defined below) relating to the Data Incident, by and on behalf of Representative Plaintiffs and Settlement Class Members (as defined below), and any other such actions by and on behalf of any other consumers and putative classes of consumers originating, or that may originate, in jurisdictions in the United States against Steel River relating to the Data Incident (collectively, the “*Litigation*”).

## **II. CLAIMS OF REPRESENTATIVE PLAINTIFFS AND BENEFITS OF SETTLING**

Representative Plaintiffs believe the claims asserted in the Litigation, as set forth in the Complaints, have merit. Representative Plaintiffs and Proposed Class Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Litigation against Steel River through motion practice, trial, and potential appeals. They have

also taken into account the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation. Proposed Class Counsel are highly experienced in class action litigation and very knowledgeable regarding the relevant claims, remedies, and defenses at issue generally in such litigation and in this Litigation. They have determined that the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of Plaintiffs and the Settlement Class.

### **III. DENIAL OF WRONGDOING AND LIABILITY**

Steel River denies each and all of the claims and contentions alleged against it in the Litigation. Steel River denies all charges of wrongdoing or liability as alleged, or which could be alleged, in the Litigation. Nonetheless, Steel River has concluded that further conduct of the Litigation would be protracted and expensive and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. Steel River also has taken into account the uncertainty and risks inherent in any litigation. Steel River has, therefore, determined that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

### **IV. TERMS OF SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Representative Plaintiffs, individually and on behalf of the Settlement Class, Proposed Class Counsel, and Steel River that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice as to the Settling Parties, the Settlement Class, and the Settlement Class

Members, except those Settlement Class Members who timely opt-out of the Settlement Agreement, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

**1. Definitions**

As used in the Settlement Agreement, the following terms have the meanings specified below:

1.1 “Agreement” or “Settlement Agreement” means this agreement.

1.2 “Approved Claims” means Settlement Claims in an amount approved by the Settlement Administrator or found to be valid through the Dispute Resolution process.

1.3 “Claims Administration” means the processing, adjudicating, and paying claims received from Settlement Class Members by the Settlement Administrator.

1.4 “Claims Deadline” means the postmark deadline for valid claims pursuant to ¶ 2.3.

1.5 “Costs of Claims Administration” means all actual costs associated with or arising from Claims Administration.

1.6 “Court” means the Fourteenth Judicial Circuit Court for Whiteside County, Illinois, Chancery Division.

1.7 “Data Incident” means the cyberattack against Steel River’s network, which occurred on or about July 16, 2022. The potentially exposed information may have included full names, dates of birth, Social Security numbers, and financial account numbers.

1.8 “Dispute Resolution” means the process for resolving disputed Settlement Claims as set forth in this Agreement.

1.9 “Effective Date” means the first date by which all of the events and conditions specified in ¶ 1.10 and ¶ 9.1 herein have occurred and been met.

1.10 “Final” means the occurrence of all of the following events: (i) the settlement pursuant to this Settlement Agreement is approved by the Court; (ii) the Court has entered a

Judgment (as that term is defined herein); and (iii) the time to appeal or seek permission to appeal from the Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing any attorneys' fee award or service award made in this case shall not affect whether the Judgment is "Final" as defined herein or any other aspect of the Judgment.

1.11 "Judgment" means a judgment rendered by the Court, in the form attached hereto as Exhibit A, or a judgment substantially similar to such form.

1.12 "Notice Plan" refers to a plan for notifying Settlement Class Members about the settlement to be developed by the Parties with the assistance of the Settlement Administrator consistent with Section 5/2-801 of the Illinois Code of Civil Procedure and constitutional Due Process.

1.13 "Objection Date" means the date by which objections to the settlement from Settlement Class Members must be filed with the Clerk of Court to be effective and timely.

1.14 "Opt-Out Date" means the date by which requests for exclusion from settlement must be postmarked to be effective and timely.

1.15 "Person" means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

1.16 “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement and ordering that notice be provided to the Settlement Class. The Settling Parties’ proposed form of Preliminary Approval Order is attached hereto as Exhibit B.

1.17 “Plaintiffs’ Counsel” and “Proposed Class Counsel” means Gary E. Mason, Danielle L. Perry, Lisa A. White, and Theodore B. Bell of Mason LLP and Scott Edward Cole of Cole & Van Note.

1.18 “Related Entities” means Steel River’s past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of Steel River’s and their respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers, and includes, without limitation, any Person related to any such entity who is, was or could have been named as a defendant in any of the actions in the Litigation, other than any Person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

1.19 “Released Claims” shall collectively mean any and all claims and causes of action that were or could have been brought in the Litigation based on, relating to, concerning, or arising out of the Data Incident and alleged theft of Social Security Numbers or other personal information or the allegations, facts, or circumstances described in the Litigation including, without limitation, any violations of the Illinois and similar state consumer protection statutes; negligence; negligence per se; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy; misrepresentation (whether fraudulent, negligent, or innocent); unjust enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute or common law duty; and including, but not limited to, any and all claims for

damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, the appointment of a receiver, and any other form of relief that either has been asserted, or could have been asserted, by any Settlement Class Member against any of the Released Persons based on, relating to, concerning, or arising out of the Data Incident and alleged theft of Social Security Numbers or other personal information or the allegations, facts, or circumstances described in the Litigation. Released Claims shall include Unknown Claims as defined in ¶ 1.27. Released Claims shall not include the right of any Settlement Class Member or any of the Released Persons to enforce the terms of the settlement contained in this Settlement Agreement and shall not include the claims of Settlement Class Members who have timely excluded themselves from the Settlement Class.

1.20 "Released Persons" means Steel River, its Related Entities and each of their past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers.

1.21 "Representative Plaintiffs" means Jay D. Heath, Beverly G. Stoll, Amber Bower, Joel Courtney, and Eric Liberty.

1.22 "Settlement Administrator" means CPT Group, a company experienced in administering class action notice and claims generally and specifically those of the type provided for and made in data breach litigation, jointly agreed upon by the Settling Parties and approved by the Court.

1.23 “Settlement Claim” means a claim for settlement benefits made under the terms of this Settlement Agreement.

1.24 “Settlement Class” means all persons residing in the United States whose personal information was exposed to unauthorized third parties during the Data Incident, which as described in the definition of Data Incident occurred on or about July 16, 2022, and who were sent notice of the Data Incident. The Settlement Class specifically excludes: (i) Steel River and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement; (iv) the attorneys representing the Settling Parties in the Litigation; and (v) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

1.25 “Settlement Class Member(s)” means a Person(s) who falls within the definition of the Settlement Class.

1.26 “Settling Parties” means, collectively, Steel River and Representative Plaintiffs, individually and on behalf of the Settlement Class.

1.27 “Unknown Claims” means any of the Released Claims that any Settlement Class Member, including any Representative Plaintiffs, does not know or suspect to exist in his or her favor at the time of the release of the Released Persons that, if known by him or her, might have affected his or her settlement with, and release of, the Released Persons, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Representative Plaintiffs expressly shall have, and each of the other Settlement Class



Members shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, Montana Code Ann. § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Settlement Class Members, including Representative Plaintiffs, and any of them, may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Representative Plaintiffs expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, upon the Effective Date, fully, finally, and forever settled and released any and all Released Claims. The Settling Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

1.28 “United States” as used in this Settlement Agreement includes the District of Columbia and all territories.

**2. Settlement Benefits.** Steel River will make monetary relief described below available to Settlement Class Members through a claims process, subject to an aggregate cap of \$200,000.

2.1 Expense Reimbursement Capped at \$310. All Settlement Class Members who submit a valid claim using the Claim Form (Exhibit C to this Settlement Agreement) are eligible to receive reimbursement for the following out-of-pocket expenses, not to exceed \$310 per Settlement Class Member, that were incurred as a result of the Data Incident: (i) unreimbursed bank fees; (ii) long distance telephone charges; (iii) cell minutes (if charged by minute), Internet usage charges (if charged by the minute or by the amount of data usage and incurred solely as a result of the Data Incident), and text messages (if charged by the message and incurred solely as a result of the Data Incident); (iv) postage; (v) gasoline for local travel; (vi) up to three (3) hours of documented lost time spent dealing with the Steel River Data Incident (calculated at the rate of \$25 per hour), but only if at least one full hour was spent and only if the time can be documented with reasonable specificity by answering open-ended questions on the Claim Form; (vii) costs of credit report(s) purchased by Settlement Class Members between July 16, 2022 and the Claims Deadline (with reasonable documentation, proof of purchase, and an affirmative statement by Settlement Class Member that it was purchased primarily because of the Data Incident, including, if purchased prior to December 15, 2022, identification of a fraudulent charge caused by the Data Incident that prompted the purchase); and (viii) costs of credit monitoring purchased by Settlement Class Members between July 16, 2022 and the Claims Deadline (with reasonable documentation, proof of purchase, and an affirmative statement by Settlement Class Member that it was purchased primarily because of the Data Incident and not for other purposes, including, if purchased prior to

December 15, 2022, identification of a fraudulent charge caused by the Data Incident that prompted the purchase).

2.2 Other Extraordinary Expense Reimbursement. Steel River shall reimburse, as provided for below, each Settlement Class Member in the amount of his or her proven loss, but not to exceed \$5,000 per claim (and only one claim per Settlement Class Member), for a monetary out-of-pocket loss that occurred more likely than not as a result of the Data Incident if: (a) it is an actual, documented, and unreimbursed monetary loss; (b) was more likely than not caused by the Data Incident; (c) occurred during the time period from July 16, 2022, through and including the end of the Claims Deadline (*see* ¶ 2.3); (d) is not an amount already covered by one or more of the categories in ¶ 2.1; and (e) the claimant made reasonable efforts to avoid or seek reimbursement for the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance as required under ¶ 2.4.3. The total of all amounts recovered under this paragraph shall not exceed \$5,000 per Settlement Class Member. Settlement Class Members with claims under this paragraph may also submit claims for benefits under ¶ 2.1.

2.3 Settlement Class Members seeking reimbursement under ¶¶ 2.1 or 2.2 must complete and submit a written Claim Form to the Settlement Administrator, postmarked on or before the 90th day after the deadline for the commencement of notice to Settlement Class Members as set forth in ¶ 3.2 (the “Claims Deadline”). The notice to the Class will specify this deadline and other relevant dates described herein.

2.4 The Claim Form must be verified by the Settlement Class Member with a statement that his or her claim is true and correct, to the best of his or her knowledge and belief and is being made under penalty of perjury. Notarization shall not be required. As proof of class membership, Settlement Class Members must either submit a unique identifier provided in the notice emailed

to them by the Settlement Administrator or provide their full name and the name of Steel River's customer to whom the Settlement Class Member provided his or her PII. The Settlement Class Member must reasonably attest that the out-of-pocket expenses and charges claimed were both actually incurred and plausibly arose from the Data Incident. Failure to provide supporting attestation and documentation as requested on the Claim Form shall result in denial of a claim. Disputes as to claims submitted under this paragraph are to be resolved pursuant to the provisions stated in ¶ 2.6.

2.4.1 Claimants seeking reimbursement for expenses or losses described in ¶¶ 2.1 and 2.2 must complete and submit the appropriate section of the Claim Form to the Settlement Administrator, together with proof of such losses.

2.4.2 Claimants must exhaust all credit monitoring insurance and identity theft insurance, before Steel River is responsible for any expenses claimed pursuant to ¶¶ 2.1 or 2.2 of this Settlement Agreement. Nothing in this Settlement Agreement shall be construed to provide for a double payment for the same loss or injury that was reimbursed or compensated by any other source.

2.4.3 To be valid, claims must be complete and submitted to the Settlement Administrator on or before the Claims Deadline.

2.4.4 No payment shall be made for emotional distress, personal/bodily injury, or punitive damages, as all such amounts are not recoverable pursuant to the terms of the Settlement Agreement.

## 2.5 Equitable Relief.

Steel River agrees to implement, continue, and maintain the following data security measures for a period of one year following final approval of the settlement:

2.5.1 Maintenance of a written information security program;

2.5.2 Implementation of annual employee training on Steel River's data security policies and detecting/handling suspicious emails;

2.5.3 Maintenance of a policy for responding to information security events; and

2.5.4 Requirement of adding encryption to any and all sensitive personally identifiable consumer data collected during the course of business in accordance with all applicable regulations, industry standards, and federal, state, or local laws;

2.5.5 Implementation and requirement of multi-factor authentication for all current Steel River employees to access any PII; and

2.5.6 Implementation of a commercially reasonable process for reviewing vendors' information security posture.

2.6 Dispute Resolution for Claims.

2.6.1 The Settlement Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the claimant is a Settlement Class Member; (2) the claimant has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support the claimant's class membership and the expenses described in ¶¶ 2.1 and 2.2; and (3) the information submitted could lead a reasonable person to conclude that more likely than not the claimant has suffered the claimed losses as a result of the Data Incident (collectively, "Facially Valid"). The Settlement Administrator may, at any time, request from the claimant, in writing, additional information ("Claim Supplementation") as the Settlement Administrator may reasonably require to evaluate the claim, *e.g.*, documentation requested on the Claim Form, information regarding the claimed losses, available insurance and the status of any

claims made for insurance benefits, or claims previously made for identity theft and the resolution thereof.

2.6.2 Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not accompanied by sufficient documentation to determine whether the claim is Facially Valid, the Settlement Administrator shall request additional information (“Claim Supplementation”) and give the claimant thirty (30) days to cure the defect before rejecting the claim. Requests for Claim Supplementation shall be made within thirty (30) days of receipt of such Claim Form or thirty (30) days from the Effective Date, whichever comes later. In the event of unusual circumstances interfering with compliance during the 30-day period, the claimant may request and, for good cause shown (illness, military service, out of the country, mail failures, lack of cooperation of third parties in possession of required information, etc.), shall be given a reasonable extension of the 30-day deadline in which to comply; however, in no event shall the deadline be extended to later than one year from the Effective Date. If the defect is not cured, then the claim will be deemed invalid and there shall be no obligation to pay the claim.

2.6.3 Following receipt of additional information requested as Claim Supplementation, the Settlement Administrator shall have thirty (30) days to accept, in whole or lesser amount, or reject each claim. If, after review of the claim and all documentation submitted by the claimant, the Settlement Administrator determines that such a claim is Facially Valid, then the claim shall be paid subject to ¶ 8. If the claim is not Facially Valid because the claimant has not provided all information needed to complete the Claim Form and evaluate the claim, then the Settlement Administrator may reject the claim without any further action.

2.6.4 Settlement Class Members shall have thirty (30) days from receipt of the offer to accept or reject any offer of partial payment received from the Settlement Administrator. If a

Settlement Class Member rejects an offer from the Settlement Administrator, the Settlement Administrator shall have fifteen (15) days to reconsider its initial adjustment amount and make a final, non-appealable determination. If the claimant approves the final determination, then the approved amount shall be the amount to be paid subject to ¶ 8.

2.6.5 Settlement Expenses. All costs for notice to the Settlement Class as required under ¶¶ 3.1 and 3.2, Costs of Claims Administration under ¶¶ 8.1, 8.2, and 8.3, and the costs of Dispute Resolution described in ¶ 2.6, shall be paid by Steel River.

2.7 Settlement Class Certification. The Settling Parties agree, for purposes of this settlement only, to the certification of the Settlement Class. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Litigation shall proceed as though the Settlement Class had never been certified, without prejudice to any Person's or Settling Party's position on the issue of class certification or any other issue. The Settling Parties' agreement to the certification of the Settlement Class is also without prejudice to any position asserted by the Settling Parties in any other proceeding, case, or action, as to which all of their rights are specifically preserved.

2.8 Confidentiality of Information Submitted by Settlement Class Members. Information submitted by Settlement Class Members pursuant to this Settlement Agreement shall be deemed confidential and protected as such by Steel River and the Settlement Administrator.

### **3. Order of Preliminary Approval and Delivery of Notice**

3.1 As soon as practicable after the execution of the Settlement Agreement, Proposed Class Counsel and counsel for Steel River shall jointly submit this Settlement Agreement to the Court and file a motion for preliminary approval of the settlement with the Court requesting entry

of a Preliminary Approval Order in the form attached hereto as Exhibit B, or an order substantially similar to such form in both terms and cost, requesting, *inter alia*:

- a) certification of the Settlement Class for settlement purposes only pursuant to ¶ 2.7;
- b) preliminary approval of the Settlement Agreement as set forth herein;
- c) the scheduling of a Final Fairness Hearing and briefing schedule for Motion for Final Hearing and Application for Class Representative Service Awards and Attorneys' Fees and Costs;
- d) appointment of Proposed Class Counsel as Class Counsel;
- e) appointment of Representative Plaintiffs as Class Representatives;
- f) approval of a customary short-form notice ("Short-Form Notice") to be e-mailed to Settlement Class Members in a form substantially similar to the one attached hereto as Exhibit D and a customary long form notice ("Long-Form Notice") in a form substantially similar to the one attached hereto as Exhibit E to be posted on a settlement website, all of which shall satisfy the notice requirements of Section 5/2-801 of the Illinois Code of Civil Procedure;
- g) appointment of a Settlement Administrator to be jointly agreed to by the Settling Parties;
- h) approval of a Notice Plan to be developed by the parties with the assistance of the Settlement Administrator; and
- i) approval of a Claim Form substantially similar to that attached hereto as Exhibit C.

The forms of notice and Claim Form shall be reviewed by the Settlement Administrator and may be revised as agreed upon by the Settling Parties prior to such submission to the Court for approval.

3.2 Steel River shall pay for all of the costs associated with the Settlement Administrator and for providing notice to the Settlement Class in accordance with the Preliminary Approval Order, as well as the costs of such notice. Attorneys' fees, costs, and expenses of Proposed Class Counsel, and service awards to Class Representatives, shall be paid by Steel River as set forth in ¶ 7 below, subject to Court approval. Direct notice shall be provided to class members in accordance with the Notice Plan. The Notice Plan shall be subject to approval by the



Court as meeting constitutional due process requirements. The Settlement Administrator shall establish a dedicated settlement website and shall maintain and update the website throughout the claim period, with the forms of notice and Claim Form approved by the Court, as well as this Settlement Agreement. A toll-free help line staffed with a reasonable number of live operators shall be made available to address Settlement Class Members' inquiries. The Settlement Administrator also will provide copies of the forms of notice and Claim Form approved by the Court, as well as this Settlement Agreement, upon request. Prior to the Final Fairness Hearing, Proposed Class Counsel and Steel River shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with this provision of notice. The Short-Form Notice, Long-Form Notice, and Claim Form approved by the Court may be adjusted by the Settlement Administrator, respectively, in consultation and agreement with the Settling Parties, as may be reasonable and not inconsistent with such approval. The Notice Program shall commence within thirty (30) days after entry of the Preliminary Approval Order.

3.3 Proposed Class Counsel and Steel River's counsel shall request that after notice is completed, the Court hold a hearing (the "Final Fairness Hearing") and grant final approval of the settlement set forth herein.

#### **4. Opt-Out Procedures**

4.1 Each Person wishing to opt-out of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated email address established by the Settlement Administrator. Settlement Class members will only be able to submit an opt-out request on their own behalf; mass or class opt-outs will not be permitted. The written notice must clearly manifest a Person's intent to be excluded from the Settlement Class. To be effective, written notice must be e-mailed no later than ninety (90) days after the date on which the Notice Program commences pursuant to ¶ 3.2.

4.2 All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class, as set forth in ¶ 4.1 above, referred to herein as “Opt-Outs,” shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class in the manner set forth in ¶ 4.1 above shall be bound by the terms of this Settlement Agreement and Judgment entered thereon.

4.3 In the event that within ten (10) days after the Opt-Out Date as approved by the Court, there have been more Opt-Outs (exclusions) than listed in a separate letter agreement to be shared with the Court under seal, Steel River may, by notifying Proposed Class Counsel in writing, void this Settlement Agreement. If Steel River voids the Settlement Agreement pursuant to this paragraph, Steel River shall be obligated to pay all settlement expenses already incurred, excluding any attorneys’ fees, costs, and expenses of Proposed Class Counsel and incentive awards and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

## **5. Objection Procedures**

5.1 Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection by the Objection Date. Such notice shall state: (i) the objector’s full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class; (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of all counsel representing the objector; (v) a statement whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; (vi) the objector’s signature and the signature of the objector’s duly authorized attorney or other duly authorized representative (along

with documentation setting forth such representation); and (vii) a list, by case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement within the last three (3) years. To be timely, written notice of an objection in the appropriate form must be filed with the Clerk of the Court no later than ninety (90) days from the date on which the Notice Program commences pursuant to ¶ 3.2 and served concurrently therewith upon Proposed Class Counsel and counsel for Steel River via the Court's electronic filing system.

5.2 Any Settlement Class Member who fails to comply with the requirements for objecting in ¶ 5.1 shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of ¶ 5.1. Without limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Judgment to be entered upon final approval shall be pursuant to appeal under the Illinois Rules of Appellate Procedure and not through a collateral attack.

## **6. Releases**

6.1 Upon the Effective Date, each Settlement Class Member, including Representative Plaintiffs, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Representative Plaintiffs, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum

(other than participation in the settlement as provided herein) in which any Released Claim is asserted.

6.2 Upon the Effective Date, Steel River shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged, Representative Plaintiffs, each and all of the Settlement Class Members, Proposed Class Counsel and Plaintiffs' Counsel, of all claims, including Unknown Claims, based upon or arising out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims, except for enforcement of the Settlement Agreement. Any other claims or defenses Steel River may have against such Persons including, without limitation, any claims based upon or arising out of any retail, banking, debtor-creditor, contractual, or other business relationship with such Persons that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims are specifically preserved and shall not be affected by the preceding sentence.

6.3 Notwithstanding any term herein, neither Steel River, nor its Related Parties, shall have or shall be deemed to have released, relinquished, or discharged any claim or defense against any Person other than Representative Plaintiffs, each and all of the Settlement Class Members, Proposed Class Counsel, and Plaintiffs' Counsel.

**7. Plaintiffs' Counsel's Attorneys' Fees, Costs, and Expenses; Service Award to Representative Plaintiffs**

7.1 The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or service award to Representative Plaintiffs, as provided for in ¶¶ 7.2 and 7.3, until after the substantive terms of the settlement had been agreed upon, other than that Steel River would pay reasonable attorneys' fees, costs, expenses, and service awards to Representative Plaintiffs as may be agreed to by Steel River and Proposed Class Counsel and/or as ordered by the Court, or in the

event of no agreement, then as ordered by the Court. Steel River and Proposed Class Counsel have agreed to the following:

7.2 Proposed Class Counsel has agreed to request and Steel River has agreed to pay, subject to Court approval, the amount of \$123,750 to Proposed Class Counsel for attorneys' fees and verified costs and expenses of all cases against Steel River that Plaintiffs' Counsel have pursued over the Data Incident. Proposed Class Counsel, in their sole discretion, shall allocate and distribute the amount of attorneys' fees, costs, and expenses awarded by the Court among Plaintiffs' Counsel, if any.

7.3 Subject to Court approval, Steel River has agreed to pay a service award in the amount of \$1,250 to each of the Representative Plaintiffs.

7.4 Steel River shall pay the Court-approved amount of attorneys' fees, costs, expenses, and service awards to Representative Plaintiffs by check to an account established by Proposed Class Counsel ten (10) days after the Effective Date. Class Counsel will repay to Steel River the amount of the award of attorneys' fees and costs in the event that the final approval order and final judgment are not upheld on appeal, and if only a portion of fees or costs (or both) is upheld, Class Counsel will repay to Steel River the amount necessary to ensure the amount of attorneys' fees or costs (or both) comply with any court order.

7.5 Proposed Class Counsel shall thereafter distribute the award of attorneys' fees, costs, and expenses among Plaintiffs' Counsel and service award to Representative Plaintiffs consistent with §§ 7.2 and 7.3. If this Settlement Agreement is terminated or otherwise does not become Final (*e.g.*, disapproval by the Court or any appellate court), Steel River shall have no obligation to pay attorneys' fees, costs, expenses, or service awards and shall only be required to pay costs and expenses related to notice and administration that were already incurred. Under no

circumstances will Proposed Class Counsel or any Class Member be liable for any costs or expenses related to notice or administration.

7.6 The amount(s) of any award of attorneys' fees, costs, and expenses and the service award to Representative Plaintiffs are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any attorneys' fees, costs, expenses, and/or service award ordered by the Court to Proposed Class Counsel or Representative Plaintiffs shall affect whether the Judgment is Final or constitute grounds for cancellation or termination of this Settlement Agreement.

## **8. Administration of Claims**

8.1 The Settlement Administrator shall administer and calculate the claims submitted by Settlement Class Members under ¶ 2. Proposed Class Counsel and Steel River shall be given reports as to both claims and distribution and have the right to review and obtain supporting documentation and challenge any such claim if they believe it to be inaccurate or inadequate. The Settlement Administrator's determination of the validity or invalidity of any such claims shall be binding, subject to the dispute resolution process set forth in ¶ 2.6. All claims agreed to be paid in full by Steel River shall be deemed valid.

8.2 Checks for approved claims shall be mailed and postmarked within sixty (60) days of the Effective Date or within thirty (30) days of the date that the claim is approved, whichever is later. No approved claims shall be paid until after the Effective Date. If this Settlement Agreement is terminated or otherwise does not become Final (*e.g.*, disapproval by the Court or any appellate court) prior to the payment of approved claims, Steel River shall have no obligation to pay such claims and shall only be required to pay costs and expenses related to notice and administration that were already incurred.

8.3 All Settlement Class Members who fail to timely submit a claim for any benefits hereunder within the time frames set forth herein, or such other period as may be ordered by the Court or otherwise allowed, shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth herein but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein, and the Judgment.

8.4 No Person shall have any claim against the Settlement Administrator, Steel River, Proposed Class Counsel, Plaintiffs, Plaintiffs' Counsel, and/or Steel River's counsel based on distributions of benefits to Settlement Class Members.

**9. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination**

9.1 The Effective Date of the settlement shall be conditioned on the occurrence of all of the following events:

- a) the Court has entered the Order of Preliminary Approval and Publishing of Notice of a Final Fairness Hearing, as required by ¶ 3;
- b) Steel River has not exercised its option to terminate the Settlement Agreement pursuant to ¶ 4.3;
- c) the Court has entered the Judgment granting final approval to the settlement as set forth herein; and
- d) the Judgment has become Final, as defined in ¶ 1.10.

9.2 If all of the conditions specified in ¶ 9.1 hereof are not satisfied, the Settlement Agreement shall be canceled and terminated subject to ¶ 9.4 unless Proposed Class Counsel and Steel River's counsel mutually agree in writing to proceed with the Settlement Agreement.

9.3 Within seven (7) days after the Opt-Out Date, the Settlement Administrator shall furnish to Proposed Class Counsel and to Steel River's counsel a complete list of all timely and valid requests for exclusion (the "Opt-Out List").

9.4 In the event that the Settlement Agreement is not approved by the Court or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms, (i) the Settling Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or Settling Party's counsel; and (b) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of attorneys' fees, costs, expenses, and/or service awards shall constitute grounds for cancellation or termination of the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, Steel River shall be obligated to pay amounts already billed or incurred for costs of notice to the Settlement Class, Claims Administration, and Dispute Resolution above and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

#### **10. Miscellaneous Provisions**

10.1 The Settling Parties (i) acknowledge that it is their intent to consummate this agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement and to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

10.2 The Settling Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The settlement compromises claims that are contested and shall not be deemed an admission by any Settling Party as to the merits of any



claim or defense. The Settling Parties each agree that the settlement was negotiated in good faith by the Settling Parties and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis. It is agreed that neither Party shall have any liability to one another as it relates to the Litigation, except as set forth herein.

10.3 Neither the Settlement Agreement, nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim or of any wrongdoing or liability of any of the Released Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Any of the Released Persons may file the Settlement Agreement and/or the Judgment in any action that may be brought against them or any of them to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

10.4 The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

10.5 The Settlement Agreement, together with the Exhibits attached hereto and the letter agreement referenced in ¶ 4.3, constitutes the entire agreement among the parties hereto, and no representations, warranties, or inducements have been made to any party concerning the Settlement Agreement other than the representations, warranties, and covenants contained and

memorialized in such document. Except as otherwise provided herein, each party shall bear its own costs. This agreement supersedes all previous agreements made by the parties.

10.6 Proposed Class Counsel, on behalf of the Settlement Class, is expressly authorized by Representative Plaintiffs to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to the Settlement Agreement to effectuate its terms and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Settlement Class that they deem appropriate to carry out the spirit of this Settlement Agreement and to ensure fairness to the Settlement Class.

10.7 Each counsel or other Person executing the Settlement Agreement on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

10.8 The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of executed counterparts shall be filed with the Court.

10.9 The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

10.10 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement.

10.11 The Settlement Agreement shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of Illinois, and the rights and obligations of the Settling Parties shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Illinois

10.12 As used herein, “he” means “he, she, or it”; “his” means “his, hers, or its”; and “him” means “him, her, or it.”

10.13 All dollar amounts are in United States dollars (USD).

10.14 Cashing a settlement check is a condition precedent to any Settlement Class Member’s right to receive settlement benefits. All settlement checks shall be void sixty (60) days after issuance and shall bear the language: “This check must be cashed within 60 days, after which time it is void.” If a check becomes void, the Settlement Class Member shall have until six months after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Settlement Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Settlement Class Member’s right to receive monetary relief shall be extinguished, and Steel River shall have no obligation to make payments to the Settlement Class Member for expense reimbursement under ¶ 2.1 or ¶ 2.2 or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than one hundred eighty (180) days from the Effective Date, requests for re-issuance need not be honored after such checks become void.

10.15 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto have caused the Settlement Agreement to be executed, by their duly authorized attorneys.

*[Signatures on the Following Page]*

**Proposed Settlement Class Counsel**

By:   
\_\_\_\_\_  
Gary E. Mason  
Danielle L. Perry  
Lisa A. White  
MASON LLP  
5335 Wisconsin Ave. NW, Ste. 640  
Washington, D 20015  
T: 202.429.2290  
gmason@masonllp.com  
dperry@masonllp.com  
lwhite@masonllp.com

Theodore B. Bell  
MASON LLP  
8045 Kenneth Ave.  
Skokie, Illinois 60076  
T: 202.640.1169  
tbell@masonllp.com

By:   
\_\_\_\_\_  
Scott Edward Cole  
**COLE & VAN NOTE**  
555 12th Street, Suite 1725  
Oakland, CA 94607  
T: 510.891.9800  
F: 510.891.7030  
sec@colevanote.com

*Proposed Class Counsel*

**Counsel for Steel River Systems LLC**

By:   
\_\_\_\_\_  
Paul G. Karlsgodt  
**BAKER & HOSTETLER LLP**  
1801 California Street, Suite 4400  
Denver, CO 80202-2662  
T: (303) 861-0600  
F: (303) 861-7805  
pkarlsgodt@bakerlaw.com

Amy L. Lenz  
**BAKER & HOSTETLER LLP**  
One North Wacker Drive, Suite 4500  
Chicago, Illinois 60606  
T: (312) 416-6220  
F: (312) 416-6201  
alenz@bakerlaw.com

*Attorneys for Defendant Steel River  
Systems, LLC*