IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

Case No. 7:21-cv-00047-M

JOSEPH McALEAR, individually and on behalf of all others similarly situated,

Plaintiff,

v.

nCINO, INC.,

Defendant.

ORDER

This matter comes before the court on Plaintiff's unopposed Motion for Preliminary Approval of a Class Action Settlement with Defendant nCino, Inc. ("nCino") [DE 127]. Having considered the motion, briefs, and the entire record, the court grants the motion as follows.

BACKGROUND

Plaintiff initiated this action on March 12, 2021, alleging that Live Oak Bancshares ("Live Oak"), nCino, and Apiture (hereinafter, the "Defendants") conspired to restrain competition and reduce compensation for their employees in Wilmington, North Carolina (the "No-Hire Agreement"). Plaintiff filed an Amended Complaint on September 29, 2021, alleging that Defendants are the leading employers for financial technology employees in Wilmington and that absent the No-Hire Agreement, the Defendants would have recruited and hired employees from each other, driving employee pay up.

The following are facts submitted by the parties in support of the present motion. Plaintiff reached settlement agreements with Live Oak and Apiture in October 2021. After a robust notice process and favorable response from the settlement class, the court granted final

approval to those settlements on April 28, 2022. The case against nCino, the remaining non-settling Defendant, continued thereafter.

However, certain discovery was delayed at the request of the United States Department of Justice ("DOJ"), which sought a stay of written discovery and depositions pending its criminal investigation into the conduct Plaintiff alleged against nCino. The parties proceeded with document discovery, including from the parties themselves and from third parties Live Oak and Apiture. Plaintiff McAlear produced approximately 1,700 pages of documents; Live Oak produced approximately 25,700 pages of documents; Apiture produced approximately 36,368 documents; and nCino produced approximately 2,500 pages of documents, including centrally located corporate organization and compensation policy documents, and dozens of data files containing its employee data. Moreover, Plaintiff's retained statistical expert analyzed nCino's employee data.

Plaintiff and nCino spent several months negotiating custodians and search terms to identify relevant documents from electronic sources such as email, text message, and chat platforms. Plaintiff also took the deposition of an nCino corporate representative about nCino's compensation practices and corporate organization. The parties had reached agreement on custodians and were negotiating search terms to enable nCino's collection and review of potentially responsive documents, when the parties agreed to attend a mediation with Jonathan Harkavy to see whether resolution of the case was possible. In the meantime, the DOJ terminated its criminal investigation of nCino without seeking an indictment.

The parties participated in mediation on May 25, 2023. Unlike the prior mediation that resulted in settlements with Live Oak and Apiture, both parties in this mediation had the benefit of robust data analysis and document discovery to inform their respective positions. The parties

exchanged letters, fully apprising the other party of their legal arguments and the best evidence in support, and also submitted confidential mediation briefs to the mediator. The parties were unable to reach agreement at the mediation; however, the mediator continued conversations with counsel for both parties thereafter, culminating in a mediator's proposal to resolve the matter for $2,190,000, which both parties accepted. The parties also negotiated other terms of the settlement and executed the agreement on August 21, 2023.

The terms of the Settlement Agreement are:

1. nCino will pay $2,190,000 into a non-reversionary common fund. Each settlement class member's recovery will be calculated in approximate proportion to their alleged harm, consistent with Plaintiff's damages theory. This formula accounts for the fact that settlement class members who earned more or worked longer were allegedly harmed more than those who worked for a shorter period or earned lower compensation.
2. nCino agrees that it will not enter into, maintain or enforce any agreement with another employer that violates the antitrust laws.
3. The proposed settlement class is: all natural persons employed by Live Oak, Apiture, or nCino in North Carolina at any time from January 27, 2017 through March 31, 2021. Excluded from the settlement class are: members of the boards of directors; C-suite; executive level managers; and any and all judges and justices and chambers' staff assigned to adjudicate any aspect of this litigation (hereinafter, "Settlement Class").
4. The release of claims is also identical to that previously approved by the court: Settlement Class members will release claims against nCino relating to the allegations in the Amended Complaint or any other purported restraint on competition for employment or compensation of the Settlement Class between Live Oak, Apiture, or nCino, up to the effective date of the Settlement. The release does not include breach of contract or other employment law claims that Settlement Class members may have against nCino regarding any alleged compensation owed to the Settlement Class

member, nor claims related to non-compete agreements between Settlement Class members and nCino.

5. The settlement administrator will send notice of the Settlement to Settlement Class members by U.S. mail and email. Defendants will provide the Settlement Administrator with employee data sufficient to effectuate notice and to calculate each Settlement Class member's share pursuant to the Plan of Allocation within fourteen days of a court order directing notice. The Notice will direct Settlement Class members to a case website which shall provide additional information and case documents, and a dedicated phone number where they can call with any questions.
6. Settlement Class members who wish to opt out of the Settlement Class can do so by submitting a request for exclusion to the Settlement Administrator. The opt-out period ends thirty calendar days after the Settlement Administrator mails notice (through both email and U.S. Mail). Settlement Class members shall also have the opportunity to object to the Settlements. Settlement Class members must submit their objection(s) in writing if they wish to appear at the final approval hearing. Objections must be submitted on or before thirty calendar days after the Settlement Administrator mails notice.
7. Plaintiff's counsel will request up to 33.33% of the common fund in attorneys' fees, and will ask to be reimbursed approximately $86,884 for costs expended in litigating the case against nCino only. Plaintiff's counsel will submit a separate motion for attorneys' fees and costs no later than fourteen days prior to the objection deadline.
8. Costs of notice and administration shall be paid from the Settlement Fund. Settlement Agreement § II.A. Plaintiff proposes JND Legal Administration ("JND") following a competitive bidding process that included three competing settlement administrators. JND estimates a total cost of approximately $30,500 to administer the Settlement.
9. Mr. McAlear will seek a service award of $90,000 to compensate him for his contributions to this Action. Plaintiff's counsel will submit a motion for the service award along with their motion for attorneys' fees and costs, by no later than fourteen days prior to the objection deadline.

LEGAL STANDARDS

At the initial stage of settlement review, the court must determine whether notice of the proposal to the purported class "is justified by the parties' showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2) [of the Federal Rules of Civil Procedure]; and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(l)(B); *see also Horton v. Merrill Lynch, Pierce, Fenner & Smith. Inc.*, 855 F. Supp. 825, 827 (E.D.N.C. 1994) (courts preliminarily review Rule 23 class settlements to determine "whether there is 'probable cause' to notify the class of the proposed settlement."). The purpose of preliminary approval is to determine whether the proposed settlement agreement is "sufficiently within the range of reasonableness." *In re Outer Banks Power Outage Litigation*, No. 4:17-CV-141, 2018 WL 2050141, at *3 (E.D.N.C. May 2, 2018) (quoting *In re Titanium Dioxide Antitrust Litig.*, No. RDB-10-0318, 2013 WL 5182093, at *3 (D. Md. Sept. 13, 2013)).

Thus, the court focuses at this stage on whether it is likely to grant final approval of the Rule 23 settlement. A class settlement may be approved if it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *see also In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991). "In applying this standard, the Fourth Circuit has bifurcated the analysis into consideration[s] of [(1)] fairness, which focuses on whether the proposed settlement was negotiated at arm's length, and [(2)] adequacy, which focuses on whether the consideration provided the class members is sufficient." *Beaulieu v. EQ Indus. Servs., Inc.*, No. 5:06-CV-00400-BR, 2009 WL 2208131, at *23 (E.D.N.C. July 22, 2009) (citing *Jiffy Lube*, 927 F.2d at 158-59). When performing this analysis, a district court must "act[ ] as a fiduciary of the class." *1988 Tr. for Allen Children v. Banner Life Ins. Co.*, 28 F.4th 513, 525 (4th Cir. 2022).

In addition, when a class-wide settlement is presented for approval prior to class certification, there must be a preliminary determination that the proposed settlement class satisfies the prerequisites set forth in Rule 23(a), and at least one of the subsections of Rule 23(b), of the Federal Rules of Civil Procedure. *Casa de Maryland, Inc., et al. v. Arbor Realty Trust, Inc., et al.*, No. CV DKC 21-1778, 2023 WL 6125531, at *4 (D. Md. Sept. 19, 2023) (citing Manual for Complex Litig. (Fourth) § 21.632). The parties must also be directed to provide notice to the putative class members regarding the terms of the proposed settlement and the date of the final fairness hearing, where arguments and evidence may be presented in support of, and in opposition to, the settlement. *Id.* (citing Fed. R. Civ. P. 23(e)).

DISCUSSION

I. Rule 23(e)(2) Analysis

A. Fairness

Under Rule 23(e)(2), "[t]he fairness analysis is intended primarily to ensure that a settlement is reached as a result of good-faith bargaining at arm's length, without collusion." *1988 Tr. for Allen Child.*, 28 F.4th at 525 (quoting *Berry v. Schulman*, 807 F.3d 600, 614 (4th Cir. 2015) (internal quotation marks omitted). The Fourth Circuit has "identified four factors for determining a settlement's fairness, which are: (1) the posture of the case at the time settlement was proposed; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations; and (4) the experience of counsel in the area of the class action litigation." *Id.* (quoting *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Practices & Prods. Liab. Litig.*, 952 F.3d 471, 484 (4th Cir. 2020)).

All four factors favor preliminary approval here. The settlement was reached after substantial litigation and extensive negotiations, including the production of significant

document discovery and an expert's examination of Settlement Class Member data. Counsel for the purported class have extensive experience in complex antitrust and class action litigation, and all counsel affirm that they had sufficient information in this case to evaluate the costs and benefits of settlement at this juncture. The parties spent months exchanging discovery requests, negotiating discovery disputes, and sending correspondence concerning each party's views of the case. Eventually, the parties submitted comprehensive mediation briefs, and their subsequent settlement negotiations—facilitated through a neutral third-party mediator—were adversarial, at arm's length, and occurred through many discussions over the course of two months.

B. Adequacy

The court assesses the adequacy of the settlement by considering the following factors: "(1) the relative strength of the plaintiff['s] case on the merits; (2) the existence of any difficulties of proof or strong defenses the plaintiff[] [is] likely to encounter if the case [were to go] to trial; (3) the anticipated duration and expense of additional litigation; (4) the solvency of the defendant and the likelihood of recovery on a litigated judgment; and (5) the degree of opposition to the settlement." *1988 Tr. for Allen Child.*, 28 F.4th at 526 (quoting *In re Lumber Liquidators*, 952 F.3d at 484).

With respect to the first through third factors, even when an individual plaintiff has evidence indicating unlawful collusion, obtaining class certification in complex antitrust cases is a lengthy and resource-intensive undertaking. Typically, class certification requires a large amount of discovery as well as expert witnesses to prove antitrust impact and damages. Most such cases require several years to reach the class certification stage, and may require even more to litigate through the merits. *See, e.g., Seaman v. Duke Univ.*, No. 1:15-cv-00462, 2019 WL 4674758, at *3 (M.D.N.C. Sept. 25, 2019) (approving settlement in no-poach case reached at

summary judgment stage four years into litigation); *In re High Tech Employee Antitrust Litigation*, No. 11-cv-2509, 2015 WL 5158730, at *5 (N.D. Cal. September 2, 2015) (approved settlement in no-poach case reached four years into litigation). The parties assert that both cited cases were litigated under the "per se" standard and it is common knowledge that litigation is more costly and complex under the "rule of reason" standard. At this stage, it is uncertain which standard would apply here. Nevertheless, in light of the risks, amount of time, and costs associated with prosecuting this case, the $2.19 million recovery in the proposed settlement, as well as the prohibition on future improper conduct, appear to reflect a good result for the Settlement Class.

Regarding the fourth factor, the parties indicate no issue with nCino's ability to satisfy a judgment. The fifth factor, the degree of opposition to the Settlement, is inapplicable at this stage because it can only be considered after the court grants preliminary approval and directs notice to the Settlement Class. The court finds the proposed allocation plan is fair and reasonable, as it will compensate Class Members on a pro rata basis according to the degree of alleged harm they suffered.

In sum, the court finds the parties have demonstrated that the settlement appears to meet Rule 23(e)(2)'s requirements.

II. Rule 23(a), (b)(3) Analysis

The proponents of "class certification must affirmatively demonstrate [their] compliance with" the requirements of Rule 23 of the Federal Rules of Civil Procedure. *1988 Tr. for Allen Child.*, 28 F.4th at 521 (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). Under Rule 23(a), class certification is appropriate if: "(1) the class is so numerous that joinder of all members is impracticable ["numerosity" requirement]; (2) there are questions of law or

fact common to the class ["commonality" requirement]; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class ["typicality" requirement]; and (4) the representative parties will fairly and adequately protect the interests of the class" ["adequacy" requirement]. Fed. R. Civ. P. 23(a). In addition, Rule 23(b)(3) allows a class action to be maintained if the court finds "that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

A. Numerosity

"There is no mechanical test for determining whether in a particular case the requirement of numerosity has been satisfied. ... [t]he issue is one primarily for the district court, to be resolved in light of the facts and circumstances of the particular case." *In re Outer Banks*, 2018 WL 2050141, at *4 (quoting *Kelley v. Norfolk & W. Ry.*, 584 F.2d 34, 35 (4th Cir. 1978)).

Here, the proposed Settlement Class includes approximately 1,900 employees who worked for nCino, Live Oak, or Apiture between January 27, 2017 and March 31, 2021. This fact satisfies the numerosity requirement. *See Cent. Wesleyan Coll. v. W.R. Grace & Co.*, 6 F.3d 177, 183 (4th Cir. 1993) (noting district court's finding "that some 480 potential class members would easily satisfy the numerosity requirement"); *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 425 (4th Cir. 2003) (noting district court's finding that "1400 employees plus their families … easily satisfied" numerosity for conditional certification of a class against one defendant); *Seaman*, 2018 WL 671239, at *9 (finding that 5,469 persons "is so numerous that joinder of all members is impracticable.").

B. Commonality and Typicality

Under Rule 23(a), "[t]he requirements for typicality and commonality often merge." *In re Outer Banks*, 2018 WL 2050141, at *4 (quoting *Romero v. Mountaire Farms, Inc.*, 796 F. Supp. 2d 700, 714 (E.D.N.C. 2011)); *see also 1988 Tr. For Allen Child.*, 28 F.4th at 523 ("'[t]he commonality and typicality requirements of Rule 23(a) tend to merge[,]' and so we need not tarry for long.") (alterations in original). The commonality requirement is met if at least one common question of law or fact exists among class members, and the typicality requirement is met if "the claims of the representative parties [are] typical of the claims of the class." *Id.* (citations omitted). "Generally speaking, in the antitrust context, 'courts have held that the existence of an alleged conspiracy or monopoly is a common issue that will satisfy the commonality requirement.'" *In re Titanium Dioxide Antitrust Litig.*, 284 F.R.D. 328, 337 (D. Md. 2012), *amended*, 962 F. Supp. 2d 840 (D. Md. 2013). Furthermore, "typicality will be established by plaintiffs and all class members alleging the same antitrust violations by defendants." *Id.* at 338-39. Here, the plaintiff and class members all allege that they were harmed because nCino and former Defendants entered into an unlawful "poaching" agreement in violation of antitrust laws. The court finds the parties have met the commonality and typicality requirements.

C. Adequacy

Rule 23(a)(4) requires that class representatives "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "A class representative must be part of the class and possess the same interest and suffer the same injury as the class members." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625-26 (1997). Rule 23(a)(4) "serves to uncover conflicts of interest between named parties and the class they seek to represent," as well as "competency and

conflicts of class counsel." *Seaman*, 2018 WL 671239, at *10 (quoting *Amchem Prods.*, 521 U.S. at 625, n.20). Any "conflict of interest 'will not defeat the adequacy requirement if it is merely speculative or hypothetical.'" *1988 Tr. for Allen Child.*, 28 F.4th at 524 (quoting *Ward v. Dixie Nat'l Life Ins. Co.*, 595 F.3d 164, 180 (4th Cir. 2010)).

In this case, the court perceives no conflicts of interest between Mr. McAlear and the class members, nor between class counsel and their clients. It appears that Mr. McAlear has and will fairly and adequately protect(ed) the interests of the class, particularly in that he has "pursued a resolution of the controversy in the interests of the class." *See In re Outer Banks*, 2018 WL 2050141, at *5 (quoting *Dura-Bilt Corp. v. Chase Manhattan Corp.*, 89 F.R.D. 87, 101 (S.D.N.Y. 1981)). Also, the record in this case, including the motion and briefing presented here, demonstrates that class counsel are competent advocates for the purported class. The court finds the parties have met the adequacy requirement of Rule 23(a)(4).

Thus, the court preliminarily finds that the proposed Settlement Class, for the purposes of settlement only, meets the requirements of Fed. R. Civ. P. 23(a).

D. Predominance and Superiority

Finally, Rule 23(b)(3) provides that a class action may be maintained if the court finds "that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

The predominance inquiry focuses on the balance between individual and common issues, and "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *In re Outer Banks*, 2018 WL 2050141, at *5 (quoting *Gariety v. Grant Thornton. LLP*, 368 F.3d 356, 362 (4th Cir. 2004)). In assessing predominance and superiority,

courts should consider the following factors: (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action. Fed. R. Civ. P. 23(b)(3). "However, on a request for a settlement-only class certification, the court need not consider the likely difficulties in managing a class action." *In re Outer Banks*, 2018 WL 2050141, at *5 (citing *Amchem*, 521 U.S. at 620).

In this case, the predominance requirement is met. As the issues of law and fact here are common to Plaintiff and purported class members, "the same evidence would resolve the question of liability for all class members." *Beaulieu*, 2009 WL 2208131, at *20. The court perceives no imbalance between individual and common issues in this case.

In addition, a class action is superior to other available methods for fairly and efficiently adjudicating this controversy. Plaintiff and the purported class have already succeeded in securing a fair and reasonable settlement against nCino's former co-Defendants, no individual claims against nCino in this case exist, and concentrating the litigation of the claims in this forum appears to be desirable, given that the claims arose and discovery was taken in this district. Accordingly, the court preliminarily finds that the parties have met the requirements of Rule 23(b)(3).

III. Notice to Settlement Class Members

The proposed notice clearly explains the nature of the action, the Settlement Class definition, the legal issues, the binding effect of a class judgment, and Settlement Class members' rights to appear in this action with an attorney, request exclusion, and object to the

Settlement. *See* Fed. R. Civ. P. 23(c)(2)(B)(i)-(vii). The notice will be both mailed and e-mailed to all Settlement Class members. Also, notice will be given through a case-specific website. The court finds that this plan reflects "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B).

In addition, the notice includes material information about Settlement Class Counsel's intent to request fees up to 33% of the settlement amount, costs, and a service award for the Plaintiff. The court reserves final judgment on the contemplated requests until the Settlement Class has been notified and a full record has been developed. However, the requests are within the range of reasonableness of a settlement the court is likely to approve.

IV. Administration of the Settlement Fund

The court appoints the Settlement Administrator proposed by Plaintiff, JND Legal Administration, which is the entity that will provide notice to the Settlement Class and administer the Settlement Fund, as set forth in the Settlement Agreement and by order of the court. Consistent with the Settlement Agreement, the responsibilities of the Settlement Administrator include (a) disseminating the notice to the Settlement Class; (b) maintaining a website to enable Settlement Class Members to access relevant documents; (c) handling withholding, reporting, payment, dissemination of forms, and other aspects of Settlement administration related to all applicable taxes, as set forth in the Settlement Agreement; (d) distributing Settlement checks to Settlement Class Members; (e) collecting and confirming the validity of any requests for exclusion from the Class and reporting that information to the settling parties; and (f) maintaining the confidentiality of the Class Member information except as necessary to carry out these obligations. Pursuant to the Settlement Agreement, the cost of the

Settlement Administrator's services, and all other reasonable costs of Settlement administration shall be paid out of the Settlement Fund, subject to court review and approval.

The court approves Citibank, N.A. as the Escrow Agent pursuant to the Settlement Agreement. All funds held by the Escrow Agent shall be deemed and considered to be *custodia legis* and shall remain subject to the jurisdiction of the court, until such time as such funds shall be distributed pursuant to the Settlement Agreement and further order of the court.

The Settlement Fund, to be held at the Escrow Agent, shall be established as a fiduciary account and administered in accordance with the provisions of the Settlement Agreement. The court approves the establishment of the escrow account under the Settlement Agreement as a qualified settlement fund ("QSF") pursuant to Internal Revenue Code Section 1.468B-1 and the Treasury Regulations promulgated thereunder and retains continuing jurisdiction as to any issue that may arise in connection with the formation and/or administration of this QSF.

To facilitate the notice and the settlement distribution process if the court grants final approval, Live Oak, Apiture, and nCino, Inc. shall provide to the Settlement Administrator, in an electronic format, for the Class Period, the current or most-recently known names, addresses, email addresses, social security numbers, and individual total compensation for each Settlement Class Member, no later than fourteen (14) days after the date of this order.

No later than twenty-one (21) days after receiving this information, the Settlement Administrator shall cause the Notice of Settlement to be mailed by first-class mail, postage prepaid, and emailed to Settlement Class Members pursuant to procedures described in the Settlement, and to any potential Settlement Class Member who requests one; and, in conjunction with Settlement Class Counsel, shall cause a case-specific website to become operational with case information, court documents relating to the Settlement, the Notice, and a dedicated

telephone number. At least twenty-one (21) days prior to the Final Approval Hearing, the Settlement Administrator shall file with the court an Affidavit of Compliance with the Notice requirements.

V. Responses by Settlement Class Members and Scheduling a Final Approval Hearing

Settlement Class Members shall have until thirty (30) days from the date the Notice period begins (established by the first date upon which the Notice Administrator provides mail and e-mail Notice to Settlement Class Members ("Notice Date")) to opt-out of the proposed settlement (the "Opt-Out Deadline"). Any Settlement Class Member who wishes to be excluded (or, opt out) from the Settlement Class must send a written Request for Exclusion to the Settlement Administrator on or before the close of the Opt-Out Deadline. To be effective, such requests for exclusion must state the Settlement Class Member's full legal name, address, and the approximate dates of his or her employment with one of the Defendants; include a statement that the Settlement Class Member wants to be excluded from the Settlement; and be signed and dated by the Settlement Class Member or his or her legal representative. Settlement Class Members who exclude themselves from the Settlement Class will not be eligible to receive benefits under the Settlement, will not be bound by any further orders or judgments entered for or against the Settlement Class, and will preserve their ability to pursue independently any claims they may have against nCino. Settlement Class Members who do not properly and timely request exclusion from the Settlement Class shall, upon entry of the Final Approval Order and Judgment, be bound by all of the terms and provisions of the Settlement Agreement, including the Release provisions, regardless of whether such Settlement Class Member objected to the Settlement.

A final hearing on the Settlement Agreement ("Final Approval Hearing") shall be held at 2:00 p.m. on Monday, January 29, 2024, in Chief Judge Myers' courtroom at the United States District Court, Wilmington, North Carolina.

At the Final Approval Hearing, the court will consider (a) the fairness, reasonableness, and adequacy of the Settlement Agreement and whether the Settlement Agreement should be granted final approval by the court; (b) approval of the proposed Plan of Allocation; and (c) entry of a Final Approval Order and Judgment, including the Settlement Release. Class Counsel's application for payment of attorneys' fees and costs, and request for the court to approve a service award to the named plaintiff, shall also be heard at the time of the hearing. Class Counsel shall file their motion for payment of attorneys' fees and costs and for a service award to the named plaintiff no later than fourteen (14) days from the Notice Date.

The date and time of the Final Approval Hearing shall be subject to adjournment by the court without further notice to the Settlement Class Members, other than that which may be posted by the court. Should the court adjourn the date for the Final Approval Hearing, such adjournment shall not alter the deadlines for mailing of the Notice, nor the deadlines for submission of settlement objections, requests for exclusion, or notices of intention to appear at the Final Approval Hearing, unless those dates are explicitly changed by subsequent order.

Any Settlement Class Member other than those who properly and timely elect to be excluded from the Settlement Class may, but need not, enter an appearance through his or her own attorney. For Settlement purposes, Class Counsel will continue to represent Settlement Class Members who do not timely object and who do not have an attorney enter an appearance on their behalf.

Any Settlement Class Member other than those who properly and timely elect to be excluded from the Settlement Class may, but need not, submit comments or objections to (a) the Settlement Agreement, (b) the entry of a Final Approval Order and Judgment approving the Settlement Agreements, (c) Class Counsel's application for payment of attorneys' fees and costs, and/or (d) the service award request for the Plaintiff, by mailing a written comment or objection to the addresses provided by the Settlement Administrator in the Notice.

Any Settlement Class Member making an objection (an "Objector") must sign the objection personally, even if represented by counsel, and provide the Settlement Class Member's full name and residence or business address and a statement signed under penalty of perjury that the Settlement Class Member was an employee of nCino, Live Oak Bank, or Apiture, and a member of the Settlement Class. An objection must state the reason for the objection to the Settlement Agreement and provide a basis in support, together with any documents such person wishes to be considered, in support of the objection. If an Objector intends to appear at the hearing, personally or through counsel, the Objector must include with the objection a statement of the Objector's intent to appear at the hearing. The objection must also contain a detailed list of any other objections by the Objector, as well as by the Objector's attorney, to any class action settlements submitted to any court in the United States in the previous five years.

Objections, along with any statements of intent to appear, must be mailed to the Settlement Administrator no later than thirty (30) days from the Notice Date. If counsel is appearing on behalf of more than one Settlement Class Member, counsel must identify each such Settlement Class Member and each such Settlement Class Member must have complied with this Order.

Only Settlement Class Members who have mailed valid and timely objections accompanied by notices of intent to appear shall be entitled to be heard at the Final Approval Hearing. Any Settlement Class Member who does not timely mail an objection in writing in accordance with the procedure set forth in the Notice and mandated in this Order shall be deemed to have waived any objections to (a) the Settlement Agreement, (b) the entry of a Final Approval Order and Judgment approving the Settlement Agreement, (c) Class Counsel's application for payment of attorneys' fees and costs, and/or (d) the service award request for the named plaintiff.

Settlement Class Members need not appear at the hearing or take any other action to indicate their approval.

Unless otherwise ordered, upon entry of the Final Approval Order, any Settlement Class Member who has not properly and timely requested to be excluded from the Settlement Class will be enjoined from proceeding against the Settling Defendants and all other Released Parties with respect to all of the Released Claims, consistent with the Settlement Agreements.

The schedule by which the events referenced above shall occur is as follows:

Event	Date
Defendants to Submit Settlement Class Member data to Settlement Administrator	Within 14 days of this order
Settlement Administrator will mail and email notice, and set up website	Within 21 days of receiving Settlement Class Member data
Plaintiff's Counsel Motion for Attorneys' Fees, Costs, and Service Award	Within 14 days from Notice Date
Opt-Out and Objection Deadline	30 days from Notice Date
Settlement Administrator affidavit of compliance with notice requirements	To be filed 35 days prior to the Final Approval Hearing
Motion for Final Approval, including Settlement Administrator affidavit of opt out requests and copies of all objections	To be filed at least 28 days prior to the Final Approval Hearing

Event	Date
Any response(s) to Motion for Final Approval	To be filed 18 days prior to the Final Approval Hearing
Replies in Support of Motions for Final Approval, Attorneys' Fees and Costs, and Service Award	To be filed 14 days prior to Final Approval Hearing
Final Approval Hearing	Monday, January 29, 2024, at 2:00 p.m.

VI. Conclusion

All further proceedings as to nCino are hereby stayed, except for any actions required to effectuate or enforce the Settlement Agreement, or matters related to the Settlement Fund, including application for attorneys' fees, payment of costs, and a service award to the Plaintiff.

If the Settlement Agreement is terminated pursuant to the applicable provisions in the Settlement Agreement, the Settlement Agreement and all related proceedings shall, except as expressly provided in the Settlement Agreement, become void and shall have no further force or effect, and the Settlement Class shall retain all of their current rights against nCino, and nCino shall retain any and all of its current defenses and arguments thereto so that the parties may take such litigation steps that the parties otherwise would have been able to take absent the pendency of this Settlement. This Action shall thereupon revert forthwith to its procedural and substantive status as of August 24, 2023, and shall proceed as if the Settlement Agreement had not been executed.

Plaintiff's unopposed Motion for Preliminary Approval of a Class Action Settlement with Defendant nCino, Inc. ("nCino") [DE 127] is GRANTED as set forth herein. Neither this Order nor the Settlement Agreement, nor any other Settlement-related document nor anything contained or contemplated therein, nor any proceedings undertaken in accordance with the terms set forth in the Settlement Agreements or herein or in any other Settlement-related document, shall constitute, be construed as, or be deemed to be evidence of or an admission or concession

of liability by the settling parties.

SO ORDERED this 2nd day of October, 2023.

RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE