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18 **THE UNITED STATES DISTRICT COURT**
19 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

20 JONATHAN BOWDLE, individually
21 and on behalf of all others similarly
22 situated,

23 Plaintiff,

24 v.

25 KING'S SEAFOOD COMPANY, LLC,

26 Defendant.

Case No. 8:21-cv-01784-CJC-JDE

**PLAINTIFF'S NOTICE OF
MOTION AND UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

DATE: September 26, 2022
TIME: 1:30 p.m.
ROOM: 9 B
JUDGE: Hon. Cormac J. Carney

1 **TO THE COURT, ALL PARTIES AND THEIR COUNSEL:**

2 **PLEASE TAKE NOTICE THAT** on September 26, 2022, at 1:30 p.m., or
3 as soon thereafter as the matter may be heard, before the Honorable Cormac J.
4 Carney, United States District Court for the Central District of California, Ronald
5 Reagan Federal Building and United States Courthouse, 411 West Fourth Street,
6 Courtroom 9 B, Santa Ana, CA, 92701-4516, Plaintiff Jonathan Bowdle (“Plaintiff”
7 or “Settlement Class Representative”), on behalf of himself and all others similarly
8 situated (“Class Members” or “Settlement Class”)¹, will and hereby does move for
9 an order preliminarily approving the class action settlement entered into between
10 Plaintiff and King’s Seafood Company, LLC (“King’s Seafood,” or “Defendant”
11 and, together with Plaintiff, the “Parties”). Plaintiff hereby moves this Court for an
12 order: (1) granting preliminary approval of the class settlement reached by the
13 Parties (“Settlement”); and (2) provisional certification of the Settlement Class
14 (together, the “Motion”).

15 This Motion is based on this Notice and supported by the Memorandum of
16 Points and Authorities, the Joint Declaration and exhibits thereto, the Class Action
17 Complaint (“CAC”), and all other pleadings and papers on file in this action.
18 Plaintiff respectfully requests that the Court grant the relief requested in the
19 [Proposed] Order submitted herewith.

20 This motion is unopposed and is made following the conference of counsel
21 pursuant to L.R. 7-3 which took place during settlement negotiations on numerous
22 dates beginning on or about December 21, 2021 and concluding on August 4, 2022.

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25
26 ¹ Capitalized terms not defined in this Motion shall have the definitions
27 ascribed to them in the Settlement Agreement attached as Exhibit 1 to the Joint
28 Declaration of Rachele R. Byrd and M. Anderson Berry in Support of Unopposed
Motion for Preliminary Approval of Class Action Settlement (the “Joint
Declaration” or “Joint Decl.”).

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DATE: August 26, 2022

Respectfully Submitted,

/s/ Rachele R. Byrd
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1 **I. INTRODUCTION**

2 Plaintiff, on behalf of himself and others similarly situated, hereby submits
3 this unopposed Motion seeking an order: (1) granting preliminary approval of the
4 class action settlement reached by the Parties (the “Settlement”); and (2)
5 provisionally certifying the Settlement Class. The proposed Settlement satisfies the
6 criteria for preliminary settlement approval under Federal law. Moreover, Plaintiff
7 strongly believes the Settlement is fair, reasonable, and adequate. Therefore,
8 respectfully, the Court should grant this Motion and notice should be distributed to
9 Settlement Class Members.

10 **II. STATEMENT OF FACTS**

11 This matter concerns a putative class action arising out of a data breach (the
12 “Data Security Incident”). Plaintiff alleges that on or around August 23, 2021,
13 Defendant learned that personally identifiable information (“PII”) “may have been
14 compromised during a cyber-attack which began on June 4, 2021.”² Joint
15 Declaration of Rachele R. Byrd and M. Anderson Berry in Support of Unopposed
16 Motion for Preliminary Approval of Class Action Settlement (“Joint Decl.”), ¶ 6.
17 Plaintiff further alleges that the hacker gained access to directories where PII was
18 stored. *Id.* “The unauthorized individual was capable of accessing and acquiring
19 the [PII] in the directories.”³ *Id.* Defendant issued a “Notice of Data Breach,” dated
20 September 14, 2021, to those whose PII may have been affected. *Id.*, ¶ 7. Plaintiff
21 further alleges that his and the Class Members’ unprotected PII can be sold on the
22 dark web, leaving Plaintiff and Class Members to now face a present and lifetime
23 risk of identity theft, heightened here by the loss of Social Security and driver’s
24 license numbers. *Id.*, ¶ 8. Consequently, on October 27, 2021, Plaintiff filed a CAC
25 (the “Litigation”) on behalf of himself and Class Members, asserting claims against
26

27 ² [https://www.doj.nh.gov/consumer/security-breaches/documents/kings-](https://www.doj.nh.gov/consumer/security-breaches/documents/kings-seafood-20210920.pdf)
28 [seafood-20210920.pdf](https://www.doj.nh.gov/consumer/security-breaches/documents/kings-seafood-20210920.pdf) (last visited Aug. 1, 2022).

³ *Id.*

1 Defendant relating to the Data Security Incident and Defendant’s failure to (i)
2 adequately protect the PII of Plaintiff and Class Members; (ii) warn Plaintiff and
3 Class Members of Defendant’s inadequate information security practices; and (iii)
4 effectively secure hardware containing sensitive PII using adequate security
5 procedures. *Id.*, ¶ 9.

6 **III. PROCEDURAL HISTORY**

7 Proposed Settlement Class Counsel for Plaintiff and the Settlement Class
8 commenced this Litigation on October 27, 2021. *See Jonathan Bowdle v. King’s*
9 *Seafood Company, LLC*, No. 8:21-cv-01784-CJC-JDE (C.D. Cal.). Defendant filed
10 a motion to dismiss the CAC under Rule 12(b)(6) of the Federal Rules of Civil
11 Procedure (“FRCP”) on February 28, 2022. Over the course of several months, the
12 Parties engaged in numerous, arms-length, sometimes contentious, settlement
13 negotiations. The Parties’ unwavering pursuit of settlement negotiations led them
14 to eventually reach a settlement in principle on all terms, including attorneys’ fees,
15 costs and expenses, and the service award. The Parties then memorialized the terms
16 of the Settlement in a Settlement Agreement dated August 23, 2022. *See Joint Decl.*,
17 Ex. 1.

18 **IV. THE SETTLEMENT TERMS**

19 The Settlement Agreement provides, in part, the following:

20 **A. Proposed Settlement Class**

21 The Settlement will provide relief for the following Settlement Class: “all
22 individuals residing in the United States to whom Defendant or its authorized
23 representative sent a notice concerning the 2021 Data Security Incident announced
24 by Defendant.” Settlement Agreement (“SA”), § 1.6. The Settlement Class
25 specifically excludes: (i) King’s Seafood and King’s Seafood’s parents, subsidiaries,
26 affiliates, officers, and directors, and any entity in which King’s Seafood has a
27 controlling interest; (ii) all individuals who make a timely election to be excluded
28 from this proceeding using the correct protocol for opting out; and (iii) all judges

1 assigned to hear any aspect of this Litigation as well as their immediate family
2 members. *Id.*

3 **B. Settlement Benefits – Monetary Relief**

4 The Settlement provides for two separate forms of monetary relief to
5 Settlement Class Members who submit a valid and timely Claim Form: (1)
6 reimbursement of ordinary expenses and lost time up to \$450 per Settlement Class
7 Member; and (2) reimbursement of extraordinary expenses up to \$3,000 per Class
8 Member. SA, §§ 2.2.1-2.2.2.

9 **1. Compensation for Ordinary Losses**

10 The first category of payments reimburses each Settlement Class Member up
11 to \$450 in compensation upon submission of a valid and timely Claim Form and
12 supporting documentation for ordinary out-of-pocket losses incurred as a direct
13 result of the Data Security Incident. *Id.*, § 2.2.1. Ordinary losses can arise from the
14 following categories of expenses, fees and lost time: (1) out of pocket expenses
15 incurred as a direct result of the Data Security Incident; (2) unreimbursed fees for
16 credit reports, credit monitoring, or other identity theft insurance products purchased
17 between June 4, 2021 and the Claims Deadline, supported by documentation and
18 reasonably connected to the Data Security Incident; and (3) reimbursement for lost
19 time reasonably spent responding to the Data Security Incident. *Id.* Settlement Class
20 Members may claim up to three (3) hours of time compensated at the rate of \$20 per
21 hour so long as the lost time is fairly traceable to the Data Security Incident,
22 reasonably described by type of lost time incurred, and supported by an attestation
23 under penalty of perjury that the time spent was reasonably incurred dealing with
24 the Data Security Incident. *Id.*

25 **2. Compensation for Extraordinary Losses**

26 The second category provides for reimbursement of extraordinary expenses,
27 up to \$3,000 per Settlement Class Member who submits a valid and timely claim
28 form. *Id.*, § 2.2.2. Providing certain specific conditions are met, each Settlement

1 Class Member must prove monetary loss directly arising from identity theft
2 perpetrated on or against the Settlement Class Member. *Id.*

3 **C. Non-Monetary Settlement Benefits – Identity Protection and**
4 **Credit Monitoring Services**

5 In addition to the potential cash benefits outlined above, King’s Seafood has
6 agreed to make available to Settlement Class Members identity-theft protection,
7 called “Financial Shield” by Aura, for a period of two (2) years, with the
8 commencement of protection and monitoring to begin upon the Court’s final
9 approval of the Settlement, and to remain available for commencement for 90 days
10 thereafter. *Id.*, § 2.1. The protection and monitoring will include:

- 11 i. Credit monitoring at one of the three major credit reporting agencies:
12 Equifax, Experian or TransUnion;
- 13 ii. Dark web monitoring;
- 14 iii. Identity restoration and recovery services; and
- 15 iv. \$1,000,000 identity theft insurance with no deductible. *Id.*

16 Settlement Class Members can submit Claim Forms for these identity
17 protection and credit monitoring services whether or not they are eligible for a
18 monetary recovery under this Settlement. *Id.* Those Settlement Class Members who
19 submit valid and timely claim forms for monitoring and protection services and who
20 already have obtained monitoring and protection services offered through Defendant
21 as a result of the Data Security Incident will receive an additional two (2) years of
22 monitoring and protection services from the expiration date of the monitoring and
23 protection services already received. *Id.*, § 2.1.2.

24 **D. Business Practices Enhancements, Including Monetary**
25 **Investment and Data Security**

26 For a period of 36 months beginning in July 2021, Defendant has and will
27 continue to undertake certain reasonable steps to enhance the security deployed to
28 secure access to its data network, including:

- 1 i. Periodic third-party security auditor and/or internal IT security
2 personnel monitoring, scanning, and testing of data system security,
3 with prompt correction of detected problems;
- 4 ii. Periodic internal IT security personnel training on data system security,
5 including any modifications or updates thereto;
- 6 iii. Data system segmentation, including firewalls and access controls such
7 that hackers cannot use a breach in one system area to access other
8 system areas;
- 9 iv. Use of encrypted email, including encryption of email attachments, and
10 enlist protocols as reasonable to avoid PII storage in email accounts;
- 11 v. Routinely conduct employee training/education on best practices to ID
12 and avoid threats to data system;
- 13 vi. Have a breach response plan and train IT security personnel on
14 operation of same;
- 15 vii. Practices to ensure reasonable software lifecycle management;
- 16 viii. Deploy active encryption software covering relevant data locations
17 where PII maintained. *Id.*, § 2.3.

18 **E. Class Notice and Settlement Administration**

19 As part of the Settlement, King’s Seafood shall pay for providing Notice to
20 the Settlement Class in accordance with the Preliminary Approval Order, and the
21 costs of Claims Administration. *Id.*, § 4.2. The Claims Administrator, Atticus
22 Administration LLC (“Atticus”), will mail to the Settlement Class Members the
23 Short Notice (attached to the Settlement Agreement as Exhibit D). Declaration of
24 Christopher Longley on Adequacy of Notice Plan (“Longley Decl.”) attached to the
25 Joint Declaration as Exhibit 2, §§ 6-8. The Short Notice will direct recipients to the
26 Settlement Website and inform Settlement Class Members of, among other things,
27 the Claims Deadline, the Opt-Out and Objection deadlines, and the date of the Final
28 Fairness Hearing. SA, § 1.30, Ex. D. Prior to mailing this notice, Atticus will verify

1 the last known address using the National Change of Address database maintained
2 by the United States Postal Service. Longley Decl., § 8. A Long Notice (attached
3 to the Settlement Agreement as Exhibit B) will also be posted on the Settlement
4 Website, along with the Claim Form (attached as Exhibit A to the Settlement
5 Agreement) and other important documents such as the Settlement Agreement itself
6 and the motions for final approval and for attorneys’ fees, costs and expenses, and
7 the service award. SA, § 5.3.2. Furthermore, a toll-free help line will provide
8 Settlement Class Members with additional information about the settlement. *Id.*, §
9 5.3.4.

10 **F. Attorneys’ Fees and Expenses**

11 After an agreement was reached as to the essential terms of a settlement (i.e.,
12 Settlement Class benefits), Defendant agreed to pay the Proposed Settlement Class
13 Counsel attorneys’ fees and litigation costs not to exceed \$192,500, separate and
14 apart from any other sums agreed to under the Settlement and subject to Court
15 approval. *Id.*, § 9.2.⁴

16 **G. Service Award to Settlement Class Representative**

17 After an agreement had been reached as to the essential terms of a settlement
18 (i.e., Settlement Class benefits), Defendant agreed to pay a service award of \$1,750
19 to the Settlement Class Representative, separate and apart from any other sums
20 agreed to under the Settlement and subject to Court approval. *Id.*, § 9.1. The amount
21 is presumptively reasonable and commonly awarded in settled class action cases.
22 *See, e.g., Pauley v. CF Entertainment*, 2020 U.S. Dist. LEXIS 187614, at *9-10
23 (C.D. Cal. July 23, 2020) (This Court granted “class representative enhancement
24 fees in the amount of \$5,000 each to [p]laintiffs,” finding that amount to be
25 “presumptively reasonable”).

26 ⁴ Plaintiff will file, at the appropriate time, a motion for an award by the Court
27 of attorneys’ fees and costs and will demonstrate that Proposed Settlement Class
28 Counsel’s fee request is well within the range of reasonableness for Settlements of
this nature.

1 **H. Release**

2 Upon entry of the Final Approval Order, Plaintiff and the Settlement Class
3 will be deemed to “have, fully, finally, and forever released, relinquished, and
4 discharged all Released Claims.” SA, § 8.1. “Released Claims” are defined, *inter*
5 *alia*, as:

6 any and all past, present, and future claims, causes of action, lawsuits,
7 set-offs, costs, expenses, attorneys’ fees, losses, rights, demands,
8 charges, complaints, actions, suits, petitions, obligations, debts,
9 contracts, penalties, damages, or liabilities of any nature whatsoever,
10 whether known or unknown, liquidated or unliquidated, accrued or
11 unaccrued, fixed or contingent, direct or derivative, matured or
12 unmatured, in law or equity, and any other form of legal or equitable
13 relief that has been asserted, was asserted, or could have been asserted,
14 by any Settlement Class Member against any of the Released Persons
15 reasonably related to the operative facts alleged in or otherwise
16 described by the Complaint. Released Claims shall not include the right
17 of any Settlement Class Member or any of the Released Persons to
18 enforce the terms of the settlement contained in this Settlement
19 Agreement, and shall not include the claims of Class Members who
20 have timely excluded themselves from this settlement.

21 *Id.*, § 1.23. Released Claims include Unknown Claims (*see id.*, § 1.31), but do not
22 include the claims of individuals who have timely excluded themselves from the
23 Settlement Class. *Id.*, § 1.23.

24 **V. LEGAL STANDARDS**

25 A class action may not be dismissed, compromised or settled without court
26 approval. Fed. R. Civ. P. 23(e). The Court may approve a settlement upon “finding
27 that it is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2); *see also Officers*
28 *for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). This procedure

1 safeguards class members’ procedural due process rights and enables a court to
2 fulfill its role as the “guardian” of the class. *See* 4 Herbert B. Newberg, *Newberg on*
3 *Class Actions*, §§ 13.10, *et seq.* (5th ed. 2017) (“Newberg”). Judicial proceedings
4 under Rule 23 have led to a defined procedure and specific criteria for settlement
5 approval in class action settlements outlined in the Manual for Complex Litigation
6 (Fourth) (Fed. Judicial Center 2004) (the “Manual”), § 21.63, *et seq.*, including (1)
7 preliminary approval, (2) dissemination of notice to the class, and (3) a final fairness
8 hearing. Manual, §§ 21.632, 21.633, 21.634.

9 Preliminary settlement approval and dissemination of court-approved notice
10 to the class are proper where “the proposed settlement appears to be the product of
11 serious, informed, non-collusive negotiations, has no obvious deficiencies, does not
12 improperly grant preferential treatment to class representatives or segments of the
13 class, and falls within the range of possible approval.” *See, e.g., In re Tableware*
14 *Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (citing *Schwartz v.*
15 *Dallas Cowboys Football Club, Ltd.*, 157 F. Supp. 2d 561, 570 n.12 (E.D. Pa. 2001)).

16 The preliminary evaluation of class action settlements focuses only on
17 whether the proposed settlement is within the range of possible approval because the
18 Court will make its final determination on adequacy at the final approval hearing.
19 *See Acosta v. Trans Union LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007). Thus, courts
20 should grant preliminary approval of a settlement agreement unless obvious
21 deficiencies exist such that the settlement would ultimately not weather a final
22 approval hearing. *See Corder v. Houston’s Rests., Inc.*, 2007 U.S. Dist. LEXIS
23 105049, at *14 (C.D. Cal. Jan. 5, 2007).

24 The approval of a proposed settlement is committed to the court’s wise
25 discretion. *See Class Plaintiffs v. City of Seattle*, 955 F. 2d 1268, 1276 (9th Cir.
26 1992) (in the context of a class action settlement, an appellate court cannot
27 “substitute [its] notions of fairness for those of the [trial] judge and the parties to the
28 agreement,” and will reverse only upon a strong showing of abuse of discretion).

1 Strong judicial policy favors pretrial settlement of class actions. *See Churchill*
2 *Village, LLC v. Gen. Elec. Co.*, 361 F.3d 566, 576 (9th Cir. 2004); *Linney v. Cellular*
3 *Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998) (“[S]trong judicial policy []
4 favors settlements, particularly where complex class action litigation is concerned.”)
5 (quoting *Officers for Justice*, 688 F.2d at 626). Accordingly, while approval of the
6 settlement is committed to the sound discretion of the court, “the court must also be
7 mindful of the Ninth Circuit’s policy favoring settlement, particularly in class action
8 law suits.” *Sadowska v. Volkswagen Grp. of Am., Inc.*, 2013 U.S. Dist. LEXIS
9 188582, at *8 (C.D. Cal. Sep. 25, 2013) (quoting *Officers for Justice*, 688 F.2d at
10 625).

11 Based on these standards, Plaintiff respectfully submits that, for the reasons
12 fully articulated below, the Settlement falls squarely within the range of possible
13 approval, and the Court should preliminarily approve the proposed Settlement.

14 **VI. PRELIMINARY APPROVAL OF THE SETTLEMENT IS** 15 **APPROPRIATE**

16 **A. The Negotiated Settlement is Fundamentally Fair, Reasonable,** 17 **and Adequate**

18 Under Rule 23(e)(1), the issue at preliminary approval turns on whether the
19 Court can (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for
20 purposes of judgment on the proposal. *In re Banc of Cal. Sec. Litig.*, 2019 U.S. Dist.
21 LEXIS 209386, at *3 (C.D. Cal. Dec. 4, 2019). In evaluating a proposed settlement
22 at the preliminary approval stage, some district courts focus on whether the
23 settlement is within the range of possible approval or within the range of
24 reasonableness. *Bykov v. DC Transp. Servs.*, 2019 U.S. Dist. LEXIS 54652, at *5
25 (E.D. Cal. Mar. 28, 2019). That is, “preliminary approval of a settlement has both a
26 procedural and a substantive component.” *In re Tableware Antitrust Litig.*, 484 F.
27 Supp. 2d at 1080.

28 As to the procedural component, “a presumption of fairness applies when
settlements are negotiated at arm’s length, because of the decreased chance of

1 collusion between the negotiating parties.” *Gribble v. Cool Transps., Inc.*, 2008 U.S.
2 Dist. LEXIS 115560, at *26 (C.D. Cal. Dec. 15, 2008) (citing *In re First Capital*
3 *Holdings Corp. Fin. Prods. Sec. Litig.*, 1992 U.S. Dist. LEXIS 14337, at *5-6 (C.D.
4 Cal. June 10, 1992)). With respect to the substantive component, the court need only
5 determine whether the proposed settlement is within the range of “possible
6 approval.” *Murillo v. Pacific Gas & Elec. Co.*, 266 F.R.D. 468, 479 (E.D. Cal.
7 2010) (quoting *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982)).

8 In the Ninth Circuit, analysis of the fairness, reasonableness, and adequacy of
9 a class settlement encompasses nine factors: (1) the strength of the plaintiff’s case;
10 (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk
11 of maintaining class action status throughout the trial; (4) the amount offered in
12 settlement; (5) the extent of discovery completed and the stage of the proceedings;
13 (6) the views of counsel; (7) the presence of a governmental participant; (8) the
14 reaction of the class members to the proposed settlement; and (9) whether the
15 settlement is a product of collusion among the parties. *Jones v. GN Netcom, Inc. (In*
16 *re Bluetooth Headset Prods. Liab. Litig.)*, 654 F.3d 935, 946 (9th Cir. 2011); *see*
17 *also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Rule 23(e)
18 requires consideration of several additional factors, including that the class
19 representative and class counsel have adequately represented the class, and that the
20 settlement treats class members equitably. Fed. R. Civ. P. 23(e).

21 In applying these factors, the guiding principle for courts remains that
22 settlements of class actions are preferable. *See Franklin v. Kaypro Corp.*, 884 F.2d
23 1222, 1229 (9th Cir. 1989) (“It hardly seems necessary to point out that there is an
24 overriding public interest in settling and quieting litigation. This is particularly true
25 in class action suits”). Here, the relevant factors support the conclusion that the
26 negotiated settlement is fundamentally fair, reasonable, and adequate, and should be
27 preliminarily approved.

28 ///

1 **1. The Strength of Plaintiff's Case**

2 Plaintiff believes he has a strong case for liability. In particular, Plaintiff
3 believes ample evidence will establish that Defendant failed to maintain reasonable
4 data security practices, which led directly to the loss of Plaintiff's and the Class's
5 PII. Joint Decl., ¶ 16. Moreover, Plaintiff believes that once he establishes that
6 Defendant's data security measures were inadequate, Defendant is likely to be found
7 liable under at least some of the statutory and common law theories of liability
8 Plaintiff pled in his CAC. However, Plaintiff's success is not a guarantee. It is
9 reasonable to recognize that the actual recovery realized and risks avoided here
10 outweigh the opportunity to pursue potentially more favorable results through full
11 adjudication. *Dennis v. Kellogg Co.*, 2013 U.S. Dist. LEXIS 163118, at *3 (S.D.
12 Cal. Nov. 14, 2013). "Here, as with most class actions, there was risk to both sides
13 in continuing towards trial. The settlement avoids uncertainty for all parties
14 involved." *Chester v. TJX Cos.*, 2017 U.S. Dist. LEXIS 201121, at *17 (C.D. Cal.
15 Dec. 5, 2017). Given the challenges and inherent risks Plaintiff faces with respect
16 to the novel claims characteristic of data breach actions, including class certification,
17 summary judgment, and trial, the substantial benefits of the Settlement favor
18 preliminary approval of the Settlement. Joint Decl., ¶ 19.

19 **2. The Risk, Expense, Complexity, and Likely Duration of**
20 **Further Litigation**

21 While Plaintiff believes his case is strong, substantial risk is inherent in all
22 cases, including this one. This case involves a proposed class of approximately
23 2,875 individuals (SA, § 1.6) and a complicated and technical factual background in
24 a relatively novel area: data breach litigation. Although nearly all class actions
25 involve a high level of risk, expense, and complexity—undergirding the strong
26 judicial policy favoring amicable resolutions, *Linney v. Cellular Alaska P'ship*, 151
27 F.3d 1234, 1238 (9th Cir. 1998)—this is a particularly complex class action due to
28 the standing challenges plaintiffs face in data breach class actions. *See, e.g., In re*

1 *U.S. Office of Pers. Mgmt. Data Sec. Breach Litig.*, 266 F. Supp. 3d 1, 19 (D.D.C.
2 2017) (“The Court is not persuaded that the factual allegations in the complaints are
3 sufficient to establish . . . standing.”), *reversed in part*, 928 F.3d 42 (D.C. Cir. June
4 21, 2019) (holding that plaintiff had standing to bring a data breach lawsuit).

5 Moreover, the path to a class-wide monetary judgment remains unforged,
6 particularly in the area of damages. For now, data breach cases are among the
7 riskiest and most uncertain of all class action litigation, making settlement the more
8 prudent course when a favorable one is at hand. The damages methodologies, while
9 theoretically sound in Plaintiff’s view, remain untested in a disputed class
10 certification setting and unproven in front of a jury. And, as in any data breach case,
11 establishing causation on a class-wide basis also remains uncertain.

12 Each risk, by itself, could impede the successful prosecution of these claims
13 at trial and in an eventual appeal—which would result in zero recovery to the Class.
14 Therefore, this factor favors approval.

15 **3. The Risk of Maintaining Class Action Status Through Trial**

16 If the Parties were to proceed to litigate their claims through trial, Plaintiff
17 would encounter risks in obtaining and maintaining certification of the Class. The
18 Class has not yet been certified, and Defendant will certainly oppose certification.
19 Thus, Plaintiff “necessarily risk[s] losing class action status.” *Grimm v. Am. Eagle*
20 *Airlines, Inc.*, 2014 U.S. Dist. LEXIS 199608, at *26 (C.D. Cal. Sep. 24, 2014).
21 Class certification in contested consumer data breach cases is not common—first
22 occurring in *Smith v. Triad of Ala., LLC*, 2017 U.S. Dist. LEXIS 38574, at *45-46
23 (M.D. Ala. Mar. 17, 2017), and most recently in *In re Marriott Int’l, Inc., Customer*
24 *Data Sec. Breach Litig.*, 2022 U.S. Dist. LEXIS 80575 (D. Md. May 3, 2022) and
25 *In re Brinker Data Incident Litig.*, 2021 U.S. Dist. LEXIS 71965 (M.D. Fla., Apr.
26 14, 2021). Thus, the scarcity of direct precedent amplifies the risks of continuing
27 the Litigation.

28 ///

4. Amount Offered in Settlement

1 **4. Amount Offered in Settlement**
2 A settlement should stand or fall on the adequacy of its terms. *In re MRV*
3 *Communs., Inc. Derivative Litig.*, 2013 U.S. Dist. LEXIS 86295, at *12 (C.D. Cal.
4 June 6, 2013) (citing *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 211
5 (5th Cir. 1981)). The Settlement here reflects an excellent result in light of the
6 challenges that come with data breach litigation. Specifically, the Settlement
7 provides monetary relief to Class Members who submit eligible Claim Forms. *See*
8 SA, § 2.2. Further, Plaintiff and Class Members will receive, among other non-
9 monetary relief, identity theft protection. *Id.*, § 2.1. Finally, the Settlement also
10 requires significant business practice reforms in the form of Defendant’s
11 implementation of robust data security measures, which will help to protect the
12 Settlement Class’ PII going forward. Considering that this is an unsettled area of
13 law fraught with the risk that the Class would not be certified and that Plaintiff would
14 not succeed at trial, the present Settlement represents an excellent compromise of
15 Plaintiff’s and the Settlement Class Members’ claims. Joint Decl., ¶ 20.

16 Additionally, the Settlement is in line with other settlements in cases
17 involving data breaches of similar scope. *Id.*, ¶ 21. For example, the consideration
18 paid by [24]7.AI, Inc. to settle a data breach class action was up to \$2,000 in
19 reimbursement for out-of-pocket expenses resulting from the data breach including
20 up to \$100 in compensation for lost time at \$20 per hour per class member for a class
21 of approximately 378,768. *See Ford v. [24]7.AI, Inc.*, No. 5:18-cv-02770, ECF No.
22 124-1 (N.D. Cal. July 2, 2021) (Settlement Agreement); *id.*, ECF No. 139 (N.D. Cal.
23 Jan. 28, 2022) (order approving settlement). The Kemper data breach provided
24 every class member 18 months of identity theft protection, up to \$10,000 in out-of-
25 pocket expense reimbursement, as well as up to six hours of lost time spent as a
26 result of the data breach at \$18 per hour, plus an additional benefit of \$50 each for
27 each California settlement class member for a class of approximately 6,151,872
28 (conservatively valued at \$2.78 per class member). *See Aguallo v. Kemper*

1 *Corporation*, No. 1:21-cv-01883, ECF No. 35-3 (N.D. Ill. Oct. 14, 2021) (Settlement
2 Agreement); *id.*, ECF No. 53 (N.D. Ill. Mar. 18 2022) (order approving
3 settlement). Because the settlement here is similar to other settlements reached and
4 approved in similar cases, this factor reflects that the Settlement is fair. *See*
5 *Calderon v. Wolf Firm*, 2018 U.S. Dist. LEXIS 42054, at *21 (C.D. Cal. Mar. 13,
6 2018) (comparing class settlement with other settlements in similar cases).

7 In sum, this factor favors approval.

8 **5. The Extent of Discovery Completed and the Stage of**
9 **Proceedings**

10 Before entering into settlement discussions on behalf of class members,
11 counsel should have “sufficient information to make an informed decision.” *Linney*,
12 151 F.3d at 1239. Here, Plaintiff gathered all of the information that was available
13 regarding King’s Seafood and the Data Security Incident—including publicly-
14 available documents concerning announcements of the Security Incident and notice
15 of the Security Incident to its customers. Joint Decl., ¶ 22. The parties also
16 exchanged information during settlement negotiations regarding the number of
17 Settlement Class Members and the amount Defendant has and will spend on
18 remedial measures. *Id.*, ¶ 23.

19 Although the parties have not engaged in formal discovery, Proposed
20 Settlement Class Counsel’s collective experience in similar types of privacy and data
21 protection practices provided substantive knowledge on the subject to enable Class
22 Counsel to represent Plaintiff’s and Class Members’ interests without expending
23 hundreds of hours and substantial financial resources to come up to speed on the
24 subject area. *Id.*, ¶ 24. “[T]he efficiency with which the Parties were able to reach
25 an agreement need not prevent this Court from granting . . . approval.” *Hillman v.*
26 *Lexicon Consulting, Inc.*, 2017 U.S. Dist. LEXIS 230265, at *10 (C.D. Cal. Oct. 12,
27 2017). Accordingly, Plaintiff made a decision fully informed about the strengths
28 and weaknesses of this case.

1 **6. The Experience and Views of Counsel**

2 Proposed Settlement Class Counsel initiated this lawsuit after Defendant
3 announced the Data Security Incident, which impacted approximately 2,875
4 individuals. SA, § 1.6. Proposed Settlement Class Counsel have substantial
5 experience litigating complex class cases of various types, including data breach
6 cases such as this one. *See* Joint Decl., ¶ 25 and Exs. 3 and 4 thereto. Having worked
7 on behalf of the Class since the Data Security Incident was first announced,
8 evaluated the legal and factual disputes, and dedicated significant time and resources
9 to this litigation, Proposed Settlement Class Counsel fully endorse the Settlement.
10 *Id.*, ¶ 26. A great deal of weight is accorded to the recommendation of counsel, who
11 are most closely acquainted with the facts of the underlying litigation. *See, e.g.,*
12 *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal.
13 2004). Therefore, this factor supports approval.

14 **7. Governmental Participants.**

15 There is no governmental participant in this matter. This factor is neutral.

16 **8. The Reaction of the Class Members to the Proposed**
17 **Settlement**

18 Because Notice has not yet been given, this factor is not yet implicated;
19 however, Plaintiff supports the Settlement. Joint Decl., ¶ 15.

20 **9. Lack of Collusion among the Parties**

21 The Parties negotiated a substantial, multifaceted Settlement, as described
22 above. The parties did not negotiate attorneys' fees and the service award until
23 agreement on all substantive portions of the class resolution had been reached, and
24 both the class portion of the resolution and the attorneys' fees and the service award
25 were negotiated during numerous and periodic arm's-length negotiations.
26 Furthermore, Proposed Settlement Class Counsel and Defendant's counsel are well
27 versed in handling data breach class actions such as this one and fully understand
28

1 the values recovered in similar cases. Therefore, the Court can rest assured that the
2 negotiations were not collusive.

3 **10. The Settlement Treats Settlement Class Members**
4 **Equitably**

5 Finally, under Rule 23(e)(2)(D), the court must confirm that the settlement
6 treats all class members as equitably as possible under the circumstances. Courts
7 should consider “whether the apportionment of relief among class members takes
8 appropriate account of differences among their claims, and whether the scope of the
9 release may affect class members in different ways that bear on the apportionment
10 of relief.” Fed. R. Civ. P. 23(e), advisory comm.’s note (2018). In determining
11 whether this factor weighs in favor of approval, a Court must determine whether the
12 Settlement “improperly grant[s] preferential treatment to class representatives or
13 segments of the class.” *Hudson v. Libre Tech. Inc.*, 2020 U.S. Dist. LEXIS 84576,
14 at *26 (S.D. Cal. May 12, 2020) (quoting *In re Tableware Antitrust Litig.*, 484 F.
15 Supp. 2d 1078, 1079 (N.D. Cal. 2007).

16 Here, all Settlement Class Members benefit from the same relief, so no
17 preferential treatment exists. Each Settlement Class Member can claim up to \$450
18 in reimbursements for ordinary expenses and time spent and up to \$3,000 in
19 reimbursements for extraordinary expenses, and all Settlement Class Members are
20 eligible to receive identity theft protection.

21 While Plaintiff will also seek approval of a service award from this Court, as
22 will be explained in detail at Plaintiff’s motion for attorneys’ fees, the award of
23 \$1,750 aligns with awards granted in similar cases, is presumptively reasonable, and
24 does not call into question Plaintiff’s adequacy or the validity of the Settlement. *See,*
25 *e.g. In re Yahoo Mail Litig.*, 2016 U.S. Dist. LEXIS 115056, at *36 (N.D. Cal. Aug.
26 25, 2016) (“The Ninth Circuit has established \$5,000.00 as a reasonable benchmark
27 [for service awards].”). As such, this factor also weighs in favor of approval.

28 ///

1 **B. The Court Should Approve the Proposed Notice Program**

2 Before final approval, the “court must direct notice in a reasonable manner to
3 all class members who would be bound by the proposal.” Fed. R. Civ. P.
4 23(e)(1)(B). For classes certified under Rule 23(b)(3), “the court must direct to class
5 members the best notice that is practicable under the circumstances, including
6 individual notice to all members who can be identified through reasonable effort.”
7 Fed. R. Civ. P. 23(c)(2)(B). This means “individual notice to all members who can
8 be identified through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S.
9 156, 173 (1974). To satisfy due process, notice to class members must be reasonably
10 calculated under all the circumstances to apprise interested parties of the pendency
11 of the action and afford them an opportunity to present their objections. Fed. R. Civ.
12 P. 23(c)(2); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Class
13 settlement notices must present information about a proposed settlement simply,
14 neutrally, and understandably. *In re Hyundai & Kia Fuel Economy Litig.*, 926 F.3d
15 539, 567 (9th Cir. 2019). Notice is adequate if it generally describes the terms of
16 the class action settlement in sufficient detail to alert those with adverse viewpoints
17 to investigate and to come forward and be heard. *Id.*

18 Here, the Parties have agreed to a robust Notice program. Joint Decl. ¶¶ 13-
19 14. The costs of administering the Settlement will be paid by Defendant and will
20 not negatively interfere with the amount available to Settlement Class Members who
21 make valid claims. SA, § 4.1. The Notice and Claim Forms negotiated by the Parties
22 are clear and comprehensive and inform Settlement Class Members of their rights
23 and options under the Settlement, including how to make a claim, object to the
24 Settlement, or opt-out of the Settlement. *Id.*, Exs. A, B and D. In addition to the
25 direct Notice, a dedicated Settlement Website, to be maintained and updated
26 throughout the Claims Period, will contain the forms of Short Notice, Long Notice,
27 and Claim Form approved by the Court, as well as the Settlement Agreement. *Id.*, §
28 5.3.2, Exs. A, B and D. Finally, a toll-free help line will be active and provide

1 Settlement Class Members with additional information about the settlement. *Id.*,
2 § 5.3.4.

3 Plaintiff has therefore negotiated a Notice program that reasonably apprises
4 Class Members of the pendency of the action and affords them an opportunity to
5 present their objections. Because the Notice plan ensures that Settlement Class
6 Members' due process rights are amply protected, this Court should approve it.

7 **C. Appointment of the Settlement Administrator**

8 In connection with implementation of the Notice program and administration
9 of the settlement benefits, the Parties request that the Court appoint Atticus to serve
10 as the Claims Administrator. Atticus has a proven track record of supporting
11 hundreds of class action administrations, with ample legal administration
12 experience. Longley Decl., ¶ 2. Notice and administration is expected to cost up to
13 \$20,000 and will be paid by Defendant separate and apart from the relief to the Class.
14 *Id.*, Ex. B.

15 **D. Appointment of Settlement Class Counsel**

16 Under Rule 23, "a court that certifies a class must appoint class counsel [who
17 must] fairly and adequately represent the interests of the class." Fed. R. Civ. P.
18 23(g)(1)(B). In making this determination, courts generally consider: the proposed
19 class counsel's (1) work in identifying or investigating potential claims, (2)
20 experience in handling class actions or other complex litigation, and the types of
21 claims asserted in the case, (3) knowledge of the applicable law, and (4) resources
22 committed to representing the class. Fed. R. Civ. P. 23(g)(1)(A)(i-iv).

23 Here, proposed Class Counsel has extensive experience prosecuting class
24 actions and other complex cases, and specifically data breach cases. *See* Joint Decl.
25 ¶ 25 and Exs. 3 and 4 (firm resumes). Accordingly, the Court should appoint M.
26 Anderson Berry of Clayeo C. Arnold, A Professional Law Corporation and Rachele
27 R. Byrd of Wolf Haldenstein Adler Freeman & Herz LLP as Settlement Class
28 Counsel.

VII. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE

In cases presented for preliminary approval of a settlement, the court must first make a determination that the proposed class satisfies the criteria under Rule 23. Manual for Complex Litigation (Fourth), § 21.632. Because a court evaluating certification of a class action that settled is considering certification only in the context of settlement, the court’s evaluation is somewhat different than it would be in a case not yet settled. In some ways, the court’s review of certification of a settlement-only class is lessened: as no trial is anticipated in a settlement-only class case, the case management issues inherent in the ascertainable class determination need not be confronted. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.”). Other certification issues, however, such as “those designed to protect absentees by blocking unwarranted or overbroad class definitions,” require heightened scrutiny in the settlement-only class context “for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.” *Id.* More traditional means of handling claims, such as individual litigation, would unduly hinder judicial efficiency in terms of costs and resources. Thus, a settlement—and specifically the Settlement proposed here—best facilitates the relief in the context of a class under the requirements of Rule 23(a) and (b).

A. The Class Satisfies Rule 23(a)

The requirements of Rule 23(a) are well settled: numerosity, commonality, typicality, and adequacy—each of which is met here. Fed. R. Civ. P. 23(a); *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 979–80 (9th Cir. 2011).

1. The Class is Sufficiently Numerous

While there is no fixed point grounding the numerosity requirement, courts find numerosity where there are so many class members as to make joinder

1 impracticable. *See* Fed. R. Civ. P. 23(a)(1). “Where the exact size of the class is
2 unknown but general knowledge and common sense indicate that it is large, the
3 numerosity requirement is satisfied.” *Turcios v. Carma Labs., Inc.*, 296 F.R.D. 638,
4 645 (C.D. Cal. 2014) (citing *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 370
5 (C.D. Cal. 1982) (*overturned on different grounds*). Generally, Courts will find
6 numerosity is satisfied where a class includes at least 40 members. *Holly v. Alta*
7 *Newport Hosp., Inc.*, 2020 U.S. Dist. LEXIS 64104, at *18 (C.D. Cal. Apr. 10, 2020)
8 (citing *Rannis v. Recchia*, 380 Fed. App’x 646, 650-51 (9th Cir. 2010)). Numbering
9 approximately 2,875 individuals (SA, § 1.25), the Class here easily satisfies Rule
10 23’s numerosity requirement. Joinder of the 2,865 individuals is clearly
11 impracticable—thus the numerosity prong is satisfied.

12 **2. The Class Satisfies the Commonality Requirement**

13 The Class also satisfies the commonality requirement, under which Class
14 Members’ claims “depend upon a common contention” of such a nature that
15 “determination of its truth or falsity will resolve an issue that is central to the validity
16 of each [claim] in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350
17 (2011). Here, as in most data breach cases, courts in the Ninth Circuit have found
18 that these common issues all center around Defendant’s misconduct, and in
19 particular, around its inadequate data security practices, satisfying the commonality
20 requirement. *In re Premera Blue Cross Customer Data Sec. Breach Litig.*, 2019
21 U.S. Dist. LEXIS 127093, at *31 (D. Or. July 29, 2019). For the same reason,
22 predominance is readily met “where the class is a ‘cohesive group of individuals
23 [who] suffered the same harm in the same way because of the [defendant’s]
24 conduct.’” *In re Google LLC St. View Elec. Communs. Litig.*, 2020 U.S. Dist.
25 LEXIS 47928, at *21 (N.D. Cal. Mar. 18, 2020) (quoting *In re Hyundai & Kia Fuel*
26 *Economy Litig.*, 926 F.3d 539, 559 (9th Cir. 2019)). Thus, common questions
27 include, among many, whether Defendant engaged in the wrongful conduct alleged;
28 whether Class Members’ PII was compromised during the Data Security Incident;

1 whether Defendant owed a duty to Plaintiff and Class Members and breached its
2 duty; and whether Defendant unreasonably delayed notifying Plaintiff and Class
3 Members of the material facts of the Data Security Incident.

4 Thus, the proposed Class meets the commonality requirement of Rule 23(a).

5 **3. Plaintiff's Claims are Typical of the Class**

6 Plaintiff's claims are typical of the proposed Class because they are based on
7 Defendant's alleged failure to protect Plaintiff's and Class Members' PII and are
8 therefore "reasonably coextensive with those of the absent class members." *See* Fed.
9 R. Civ. P. 23(a)(3); *Forcellati v. Hyland's, Inc.*, 2014 U.S. Dist. LEXIS 50600, at
10 *31 (C.D. Cal. Apr. 9, 2014) (finding plaintiffs' claims were reasonably co-extensive
11 with those of absent class members). Plaintiff here alleges that his PII was
12 compromised, and that as a result, Defendant's same poor data security practices
13 caused him the same injury that the Class suffered. *See Just Film, Inc. v. Buono*,
14 847 F.3d 1108, 1118 (9th Cir. 2017) ("[I]t is sufficient for typicality if the plaintiff
15 endured a course of conduct directed against the class.").

16 **4. Plaintiff Will Adequately Protect the Interests of the Class**

17 The adequacy requirement of Rule 23 is satisfied where (1) there are no
18 antagonistic or conflicting interests between named plaintiffs and their counsel and
19 the absent class members; and (2) the named plaintiffs and their counsel will
20 vigorously prosecute the action on behalf of the class. Fed. R. Civ. P. 23(a)(4); *see*
21 *also Ellis*, 657 F.3d at 985 (*citing Hanlon*, 150 F.3d at 1020); *Longest v. Green Tree*
22 *Servicing LLC*, 308 F.R.D. 310, 325 (C.D. Cal. 2015).

23 Here, Plaintiff has no conflicts of interest with other class members, is not
24 subject to unique defenses, and he and his counsel have and continue to vigorously
25 prosecute this case on behalf of the Class. Plaintiff is a member of the Class who
26 experienced the same injuries and seeks, like other Class Members, compensation.
27 As such, Plaintiff's and the Proposed Settlement Class Counsel's interests align with
28 those of the Class. Further, counsel for Plaintiff have decades of combined

1 experience as class action advocates and are well suited to litigate on behalf of the
2 Class. *See* Joint Decl. ¶ 27 and Exs. 3 and 4.

3 Thus, Plaintiff will adequately protect the interests of the Class.

4 **B. The Settlement Satisfies Rule 23(b)(3)**

5 In addition to meeting the conditions imposed by Rule 23(a), parties seeking
6 class certification must also show that the action is maintainable under FRCP
7 23(b)(1), (2) or (3). *See Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186
8 (9th Cir. 2001). Here, the Plaintiff alleges that the Settlement Class is maintainable
9 for purposes of settlement under Rule 23(b)(3), as common questions predominate
10 over any questions affecting only individual members and class resolution is
11 superior to other available methods for a fair and efficient resolution of the
12 controversy. *Hanlon*, 150 F.3d at 1022.

13 **1. Common Questions of Law and Fact Predominate**

14 Common questions of law and fact predominate over individualized
15 questions. “The Rule 23(b)(3) predominance inquiry tests whether proposed classes
16 are sufficiently cohesive to warrant adjudication by representation.” *Capaci v.*
17 *Sports Rsch. Corp.*, 2022 U.S. Dist. LEXIS 72856, at *26 (C.D. Cal. Apr. 14, 2022)
18 (citing *Amchem Prods.*, 521 U.S. at 623). Courts analyze whether a prima facie
19 showing of liability can be proved by common evidence or whether this showing
20 varies from member to member. *Reynoso v. All Power Mfg. Co.*, 2018 U.S. Dist.
21 LEXIS 227475, at *7 (C.D. Cal. Apr. 30, 2018) (citing *Tyson Foods, Inc. v.*
22 *Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016)). If, to make a prima facie showing on a
23 particular issue, plaintiffs will need to present evidence that varies from one class
24 member to the next, then the issue raises an individual question. *Chua v. City of*
25 *L.A.*, 2017 U.S. Dist. LEXIS 224221, at *28 (C.D. Cal. May 25, 2017). Conversely,
26 if the same evidence can suffice for each member of the class on an issue, then it
27 becomes a common question. *Id.* (citing *Tyson Foods, Inc.*, 136 S. Ct. at 1045)
28 (internal quotations and citation omitted). Courts in the Ninth Circuit find

1 predominance where there is a sufficient constellation of common issues that binds
2 class members together. *Keegan v. Am. Honda Motor Co.*, 284 F.R.D. 504, 545 (C.D.
3 Cal. 2012).

4 Plaintiff's claims depend, first and foremost, on whether Defendant used
5 reasonable data security measures to protect PII. That question can be resolved using
6 the same evidence for all Class Members, and thus is precisely the type of
7 predominant question that makes a class-wide settlement worthwhile. *See, e.g.*,
8 *Tyson Foods, Inc.* 136 S. Ct. at 1045 (“When ‘one or more of the central issues in
9 the action are common to the class and can be said to predominate, the action may
10 be considered proper under Rule 23(b)(3)’”) (citation omitted).

11 **2. A Class Action is the Superior Mechanism for Adjudication**

12 Rule 23(b)(3) requires that a “class action [be] superior to other available
13 methods for fairly and efficiently adjudicating the controversy” and is intended to
14 cover cases “in which a class action would achieve economies of time, effort, and
15 expense, and promote ... uniformity of decisions as to persons similarly situated,
16 without sacrificing procedural fairness or bringing about other undesirable results.”
17 *Amchem*, 521 U.S. at 615. Four factors are pertinent to this inquiry: (a) the class
18 members' interests in individually controlling the prosecution or defense of separate
19 actions; (b) the extent and nature of any litigation concerning the controversy already
20 begun by or against class members; (c) the desirability or undesirability of
21 concentrating the litigation of the claims in the particular forum; and (d) the likely
22 difficulties in managing a class action. *See* Fed. R. Civ. P. 23(b)(3). Here, class
23 treatment of Plaintiff's and the Class' claims is superior to individual actions because
24 a class action will be more efficient and conserve costs, time, and effort. The
25 relatively minor amount of damages traceable to each Class member on an individual
26 basis would not justify the pursuit of separate lawsuits across the country.
27 Additionally, a class action is the superior method of adjudicating consumer claims
28 arising from the Data Security Incident—just as in other data breach cases where

1 class-wide settlements have been approved. *See, e.g., In re Anthem, Inc. Data*
2 *Breach Litig.*, 327 F.R.D. 299, 316-17 (N.D. Cal. 2018); *In re LinkedIn User Privacy*
3 *Litig.*, 309 F.R.D. 573, 585 (N.D. Cal. 2015). Further, the Class consists of
4 thousands of individuals who, should they be required to bring individual cases,
5 would submit identical factual evidence regarding Defendant's liability and seek
6 redress for the same types of injuries, yet risk having different outcomes, even
7 though their claims arise out of the same conduct and the same Data Security
8 Incident. All these considerations demonstrate the superiority of a class action here.

9 A class action is therefore superior to other methods for the fair and efficient
10 adjudication of Plaintiff's and the Class's claims.

11 **VIII. CONCLUSION**

12 For all the aforementioned reasons, Plaintiff respectfully requests this Court
13 grant his Motion.

14 DATED: August 26, 2022

Respectfully Submitted,

15 /s/ Rachele R. Byrd

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