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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA**

STAR JOSHUA, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

THE COUNTY OF CONTRA COSTA; MARC
SHORR, in his official capacity; and DOES 1
through 100, inclusive,

Defendants.

Case No. C23-01684

*[Assigned for All Purposes to:
Dept. 39, Hon. Edward G. Weil]*

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

Date: _____
Time: _____
Dept. 39
Judge: Hon. Edward G. Weil

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1 Plaintiff Star Joshua (“Plaintiff”), individually and on behalf of all others similarly situated,
2 submits this Memorandum of Points and Authorities (“Memorandum”) in Support of Plaintiff’s
3 Unopposed Motion for Preliminary Approval of Class Action Settlement (“Motion”). Defendants County
4 of Contra Costa (“County”) and Marc Shorr (together with County, “Defendants” and, collectively with
5 Plaintiff, the “Parties”) do not oppose this Motion. The Settlement Agreement and Release (“Class
6 Settlement Agreement” or “S.A.”)¹ is attached as **Exhibit B** to the Declaration of M. Anderson Berry in
Support of Plaintiff’s Motion (“Berry Decl.”).

7 **I. INTRODUCTION**

8 This matter concerns a putative class action *Star Joshua v. The County of Contra Costa*, Contra
9 Costa Superior Court Case No. C23-01684 (the “Litigation”), which arises out of a Data Incident suffered
10 by County between September 19, 2022, and September 20, 2022. Specifically, an unauthorized third-
11 party gained unauthorized access to two of County’s employees’ email accounts, as well as all attachments
12 to the emails in those two accounts, which resulted in the potential exposure of highly sensitive personally
13 identifiable information (“PII”) of Plaintiff’s and Settlement Class Members’, including their names,
14 Social Security numbers, driver’s license numbers, and government-issued identification numbers (the
“Data Incident”).

15 As a result of the Data Incident, approximately 15,591 individuals were affected, the vast majority
16 of whom are California residents. Beginning on or around May 10, 2023, Defendants notified the
17 California Attorney General’s office and some Settlement Class Members about the Data Incident.
18 Plaintiff received her notice letter from County on or about May 10, 2023. Plaintiff brought suit on July
19 11, 2023, in Contra Costa Superior Court, Case No. C23-01684, regarding the Data Incident. Berry Decl.,
¶18. On August 30, 2023, Plaintiff filed the operative First Amended Class Action Complaint (“FAC”).
20 *Id.*, ¶19.

21 The Parties all recognized the benefits of possible early resolution. Over the course of several
22 months, the Parties engaged in informal discovery to facilitate settlement discussions and agreed to engage
23 a well-respected mediator – Bruce A. Friedman, Esq., of JAMS. – to mediate this matter. *Id.*, ¶¶20- 22.

24 The Settlement negotiated on behalf of the Settlement Class provides for three forms of relief. S.A.
25 § 2. First, County will provide all Settlement Class Members, who submit a valid claim, reimbursement
26 of any ordinary and extraordinary expenses they incurred as a result of the Data Incident totaling up to
\$500.00 for ordinary expenses and up to \$5,000.00 for extraordinary expenses. *Id.*, §§ 2.1(a)-(b). These

27 _____
28 ¹ All capitalized terms herein shall be given the same meaning as those terms are defined in the Class
Action Settlement Agreement.

1 cash benefits also include reimbursement for time spent dealing with the Data Incident at a rate of \$25 per
2 hour for up to four (4) hours for a total sum of up to \$100.00. *Id.* Second, all Settlement Class Members
3 will be able to claim two (2) additional years of credit monitoring and identity theft protection services
4 which includes three-bureau credit monitoring, identity theft, and alerts. *Id.*, § 2.2. Finally, County will
5 provide equitable relief in the form of data and information security practice changes to mitigate the risk
6 of similar data incidents in the future. *Id.*, § 2.3.

7 The Settlement will provide extraordinary relief to the group of approximately 15,591 Settlement
8 Class Members whose sensitive PII was compromised in the Data Incident. If approved, the Settlement
9 will bring certainty, closure, and significant and valuable relief to affected individuals, as opposed to what
10 otherwise would likely be contentious and costly litigation concerning County's alleged failure to
11 adequately safeguard the PII of the Settlement Class Members. The terms of the Settlement, which entitle
12 Settlement Class Members to meaningful financial compensation along with additional credit monitoring
13 and identity theft protection services, are in the best interests of the Settlement Class and meet and exceed
14 the applicable standards of fairness, reasonableness, and adequacy. Accordingly, the Court should
15 preliminarily approve the Settlement, so that the Settlement Class can receive notice of their rights.

16 As such, Plaintiff respectfully requests that the Court enter an Order: (1) preliminarily approving
17 the proposed Settlement; (2) approving the proposed notice program, and directing the commencement of
18 notice pursuant to the terms in the Class Action Settlement Agreement; (3) certifying the proposed
19 Settlement Class for settlement purposes only; (4) approving the retention of EAG Gulf Coast, LLC.
20 ("EAG") as Claims Administrator; (5) appointing Plaintiff Star Joshua as Representative Plaintiff;
21 (6) appointing M. Anderson Berry of Clayeo C. Arnold, APC and Kenneth Grunfeld of Kopelowitz
22 Ostrow P.A. as the Class Counsel; (7) staying all proceedings in the Litigation, other than those related to
23 approval of the Class Settlement Agreement, pending entry of the Final Order and Judgment; (8) staying
24 and/or enjoining any actions brought by Settlement Class Members concerning the Released Claims,
25 pending the Court's entry of the Final Order and Judgment in the Class Settlement Agreement; and (9)
26 scheduling a Final Approval Hearing at which the Court will conduct an inquiry into the fairness,
27 reasonableness, and adequacy of the Settlement, whether it was made in good faith and should be finally
28 approved, and whether to approve Class Counsel's Motion for Attorneys' Fees and Expenses Award
and/or Incentive Awards.

26 **II. CASE HISTORY**

27 **A. The Data Incident.**

28 Between September 19, 2022, and September 20, 2022, County experienced a targeted cyberattack
and data breach in which an authorized third-party threat actor gained access to two of County's

employees' email accounts and the attachments included in those accounts, which resulted in the potential compromise of highly sensitive PII belonging to approximately 15,591 individuals, including Plaintiff. FAC, ¶¶ 5, 22, 52. Beginning on or around May 10, 2023, Defendants began notifying the California Attorney General's office and Plaintiff and Settlement Class Members about the Data Incident. *Id.*, ¶ 21, Ex. A to FAC.

B. Procedural Posture and History of Negotiations.

Representative Plaintiff Star Joshua filed her putative class action on July 11, 2023, in Contra Costa Superior Court, Case No. C23-01684, regarding the Data Incident. On August 30, 2023, Plaintiff filed her First Amended Complaint.

Over the course of the next several months, the Parties met and conferred about potential early settlement and mediation of this matter. Berry Decl., ¶¶20-22. In anticipation of the mediation, County produced informal discovery to Plaintiff in order for Plaintiff to better understand the nature of her claims, including information about the Data Incident and the scope of information compromised in the Data Incident. *Id.* The Parties engaged in an all-day, arms-length mediation with Bruce A. Friedman, Esq., of JAMS on March 7, 2024. *Id.* The Parties reached an agreement in principle at mediation, but certain material terms remained unresolved. *Id.* Over the next few months, the Parties continued to negotiate the finer points of the Settlement Agreement, distribution mechanism, notice documents, and other exhibits to the Settlement Agreement. *Id.*, ¶23. The negotiations were extensive and parties worked diligently to create an agreement in the best interests of their clients. *Id.* The Settlement Agreement and exhibits were finalized on March 17, 2025. *Id.*

III. SUMMARY OF SETTLEMENT

A. Definition of the Class.

The Settlement contemplates resolution of claims on behalf of a Settlement Class comprised of approximately 15,591 individuals. The proposed Settlement Class is defined as:

[A]ll persons with California mailing addresses who were mailed a letter sent from Defendant County entitled "NOTICE OF DATA BREACH" on or about May 10, 2023.

S.A., § 1.23.

Excluded from the Settlement Class are all those persons who timely and validly request exclusion from the Settlement Class, as well as: (i) Defendant County's County Board of Supervisors ("Board") and/or the Related Entities; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; and (iii) the members of the judiciary who have presided or are presiding over this matter and their families and staff. *Id.* Plaintiff was mailed notice from County on or around May 10,

2023 informing her that her PII was compromised in the Data Incident, and therefore, has standing to represent the Settlement Class.

B. Settlement Terms and Benefits to the Class.

The Settlement reached by the Parties confers valuable benefits on the Settlement Class that could not have been obtained without this Litigation:

1. Settlement Benefits

The Settlement negotiated on behalf of the Class provides for three separate forms of relief. First, County will provide direct monetary relief to Settlement Class Members in the form of reimbursement of ordinary and extraordinary expenses stemming from the Data Incident, including lost time spent dealing with the Data Incident. S.A. § 2.1. Specifically, the cash benefits available to Settlement Class Members are divided into two categories. The first category allows Settlement Class Members to submit a valid claim for reimbursement of ordinary expenses caused by the Data Incident up to \$500.00 per Settlement Class Member. *Id.*, § 2.1(a). Ordinary expenses eligible for reimbursement include but are not limited to: (i) Unreimbursed cost to obtain credit reports; (ii) Unreimbursed fees relating to a credit freeze; (iii) Unreimbursed card replacement fees; (iv) Unreimbursed late fees; (v) Unreimbursed overlimit fees; (vi) Unreimbursed interest on payday loans taken as a result of the Data Incident; (vii) Unreimbursed other bank or credit card fees; (viii) Unreimbursed postage, mileage, and other incidental expenses resulting from lack of access to an existing account; (ix) Unreimbursed long distance phone charges; (x) Unreimbursed cell phone charges (only if charged by the minute); (xi) Unreimbursed data charges (only if charged based on the amount of data used); (xii) Unreimbursed gasoline for local travel; and (xiii) Unreimbursed costs associated with credit monitoring or identity theft insurance purchased prior to the Effective Date of the Settlement, if purchased primarily as a result of the Data Incident. *Id.* Additionally, as part of this benefit for reimbursement of ordinary expenses, Settlement Class Members are eligible to receive reimbursement for up to four (4) hours of documented lost time spent dealing with the Data Incident at a rate of \$25.00 per hour. *Id.* Claims for lost time are included within the \$500.00 cap on ordinary expenses. *Id.*

Settlement Class Members may also seek reimbursement for Extraordinary Expenses up to \$5,000 each. *Id.*, § 2.1(b). This allows Settlement Class Members to seek reimbursement for extraordinary monetary losses incurred as a result of the Data Incident which include, but are not limited to: (i) documented professional fees and other costs incurred to address actual identity fraud or theft and (ii) other documented unreimbursed losses, fees, or charges incurred as a result of actual identity fraud or theft, including, but not limited to (a) unreimbursed bank fees, (b) unreimbursed card reissuance fees, (c) unreimbursed overdraft fees, (d) unreimbursed charges related to unavailability of funds, (e) unreimbursed

late fees, (f) unreimbursed over-limit fees, (g) unreimbursed charges from banks or credit card companies, and (h) interest on payday loans due to card cancellations or due to over-limit situations. *Id.*

In addition to claims for reimbursement of expenses and lost time, Settlement Class Members are eligible to claim two (2) additional years of three-bureau credit monitoring and identity theft protection services paid for by County. *Id.*, § 2.2. Finally, County has agreed to provide equitable relief in the form of data and information security practice changes to mitigate the risk of similar data incidents in the future. *Id.*, § 2.3.

2. Attorneys' Fees, Expenses, and Incentive Awards

The Parties did not discuss the payment of attorneys' fees, costs, expenses, and/or incentive awards to Plaintiff until after the primary terms of the Settlement had been agreed upon, other than that County would pay reasonable attorneys' fees, costs, expenses, and an incentive award to Plaintiff as may be agreed to by County and proposed Class Counsel and/or as ordered by the Court. Berry Decl., ¶42.

The Parties have agreed that Class Counsel may seek, and County will pay, subject to court approval, reasonable attorneys' fees, costs, and expenses in an amount not to exceed \$150,000.00. S.A., § 7.2. Class Counsel has agreed to split any attorneys' fees awarded in this matter equally and Plaintiff has provided written approval of this fee splitting arrangement. *Mark v. Spencer* (2008) 166 Cal.App.4th 219; Rules Prof. Conduct, rule 1.5.1; Cal. R. Ct. 3.769.). Class Counsel will also request from the Court a reasonable Service Award for Plaintiff in the amount of \$2,500.00 to be paid by County, subject to Court approval.² *Id.*, § 7.3. Such an award is justified as Plaintiff has assisted counsel, including by contacting counsel and assisting counsels' investigation into the Data Incident, the factual allegations regarding their experience with County and the Data Incident, reviewing the complaints, and approving the terms of the Settlement. Berry Decl., ¶¶44, 50. Plaintiff will continue to expend considerable time and effort representing the Settlement Class should preliminary approval be granted.

3. Notice Program and Claims Administration

The notice program and Claims Administration will be administered by EAG ("Claims Administrator"), a company that specializes in class action notice plans and claims administration and has procedures in place to protect the security of Settlement Class Members' data. *See Declaration of Ryan Aldridge Regarding Administration Qualifications and Notice Procedures in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement* ("Admin. Decl."), ¶¶1-3; Ex. A.

² The requested service award is comparable to other settlements. *See Lee v. Global Tel*link Corporation* (C.D. Cal., Sept. 24, 2018, No. 215CV02495ODWPLA) 2018 WL 4625677, at *12 ("[I]n the Ninth Circuit, a \$5,000 incentive award is presumed reasonable.").

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a. Class Notice

Within twenty (20) days of entry of the Preliminary Approval Order, County shall provide the Claims Administrator with the Class Member Information. S.A., § 3.2. Thirty (30) days after Preliminary Approval is Granted and to be substantially completed not later than fifteen (15) days later, EAG will provide notice to Settlement Class Members. *Id.*, § 3.2(d) (i)-(iii).

Furthermore, at least twenty-one (21) days prior to the Claims Deadline, there will be a reminder email notice mailed to Settlement Class Members who have not yet submitted claims (the “Reminder Notice”). *Id.*, § 3.2(e) The Reminder Notice will ensure the benefits of the Settlement reach as many Settlement Class Members as practicable.

The Claims Administrator will also establish a dedicated Settlement Website that includes important documents including but not limited to the Settlement Agreement, FAC, Short Notice, Long Notice, and any other materials agreed upon by the Parties and/or required by the Court as approved by the Court. *Id.*, § 3.2(c). The Claims Administrator will maintain and update the website throughout the Claims Period. *Id.* Pursuant to California Rule of Court 3.771(b), a notice of the final judgment entered in this Litigation will further be provided to the Settlement Class by being posted on the Settlement Website.

The class notice is carefully written in plain language, complies with California Rule of Court 3.766(d), and satisfies due process. *See* Cal. R. Ct. 3.766(d). The class notice includes: (1) basic information about the Litigation; (2) a description of the benefits provided by the Settlement; (3) an explanation of how Settlement Class Members can obtain Settlement benefits; (4) an explanation of how Settlement Class Members can exercise their right to opt-out of, or object to, the Settlement; (5) an explanation that any claims against County related to the Litigation will be released if the Settlement Class Member does not opt-out; (6) the names of Class Counsel and information regarding attorneys’ fees, expenses, and the incentive awards for Plaintiff; (7) the Final Approval Hearing date; (8) an explanation that each Settlement Class Member has the right to appear at the Final Approval Hearing; and (9) the Settlement Website address where additional information can be obtained. S.A. Exs. A & B.

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b. Responses to Class Notice

The timing of the class notice is structured to ensure that all Settlement Class Members have adequate time to review the terms of the Settlement Agreement and decide whether they would like to opt-out of, or object to, the Settlement. Berry Decl., ¶33.

i. Exclusions

Within sixty (60) days after the date notice commences, any Settlement Class Member wishing to opt-out of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated address established by the Claims Administrator. S.A., §§ 1.15, 4.1. All Settlement Class

Members who opt out of the Settlement Class shall not receive any benefits of or be bound by the terms of the Class Settlement Agreement. *Id.*, § 4.2.

ii. Objections

Each Settlement Class Member desiring to object to the Settlement Agreement in writing shall submit a timely written notice of his or her objection no later than sixty (60) days after the date on which notice commences. *Id.*, § 5.1. 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 (e.g., copy of notice, copy of original notice of the Data Incident); (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 any and all counsel representing the objector in connection with the objection; (v) a statement as to 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. *Id.*, § 5.1.

To be timely, written notice of an objection in the appropriate form must be mailed to the Settlement Administrator, located at Contra Costa Data Incident Claims Administrator, P.O. Box 1188, Baton Rouge, LA 70821, under the caption *Star Joshua v. The County of Contra Costa, et al.*, Case No. C23--01684, no later than sixty (60) days after the date on which notice commences. *Id.*

4. The Releases

The release for Settlement Class Members in this case encompasses all Released 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. *Id.*, §§ 1.20, 1.28, 6.1-6.3. Upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Plaintiff, 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 of the Released Claims is asserted. *Id.*, §§ 1.20, 6.3.

IV. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

A. The Settlement Meets the Standards for Preliminary Approval

California law strongly favors settling litigation. *See Bell v. Am. Title Ins. Co.* (1991) 226 Cal.App.3d 1589, 1607 (noting California's "strong public policy in favor of settlement of class

actions.”).³ This is particularly so in the context of complex litigation such as data breach class actions. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (explaining “a voluntary conciliation and settlement are the preferred means of dispute resolution[,] ... especially ... in complex class action litigation.”); *see also Miranda v. Golden Entm’t Nv.* (2:20-cv-00534-APG-DJA, D. Nev. May 12, 2021) 2021 U.S. Dist. LEXIS 90580, at *9 (“Data breach cases ... are particularly complex and risky, further favoring settlement”).

A court has “broad discretion” in approving a class settlement. *See Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389. The required procedures are: (1) preliminary approval of the settlement; (2) notice to class members; and (3) final approval of the settlement after a hearing. *See Cal. R. Ct. 3.769*. In deciding whether to preliminarily approve a settlement, the sole issue the court must decide is whether the proposed settlement is within the range of what might be considered fair, reasonable, and adequate such that notice should be given to the class and a hearing scheduled to consider final approval. *Manual for Complex Litig* § 21.632 (4th ed.); *id.* § 13.14 (“[T]he [court] reviews the proposal preliminarily to determine whether it is sufficient to warrant public notice and a hearing. If so, the final decision on approval is made after the hearing.”).

To determine whether a settlement meets that standard, courts consider a variety of factors. *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 (“The list of factors is not exhaustive and should be tailored to each case.”); *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. Courts typically consider the most important factors to be: (1) the benefit obtained; (2) the risk, expense, and likely duration of further litigation; and (3) the recommendation of experienced counsel. *See Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App.4th 399, 407 (describing the “experience and views of counsel” as one of the “well-recognized factors” supporting preliminary approval). A presumption of fairness exists where the settlement is the result of arms-length negotiations, investigation, and discovery are sufficient to permit counsel and the court to act intelligently, and counsel are experienced in similar litigation. *See In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.

B. The Settlement is Entitled to a Presumption of Fairness.

1. The Settlement is the Result of Extensive, Arms’ Length Negotiations

As discussed in Section II.B, *supra*, counsel for the Parties engaged in extensive and contentious negotiations regarding Plaintiff’s claims, factual and legal arguments, the benefits to be achieved in the Settlement, and the terms of the Settlement. The Parties’ good faith negotiations included a formal

³ Unless otherwise stated all internal citations, quotations, brackets and emphases are omitted.

1 mediation session with experienced mediator Bruce A. Friedman, Esq., of JAMS. County produced
2 informal discovery to Plaintiff, including, but not limited to, information about the size of the class,
3 number of California residents affected by the Data Incident, types of personal information involved in
4 the breach, and the breadth of the Data Incident. Berry Decl., ¶¶20-22. After extensive negotiation
5 following the day-long mediation session, the Parties agreed to the principal terms of the Settlement. *Id.*
6 The Parties then spent the next several months negotiating the finer details of the Settlement and its
7 exhibits. *Id.*, ¶23. While negotiations were always collegial and professional between the Parties, there is
no doubt that they were also adversarial in nature. *Id.*, ¶22.

8 Consistent with best practices, the Settlement was reached after Class Counsel was informed of
9 the size of the Settlement Class, and the nature of information at issue in the Data Incident. *Id.*, ¶¶17, 20-
10 21, 27. Because the Settlement was negotiated at arm's length by experienced and knowledgeable counsel,
it is entitled to a presumption of fairness. *See Dunk, supra*, 48 Cal.App.4th at p.1802–03.

11 **2. Sufficient Investigation and Discovery Have Been Conducted**

12 As discussed in Section II.B, *supra*, the Parties conducted sufficient investigation and discovery
13 prior to reaching an agreement to settle. Indeed, Plaintiff and Class Counsel conducted thorough pre-
14 complaint investigations into the circumstances that led up to the Data Incident, County's response, the
15 scope of the Data Incident, the injuries experienced by the victims, the applicable law, and available causes
16 of action, and the resulting potential damages available to Settlement Class Members. Berry Decl., ¶¶17,
20-21, 27.

17 Prior to the mediation, Plaintiff obtained informal discovery from County, including the
18 production of relevant documents that further informed Plaintiff as to the scope of the Data Incident and
19 the nature of the information compromised. *Id.* County also produced information regarding its data
20 security policies and practices at the time of the Data Incident and its response thereto. *Id.* The information
21 provided by County was appropriately targeted at information relevant to the Data Incident and to properly
22 inform Plaintiff's counsel during Settlement negotiations. *See In re Mego Fin. Corp. Sec. Litig.*, (9th Cir.
23 2000), 213 F.3d 454, 459 as amended (June 19, 2000) (“[F]ormal discovery is not a necessary ticket to
24 the bargaining table where the parties have sufficient information to make an informed decision about
25 settlement.”); *Manual for Complex Litigation* § 13.12 (recognizing the benefits of settlement are
26 diminished if it is postponed until discovery is completed and approving of targeting early discovery at
27 information needed for settlement negotiations). Informal discovery is a recognized method of minimizing
28 the cost, delay, and burden associated with formal discovery. *See Manual for Complex Litigation* § 11.423.
Accordingly, this factor also supports preliminary approval.

1 **3. Counsel is Experienced in Similar Litigation**

2 As discussed in more details, *infra*, Class Counsel has substantial experience litigating complex
3 class cases, including similar data breach cases. Berry Decl., ¶¶2-14; and respective Firm Resumes
4 attached thereto as **Exhibit A**. Based on their experience and information obtained in this case, when
5 mediation began Class Counsel had sufficient information to assess the strengths and weaknesses of the
6 claims against Defendants, and the benefits of the proposed Settlement in light of the significant risks of
7 continuing with litigation. *Id.*, ¶¶2-14, 17, 20-21, 27. Therefore, a presumption of fairness attaches to this
8 Settlement. *See Dunk, supra*, 48 Cal.App.4th at p. 1802–03.

9 **C. The Settlement Satisfies the Dunk/Kullar Factors because it is Fair, Reasonable and**
10 **Adequate and Confers Substantial Benefits on the Settlement Class.**

11 **1. Plaintiff's Case and the Risks, Expenses, Complexity, and Duration of Continued**
12 **Litigation if Settlement Not Approved**

13 While Plaintiff is confident that their claims will prevail at trial, there are serious risks associated
14 with taking any data breach class action to trial, including pre-trial risks of surviving demurrers, obtaining
15 class certification, and defeating summary judgment. Even if Plaintiff defeated a demurrer by Defendants,
16 there remains a potential risk that Plaintiff could lose at class certification or on the merits or have the size
17 of the Class reduced. The Settlement, by contrast, affords immediate and certain relief to Settlement Class
18 Members and eliminates the risks attendant at trial and the possibility of lengthy appeals. “Avoiding such
19 a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than
20 further protracted and uncertain litigation.” *Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004)
21 221 F.R.D. 523, 527. Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
22 preferable to lengthy and expensive litigation with uncertain results.” *Id.* at p. 526.

23 Additionally, data breach cases present unique challenges. If the case were to proceed without
24 settlement, there would be considerable expense incurred from expert reports, discovery, and numerous
25 factual and legal arguments regarding liability, damages, government immunity, and injunctive relief,
26 without any guarantee of relief for the Settlement Class. *See In re Anthem, Inc. Data Breach Litig.* (N.D.
27 Cal. 2018) 327 F.R.D. 299, 317 (finding that “[d]ata-breach litigation is in its infancy with threshold issues
28 still playing out in the courts” and that “[c]ourts have noted that legal uncertainty supports approval of a
settlement.”). For instance, establishing liability on a class-wide basis in actions involving data breaches
is highly uncertain. *See, e.g., Dieffenbach v. Barnes & Noble, Inc.* (7th Cir. 2018) 887 F.3d 826, 830
(noting that “[p]laintiffs may have a difficult task showing an entitlement to collect damages from a fellow

1 victim of the data thieves.”); *In re Sonic Corp. Customer Data Security Breach Litigation* (N.D. Ohio,
2 Aug. 12, 2019, No. 1:17-MD-2807) 2019 WL 3773737, at *7.

3 There is also substantial risk associated with Plaintiff obtaining and maintaining class certification.
4 Class certification outside the settlement context poses a significant challenge. *See Adkins v. Facebook,*
5 *Inc.* (N.D. Cal. 2019) 424 F.Supp.3d 686 (denying motion to certify data breach damages class under Rule
6 23(b)(3)); *see also In re Anthem, supra*, 327 F.R.D. at p. 318 (“While there is no obvious reason to treat
7 certification in a data-breach case differently than certification in other types of cases, the dearth of
precedent makes continued litigation more risky.”).

8 Even if certification were granted, the risk of decertification is great given that data breach
9 litigation is constantly “evolving” and thus “there is no guarantee of the ultimate result.” *Yvonne Mart*
10 *Fox v. Iowa Health Sys.*, (W.D. Wis., Mar. 4, 2021, No. 3:18-CV-00327-JDP) 2021 WL 826741, at *5 ;
11 *see Gordon v. Chipotle Mexican Grill, Inc.* ((D. Colo. Dec. 16, 2019, No. 17-cv-01415-CMA-SKC) 2019
12 WL 6972701, at *1 (recognizing data breach cases are “particularly risky, expensive, and complex” and
“present significant challenges to plaintiffs at the class certification stage”).

13 If the Settlement is not approved, Plaintiff will continue litigating this matter with additional
14 discovery, motion practice, and preparing for trial. Here, questions regarding Defendants’ liability exist,
15 including state and federal laws on data security; state laws regarding government immunity; and expert
16 opinions as to Defendants’ security including whether they met statutory requirements and industry
17 standards. Additionally, a trial would likely include challenging technical issues to be presented to and
18 comprehended by a jury. Furthermore, establishing a class-wide damages model can prove to be
19 challenging in these types of cases, requiring extensive and expensive expert consultation and opinion.
20 Indeed, costly forensic expert work would be required, with no guarantee of a positive outcome of the
analysis for the Plaintiff and the Settlement Class Members.

21 Defendants would likely oppose class certification and argue that individualized issues overwhelm
22 common issues as to liability and damages, including what was done with each Settlement Class members’
23 PII. It is also foreseeable that Defendants would argue the action is not manageable on a class-wide basis.
24 As a result, there is a risk the case may not be certified. Even if certified, the risk of decertification would
25 always be present. *See* Cal. R. of Ct. 3.764. If this matter was certified and went to trial, it would likely
26 take several more years to reach a final resolution. If not certified, the traditional means for handling
27 claims like the ones at issue here would tax the court system, require a massive expenditure of public and
28 private resources, and given the relatively low value of Settlement Class member’s individual claims,
would make individual resolution impracticable.

Moreover, during the pendency of this Litigation, Plaintiff's and Settlement Class members' PII is still in Defendants' possession, and consistent with this Settlement, Defendants will implement and maintain security improvements designed to protect the PII of Plaintiff and Settlement Class members. Absent the Settlement, the implementation of necessary security improvements otherwise may not happen during the pendency of litigation, placing Plaintiff's and Settlement Class members' PII at continued risk of further hacking. Thus, the proposed Settlement is the best means for Settlement Class members to receive favorable relief in a prompt and efficient manner. Even in the best possible scenario, Settlement Class members would have to wait years for any compensation and/or implementation of additional security measures.

This Settlement resolves these risks and provides immediate monetary relief and other benefits to Settlement Class members who will not have to face the uncertainty and delay of further litigation, including demurrer, class certification, summary judgment, trial, and appeals. With these factors in mind, Plaintiff and Class Counsel are confident that the proposed Settlement is favorable and in the best interests of the Settlement Class.

2. Counsel's Estimation of the Maximum Realistic Recovery

The negligence, invasion of privacy, breach of implied contract, breach of confidence, and violations of the California Unfair Competition Law ("UCL") claims are difficult to value. To date, there have been no data breach cases tried to verdict, and only a handful of cases have achieved class certification. Moreover, data breach cases against a public entity, such as the instant Litigation, is even more uncertain considering the numerous statutory immunities afforded to public entities under California law. *See* Cal. Gov. Code §§ 820 *et seq.* While class-wide data breach damage models remain largely untested, the typical measure of damages proffered has been a market value of personal information based upon black market rates for the data points involved. *See, e.g. In re Brinker Data Breach Litig.* (M.D. Fla. Apr. 14, 2021, No. 3:18-CV-686-TJC-MCR) 2021 WL 1405508, at *3 (denying *Daubert* challenge to expert using dark web average values as a methodology for calculating damages); *Adkins v. Facebook, Inc.* (N.D. Cal. 2019), *supra*, 424 F.Supp.3d, at p. 694 (same); *cf. In re Marriott Int'l, Inc., Customer Data Sec. Breach Litig.* (D. Md. 2022) 341 F.R.D. 128, 153 (denying class certification on Plaintiff's market theory approach but approving overpayment theory approach). Under a market theory approach, Settlement Class Members may have been able to recover \$2 - \$25 per person for their Social Security numbers involved in the Data Security Incident. *See*, <https://www.cnbc.com/2018/08/22/how-much-hackers-get-for-social-security-numbers-on-the-black-market.html> (Social Security numbers selling from \$2 - \$25); *see also In re Premiera Blue Cross Customer Data Sec. Breach Litig.*, No. 3:15-MD-2633,

1 Motion for Class Certification, ECF No. 156, p. 20 (valuing Social Security numbers at \$5). Using values
2 of \$2 - \$25, full recovery for the Settlement Class as a whole would be a range of \$31,182 - \$389,775.

3 The UCL claim primarily adds injunctive relief value to the Litigation as the only remedies
4 available under that claim are restitution and injunctive relief, and, given the nature of Settlement Class
5 members relationship with County, restitution would be difficult to prove and value and remains subject
6 to a challenge on standing. *Archer v. United Rentals, Inc.* (2011) 195 Cal.App.4th 807, 816. Similarly, the
7 claim for declaratory relief primarily seeks to address any remaining deficiencies in County's
8 cybersecurity practices, and such relief has been achieved through County's agreement to implement
9 enhanced data security measures. S.A. § 2.3. Accordingly, all Settlement Class members will realize the
10 value of injunctive relief available under the UCL and declaratory relief claims asserted in the FAC.

11 For settlement negotiation purposes, Class Counsel estimated the total value of all of Plaintiff's
12 claims by analyzing the body of settlements in which they have been involved and those that research has
13 revealed. Berry Decl., ¶49. These comparators are set forth below in Section IV.C.3., *infra*. Based upon
14 this comparison, their knowledge and analysis of the facts and law of this case, and the Defendants'
15 defenses, Class Counsel believes the Settlement provides compensation to each subclass that is fair,
16 reasonable, and adequate. *Id.*

17 Given the significant risks and uncertainties present in data breach litigation in general and of each
18 of the claims in this Litigation in particular, Class Counsel believe that the Settlement allocation plan and
19 amounts made available to Settlement Call Members are fair, reasonable, and adequate. *Id.* Settlements,
20 by their nature, account for the strengths and weaknesses of the Plaintiff's claims and the Defendants'
21 defenses as discussed herein. As is inherent to all litigation, there is not a remote possibility that, after
22 trial, the Class could recover nothing.

23 **3. The Amount Offered in Settlement Favors Approval**

24 Courts routinely approve class action settlements where settlement amounts are a lower percentage
25 of the claimed number of damages. Simply put, "the fact that a proposed settlement may only amount to
26 a fraction of the potential recovery does not mean that [it] should be disapproved." *7-Eleven Owners*, 85
27 Cal.App.4th at p. 1150, citing *Linney v. Cellular Alaska P'ship* (9th Cir. 1998) 151 F.3d 1234, 1242.

28 While it is difficult to directly compare recoveries in data breach settlements due to differences in
the sensitivity of information, facts, and claims at issue in each case, a simple amount recovered per
Settlement Class Member demonstrates this Settlement is an excellent recovery compared to other data
breach/incident litigation settlements, such as: *In re Target Corp. Customer Data Breach Security*
Litigation, MDL No. 2522 (D. Minn.) (recovering \$0.10 per class member); *In re Yahoo! Inc. Customer*
Data Breach Litig., Case No. 5:16-MD-02752-LHK (N.D. Cal.) (recovering \$0.61 per class member);

1 *Atkinson, et al. v. Minted, Inc.* No. 3:20-cv-03869-VC (C.D. Cal.) (recovering \$1.22 per class member);
2 *Cochran et al. v. The Kroger Co.*, 5:21-cv-01887 (N.D. Cal.) (recovering \$1.31 per class member); *In re*
3 *Capital One Consumer Data Security Breach Litig.*, No. 1:19-md-02915-AJT-JFA (E.D. Va.) (recovering
4 \$1.93 per class member); *In re Equifax Inc. Data Security Breach Litig.*, No. 1:17-md-02800-TWT (N.D.
5 Ga.) (recovering \$2.59 per class member); *In re Premera Blue Cross Customer Data Security Breach*
6 *Litig.*, Case No. 3:15-md-2633-SI (recovering \$3.61 per class member) (D. Or.); and *Winstead v.*
7 *ComplyRight, Inc.*, Case No. 1:18-CV-4990 (N.D. Ill.) (recovering \$4.54 per class member).

8 Here, all Settlement Class Members are entitled to make a claim for up to \$500.00 in expenses
9 resulting from the Data Breach, including up to four hours of time spent at \$25.00 per hour. S.A. § 2.1.
10 Moreover, any Settlement Class Member with documented losses resulting from the Data Breach may
11 make a claim for up to \$5,000.00 in Extraordinary Losses per Settlement Class Member. *Id.* Finally, all
12 Settlement Class Members will have the ability to claim an additional two (2) years of three-bureau credit
13 monitoring services, and all Settlement Class Members will benefit from the information security
14 enhancements that the County has agreed to implement as a result of the Settlement. *Id.*, § 2.2-2.3. Indeed,
15 the Settlement offers a robust recovery to all Settlement Class Members who submit valid claims.

14 **4. Extent of Discovery Completed and the Stage of the Proceedings**

15 “A court is more likely to approve a settlement if most of the discovery is completed because it
16 suggests that the parties arrived at a compromise based on a full understanding of the legal and factual
17 issues surrounding the case.” *National Rural Telecommunications Cooperative v. DIRECTV, Inc.* (C.D.
18 Cal. 2004) 221 F.R.D. 523, 527, citing 5 Moore’s Federal Practice, § 23.85[2][e] (Matthew Bender 3d
19 ed.). However, a settlement can be approved even in the absence of any discovery, if other factors are
20 satisfied. *In re TD Ameritrade Account Holder Litig.* (N.D. Cal., Sept. 13, 2011, No. C 07-2852 SBA)
21 2011 WL 4079226, at *6. The bottom line is that “the parties have sufficient information to make an
22 informed decision about the settlement.” *Durham v. Cont’l Cent. Credit, Inc.* (S.D. Cal. Jan. 10, 2011,
23 No. 07CV1763 BTM WMC) 2011 WL 90253, at *3 (citing *Linney*, 151 F.3d at 1239).

24 As discussed in Section II.B. and IV.B.2 *supra*, prior to mediation the Parties engaged in sufficient
25 informal discovery and factual investigation to determine the strengths and weaknesses of each cause of
26 action. Berry Decl. ¶¶17, 20-21, 27. As a result of their extensive investigation, Plaintiff alleges that
27 Plaintiff’s and Settlement Class Members’ PII was stolen from Defendants’ computer system due to
28 Defendants’ negligent and inadequate data security practices.

As a result of Class Counsel’s thorough investigation of the facts and claims in this Litigation, the
extensive mediation briefing, and the informal exchange of information, the Parties have a clear
understanding of the strengths and weaknesses of their claims and defenses. *Knapp v. Art.com, Inc.* (N.D.

1 Cal. 2017) 283 F.Supp.3d 823, 833. This knowledge allowed the Class Counsel to assess the value of the
2 Class’s damages and determined the Settlement is fair, reasonable, adequate, and in the Settlement Class
3 Members’ best interest. *See Dunk*, 48 Cal.App.4th at 1802, (“presumption of fairness exists where . . .
4 investigation and discovery are sufficient to allow counsel and the court to act intelligently . . .”).

5 **5. The Recommendations of Experienced Counsel Support Preliminary Approval**

6 Courts consider the recommendations of counsel experienced in this type of litigation in
7 determining whether to approve a settlement. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th
8 224, 245 (explaining that the consideration and “experience and views of counsel” are factors in deciding
9 whether to approve a settlement). Here, Class Counsel are experienced in complex litigation, including
10 data breach class actions. Berry Decl., ¶¶2-14; **Ex. A.** Class Counsel agree that the Settlement is fair,
11 reasonable, adequate, and in the best interest of the Settlement Class. *Id.*, ¶¶12, 14, 49. Class Counsel
12 determined this only after conducting meaningful informal discovery, researching, and analyzing the legal
13 and factual issues involved, preparing a detailed mediation statement, and engaging in extensive arm’s-
length negotiations overseen by an experienced neutral mediator who provided candid insights into the
strengths and weaknesses of Plaintiff’s case. *Id.*, ¶¶17, 20-23, 27.

14 Where, as here, a settlement is the product of informed, non-collusive negotiations, significant
15 weight should be attributed to the belief of experienced counsel that the Settlement is in the best interest
16 of the class. *See In re First Capital Holdings Corp. Financial Products Securities Litigation* (C.D. Cal.,
17 June 10, 1992, No. MDL 901) 1992 WL 226321, at *3 (holding that the belief of counsel that settlement
18 was the most beneficial result for the class was a compelling factor in favor of approval). Accordingly,
Class Counsel’s recommendation supports approval of the Settlement.

19 **D. The Proposed Class Notice is the Best Practicable.**

20 Once a court preliminarily approves a settlement, the second step of the approval process is to
21 disseminate notice of the pendency and settlement of the class action. *See Manual for Complex Litigation*
22 § 21.63. Pursuant to California Civil Procedure Code § 382, a court must direct the best notice practicable
23 under the circumstances to members of the class who can be identified through reasonable effort. *See Cal.*
24 *Civ. Proc. Code* § 382; *Cal. R. Ct.* 3.766 and 3.769(f); *Kass v. Young* (1977) 67 Cal.App.3d 100, 106.
25 California Rule of Court 3.769(f) provides that “notice must contain an explanation of the proposed
26 settlement and procedures for class members to follow in filing written objections to it and in arranging
27 to appear at the settlement hearing and state any objections to the proposed settlement.” *Cal. R. Ct.*
28 3.769(f). The rules also specify the content of the notice to class members. *Id.* 3.766. The class notice
meets these requirements.

1 Under the Agreement, Settlement Class Members will be provided with the best practicable
2 opportunity to see, review, and understand the Settlement. County will provide the Claims Administrator
3 with the list of the names, email addresses, and/or physical addresses of the Settlement Class Members
4 identified through its records. Admin Decl., ¶7. Specifically, the Claims Administrator will send Short
5 Notice (via postcard by mail) to all Settlement Class Members identified through the County's records.
6 S.A. § 3.2(d). Additionally, the Claims Administrator will be issuing a Reminder Notice at least twenty-
one (21) days prior to the end of the Claims Deadline. *Id.*, 3.2(d)(iii).

7 The Claims Administrator will establish a Settlement Website to which Settlement Class Members
8 may refer for information about the Settlement and submit or download Claim Forms and submit inquiries.
9 *Id.*, 3.2(c). The Claims Administrator will post the Settlement Agreement, the Long Notice, the Claim
10 Form, as well as other important documents and deadlines. *Id.* Pursuant to California Rule of Court
11 3.771(b), notice of the final judgment entered in this Litigation will also be provided to the Settlement
Class by being posted on the Settlement Website. *Id.*

12 Here, the proposed class notice is set forth in plain language and easily understood. The class
13 notice provides neutral, objective, and accurate information about the nature of the Litigation and the
14 Settlement. The class notice describes the claims, the Settlement Class Members, the relief provided under
15 the Settlement, and Settlement Class Members' rights and options, including the deadlines and means of
16 submitting a Claim Form, opting out of or objecting to the Settlement, and/or appearing at the Final
17 Approval Hearing personally or through counsel. Further, the Parties have selected EAG to serve as the
18 Claims Administrator in this Litigation—a firm with extensive experience in disseminating class action
notice and processing settlement claims. Admin Decl., ¶¶1-3; Ex. A.

19 Plaintiff submits that the notice program is reasonable and provides the best notice practicable
20 under the circumstances. Accordingly, the notice program should be approved, and notice should be
21 directed to the Settlement Class Members.

22 **V. CLASS CERTIFICATION FOR SETTLEMENT IS PROPER**

23 Class certification is proper when the class is “ascertainable” and there is a “well-defined
24 community of interest in the questions of law and fact involved.” *Vasquez v. Super. Ct.* (1971) 4 Cal.3d
25 800, 809; *see also* Cal. Civ. Proc. Code § 382. A lesser standard of scrutiny applies when evaluating these
26 criteria for settlement purposes. *See Dunk*, 48 Cal.App.4th at 1807 n.19 (courts should take settlement into
27 account in evaluating class certification); *see also In re William Wrigley Jr. Co. S'holders Litig.* (No.
28 3750-VCL, Del. Ch. Jan. 22, 2009) 2009 Del. Ch. LEXIS 12, at *12 n.10 (acknowledging the “utility and
practical necessity of using temporary settlement classes in fast paced litigation seeking injunctive relief”).
If the action satisfies the applicable standards, the court must certify the class. *See Hogya v. Super. Ct.*,

(1977) 75 Cal.App.3d 122, 131. In assessing settlement class certification requirements, courts may properly consider there will be no trial, and therefore potential trial management problems, if any, are obviated for the settlement class. *See Wash. Mut. Bank v. Super. Ct.* (2001) 24 Cal.4th 906, 923. The criteria are all satisfied here.

A. An Ascertainable Class Exists and Is So Numerous that Joinder Is Impracticable.

“Class members are ‘ascertainable’ where they may be readily identified without unreasonable expense or time by reference to official records.” *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 966. Here, County confirmed that the Settlement Class is readily identifiable from its own records. Berry Decl., ¶27. Moreover, County has confirmed that it has previously sent notice of the Data Incident to at least 15,487 of the 15,591 (>99%) Settlement Class Members. Accordingly, the Settlement Class Members in this case are easily ascertainable.

Moreover, the proposed Settlement Class is so numerous that use of the class action procedure benefits the judicial system. *See Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. According to County’s records, the Settlement Class consists of approximately 15,591 individuals. The proposed Settlement Class is, therefore, so numerous that joinder is impracticable. *See* Code Civ. Proc. § 382 (authorizing class action suits when, *inter alia*, “the parties are numerous and it would be impracticable to bring them all before the court”); *Delarosa v. Boiron, Inc.* (C.D. Cal. 2011) 275 F.R.D. 582, 587 (holding that “classes of forty or more are considered sufficiently numerous.”).

B. The Class Satisfies the “Community of Interest” Requirement.

A “community of interest” exists where there are: “(1) predominant questions of law or fact; (2) Representative Plaintiff with claims or defenses typical of the class; and (3) Representative Plaintiff who can adequately represent the class.” *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435. The Settlement Class satisfies these requirements.

1. Common Questions of Law and Fact Predominate

The test for predominance does not require that each and every issue in the case be identical for each and every class member. *See Sav-On Drug Stores, Inc. v. Super. Ct.* (2004) 34 Cal.4th 319, 338. Rather, the “ultimate question” is whether “the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.” *Collins v. Rocha* (1972) 7 Cal.3d 232, 238. A class should be certified if the defendant engaged in a common course of conduct. *See Sav-On, supra*, 34 Cal.4th at p. 334.

Here, Plaintiff contends that each claim of the Settlement Class turns on the question of whether County’s data security protocols were adequate to protect Settlement Class Members’ PII. Analysis of this

1 question begets interrelated questions that are also common across the Settlement Class, including what
2 steps County took to identify and respond to security threats, whether County complied with industry
3 norms and applicable regulations, whether and when County knew or should have known of the Data
4 Incident, and whether the statutes asserted in the FAC have been violated. Thus, Plaintiff contends that
5 common issues predominate. *See Vasquez*, 4 Cal.3d at 810 (finding that common issues predominate when
6 they would be “the principal issues in any individual action, both in terms of time to be expended in their
7 proof and of their importance”); *In re Anthem, supra*, 327 F.R.D. at p. 316 (holding “the predominant
8 issue in this case is whether Anthem properly secured the personal information taken ...”).

9 **2. Plaintiff’s Claims Are Typical of the Settlement Class**

10 A class representative’s claims are typical if they are significantly similar to the other class
11 members. *See Daniels v. Centennial Grp., Inc.* (1993) 16 Cal.App.4th 467, 473. A representative
12 plaintiff’s claim is typical if he was subjected to the same alleged wrong as other class members. *See*
13 *Fireside Bank v. Super. Ct.* (2007) 40 Cal.4th 1069, 1090.

14 Plaintiff contends that the typicality requirement is satisfied here because (i) County’s alleged
15 conduct, stemming from allegedly inadequate data security practices, similarly affected Plaintiff and each
16 member of the proposed Settlement Class; (ii) each member of the Settlement Class had their PII exposed
17 in the *same* Data Incident; and (iii) Plaintiff and the Settlement Class experienced similar harms as a result
18 of the *same* Data Incident. Thus, Plaintiff contends that her claims are typical of those of the proposed
19 Settlement Class.

20 **C. Class Counsel Will Fairly and Adequately Represent the Settlement Class.**

21 To maintain a class action, the representative plaintiff must adequately protect the interests of the
22 class. Adequacy of representation consists of two components: (1) a lack of any conflict of interest; and
23 (2) representation by competent and experienced counsel. *See McGhee v. Bank of Am.*, (1976) 60
24 Cal.App.3d 442, 450 Plaintiff and Class Counsel satisfy these requirements.

25 Here, Plaintiff contends that no conflicts exist between Plaintiff and other members of the
26 Settlement Class. As an individual whose PII was exposed to cybercriminals in the Data Incident, Plaintiff
27 stands in the same shoes as the Settlement Class Members with the same incentives to maximize the
28 recovery. *See Richmond, supra*, 29 Cal.3d at p. 473. Further, Plaintiff has demonstrated her commitment
to the Settlement Class by actively participating in the prosecution of this Litigation, including
by regularly conferring with her attorneys regarding the initial investigation, factual allegations of the
Complaint and FAC, case status, and strategy. Berry Decl., ¶¶44, 50. Plaintiff has also agreed to act as
Representative Plaintiff and understands her responsibilities to act as fiduciary on behalf of the absent
members of the Settlement Class. *See Soderstedt v. CBIZ Southern Cal., LLC* (2011) 197 Cal.App.4th

133, 155-156; *Jones v. Farmers Ins. Exchange* (2013) 221 Cal.App.4th 986, 998-99; Declaration of Star Joshua, ¶ 8.

Class Counsel are experienced class action attorneys who regularly represent and obtain significant victories for injured consumers, including in privacy and data breach cases. Indeed, Class Counsel have been appointed as lead or class counsel in numerous class actions nationwide and have successful track records in litigating class actions of this type. Berry Decl., ¶¶2-14; Exh. A.

D. A Class Action Is the Superior Method of Adjudication.

Also relevant to the Court’s certification decision is whether a class action is the superior method of adjudication. *See Schneider v. Vennard* (1986) 183 Cal.App.3d 1340, 1347. Here, Plaintiff contends that the value of each individual Settlement Class Member’s claim is very small compared to the costs of litigating that claim. In such a situation, the superiority requirement is met because the class action mechanism is not merely the superior method for adjudicating this controversy, it is the only method. *See Valentino v. Carter-Wallace, Inc.* (9th Cir. 1996) 97 F.3d 1227, 1234-35 (“A class action is a superior method for managing litigation if no realistic alternative exists.”).

E. Claims Made Settlement is Appropriate to Maximize Recovery For Those Most Affected

As part of the Settlement, Settlement Class Members shall be required to submit a claim to receive compensation. Based upon the experience of Class Counsel, and upon the claims rates in other similar data breach cases, the anticipated claims rate here is estimated to be between 1-9%. *See e.g. Corona v. Sony Pictures.*, No. 2:14-cv-9600 (C.D. Cal.), ECF No. 145-1 at 11 n.8 & ECF 164 at 2 (Claims Rate 0.7%); *In re LinkedIn User Privacy Litig.*, No. 12-cv03088-EJD (N.D. Cal.), ECF No. 122 at 2 & ECF 145-2 at ¶ 12 (Claims Rate 0.7%); *Hashemi, et al. v. Bosley, Inc.*, No. 2:21-cv-00946- PSG (C.D. Cal.), ECF No. 170 at 1, and ECF No. 59 at 8 (Claims Rate 0.9%); *In re Banner Health Data Breach Litigation*, No. 2:16-cv-2696 (D. Ariz.), ECF 170 at 1, and ECF 195-3 at ¶ 12 (Claims Rate 1.3%). This claims rate will be further bolstered by the Reminder Notice, which was negotiated and agreed upon by the Parties for the sole purpose of encouraging more Settlement Class Members to submit claims. S.A., § 3.2(d)(iii).

A claims made settlement is appropriate and requiring Settlement Class Members to submit claims is necessary for the disbursement of the Settlement benefits in this matter because requiring claims, will permit the Settlement Class Members to tailor the benefits they receive to the harms they have. For example, under the Settlement, a Settlement Class Member who suffered identity theft stemming from the Data Incident, and resulting in the loss of thousands of dollars, would be able to claim extraordinary losses and additional credit monitoring and identity theft protection services while another Settlement Class Member who only suffered an increase in spam emails and telephone calls as a result of the Data Incident

1 would be able to claim lost time and additional credit monitoring and identity theft protection services.
2 *Id.*, § 2.1-2.2. Indeed, a claims made structure, requiring Settlement Class Members to submit valid claims
3 to receive Settlement benefits, is necessary, as it is the only way to ensure those who were most affected
4 by the Data Incident are made whole while not resulting in a windfall for those who were less severely
5 affected.

6 Additionally, the claims process described herein is not burdensome and relief would not be
7 inaccessible to Settlement Class Members as the claims process described herein is necessary to afford
8 the robust settlement benefits to the Settlement Class Members most affected by the Data Incident. As
9 such, the claims made settlement structure proposed here is appropriate and will maximize recovery for
10 those most affected by the Data Incident.

11 **VI. CONCLUSION**

12 Plaintiff respectfully requests that the Court grant her motion and enter an order: (1) preliminarily
13 approving the proposed Settlement; (2) approving the proposed notice program, and directing the
14 commencement of notice pursuant to the terms in the Settlement Agreement; (3) certifying the proposed
15 Settlement Class for settlement purposes only; (4) approving the retention of EAG Gulf Coast, LLC as
16 Claims Administrator; (5) appointing Plaintiff Star Joshua as Representative Plaintiff; (6) appointing M.
17 Anderson Berry of Clayeo C. Arnold, APC and Kenneth Grunfeld of Kopelowitz Ostrow as the Class
18 Counsel; (7) staying all proceedings in the Litigation, other than those related to approval of the Class
19 Settlement Agreement, pending entry of the Final Order and Judgment; (8) staying and/or enjoining any
20 actions brought by Settlement Class Members concerning the Released Claims, pending the Court's entry
21 of the Final Order and Judgment in the Class Settlement Agreement; and (9) scheduling a Final Approval
22 Hearing at which the Court will conduct an inquiry into the fairness, reasonableness, and adequacy of the
23 Settlement, whether it was made in good faith and should be finally approved, and whether to approve
24 Class Counsel's Motion for Attorneys' Fees and Expenses Award and/or Incentive Awards.

25 Dated: April 3, 2025

Respectfully submitted,

26 **CLAYEO C. ARNOLD**
27 **A PROFESSIONAL CORPORATION**

28 /s/ M. Anderson Berry
M. Anderson Berry, Esq.
*Attorneys for Plaintiff and the Proposed
Settlement Class*