

1 **BRADLEY/GROMBACHER LLP**

2 Marcus J. Bradley, Esq. (SBN174156)
3 Kiley L. Grombacher, Esq. (SBN 245960)
4 31365 Oak Crest Drive, Suite 240
5 Westlake Village, CA 91361
6 Phone: (805) 270-7100
7 Email: mbradley@bradleygrombacher.com
8 Email: kgrombacher@bradleygrombacher.com

Electronically FILED by
Superior Court of California,
County of Los Angeles
5/16/2024 6:25 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By S. Drew, Deputy Clerk

9 **THE LYON FIRM**

10 Joseph M. Lyon (SBN 351117) (*pro hac vice*)
11 2754 Erie Avenue
12 Cincinnati, OH 45208
13 Phone: (513) 381-2333
14 Fax: (513) 721-1178
15 Email: *jlyon@thelyonfirm.com*

16 **MARKOVITS, STOCK & DEMARCO, LLC**

17 TERENCE R. COATES (*pro hac vice*)
18 119 East Court Street, Suite 530
19 Cincinnati, OH 45202
20 Phone: (513) 665-0204
21 Fax: (513) 665-0219
22 Email: *tcoates@msdlegal.com*

23 *Attorneys for Plaintiff and the Proposed Class*

24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

25 **FOR THE COUNTY OF LOS ANGELES**

26 MIN WOO BAE, individually and on
27 behalf of all others similarly situated,

28 Plaintiff,

v.

PACIFIC CITY BANK,

Defendant.

Case No.: 21STCV45922

(Assigned to Hon. William F. Highberger, Dept. 10)

**PLAINTIFF’S MEMORANDUM IN SUPPORT
OF MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

DATE: May 30, 2024

TIME: 11:00 PST

DEP.: 10

Complaint filed: December 16, 2022

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION 1

II. BACKGROUND AND PROCEDURAL HISTORY..... 2

III. SUMMARY OF THE TERMS OF THE PROPOSED SETTLEMENT..... 2

 A. Definition of the Class. 2

 1. Definition of the Class. 2

 2. The Settlement Fund. 3

 B. Settlement Terms and Benefits to the Class. 3

 1. Settlement Benefits to the Class 4

 2. Attorneys’ Fees, Expenses, and Service Award 5

 C. The Release is Appropriately Limited. 6

 D. Settlement Notice to the Class. 7

 E. The Notice Program was Successful..... 8

 G. The Estimated Payments to the Class are Significant..... 9

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE, AND MERITS
FINAL APPROVAL..... 10

 A. The Strength of the Case, and Risk, Expense, Complexity and Likely Duration of Further
 Litigation Favors Final Approval of the Settlement..... 11

 B. The Settlement is the Product of Non-Collusive, Arm’s-Length, and Informed
 Negotiations..... 12

 C. Investigation and Discovery Conducted in This Matter Are Sufficient to Allow Class
 Counsel and the Court to Act Intelligently 13

 D. No Objections to the Settlement Have Been Received from Class Members 14

 E. Class Notice Satisfied the Requirement of Due Process 15

1 V. THE CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES 15
2 VI. CONCLUSION..... 16
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Cases

7-Eleven Owners for Fair Franchising,
85 Cal.App.4th 14, 15

Amaro v. Anaheim Arena Management, LLC,
69 Cal.App.5th 521 (2021) 6

California v. eBay, Inc.,
2015 WL 5168666 (N.D. Cal. Sept. 3, 2015) 11

Cellphone Termination Fee Cases,
180 Cal.App.4th 1110 (2009) 10

Cellphone Termination,
186 Cal.App.4th 15

Chavez v. Netflix, Inc.,
162 Cal.App.4th 43 (2008) 9, 10

Curtis-Bauer v. Morgan Stanley & Co., Inc.
2008 WL 4667090 (N.D. Cal. Oct. 22, 2008)..... 11

Dunk v. Ford Motor Co.,
48 Cal.App.4th 1794 (1996) 10, 11, 12, 13

In re Anthem, Inc. Data Breach Litig.,
327 F.R.D. 299 (N.D. Cal. 2018)..... 12

In re Mego Fin. Corp. Sec. Litig.,
213 F.3d 454 (9th Cir. 2000) 14

In Re Microsoft I-V Cases,
135 Cal.App.4th 706 (2006) 10

In re Omnivision Techs., Inc.
559 F. Supp. 2d 1036 (N.D. Cal. 2008) 12

Ketchum v. Moses,
24 Cal.4th 1122 (2001) 9

Lealao v. Beneficial California, Inc.
82 Cal.App.4th 19 (2000) 9

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

*Lee v. Glob. Tel*Link Corp.*,
No. 2:15-cv-02495-ODW (PLA), 2018 U.S. Dist. LEXIS 163410 (C.D. Cal. Sept. 24, 2018). 6

Nat’l Rural Telecomms. Coop v. DirecTV,
221 F.R.D. 523 (C.D. Cal. 2004) 12

Ochinero v. Ladera Lending, Inc.,
2021 WL 2295519 (C.D. Cal. Feb. 26, 2021)..... 11

Press v. Lucky Stores, Inc.,
34 Cal.3d 311 (1983) 9

Sonoma Land Tr. v. Thompson,
63 Cal.App.5th 978 (2021) 10

Wershba v. Apple Computer, Inc.,
91 Cal.App.4th 224 (2001) 10, 11, 12, 15

Rules

Cal. Rules of Court, Rule 3.766..... 15

Cal. Rules of Court, Rule 3.769(a) 10

Cal. Rules of Court, Rule 3.769(d) 1

Cal. Rules of Court, Rule 3.769(f)..... 15

Cal. Rules of Court, Rule 3.769(g) 10

Statutes

15 U.S.C. § 45..... 6

Cal. Civ. Code § 1798.150(a)(1)(A) 9

Cal. Civ. Code §§ 1798.100..... 3

Cal. Civ. Code § 382..... 15

1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rule 3.769(d), appointed Class Representative Min
3 Woo Bae (“Plaintiff” or “Class Representative”), individually and on behalf of the Settlement
4 Class, respectfully submits this Memorandum of Points and Authorities in support of Final
5 Approval of the proposed Settlement between Defendant Pacific City Bank (“PCB” or
6 “Defendant,” and, collectively with Plaintiff, the “Settling Parties”) and Plaintiff as being fair,
7 reasonable, and adequate.

8 The proposed Settlement provides immediate and significant cash benefits to the
9 approximately 15,037 individuals, inclusive of a Subclass of 9,844 California residents, whose
10 Private Information (“PII”) may have been impacted in the targeted Data Incident. Specifically,
11 the Settlement provides a non-reversionary Settlement Fund in the amount of \$700,000, which will
12 be distributed to every Class Member who made a Valid Claim: (a) \$25 per hour, up to a total of
13 \$100, for Class Members who attest that the time claimed was actually spent as a result of the Data
14 Incident; (b) up to \$5,000 for reimbursement of documented out-of-pocket expenses reasonably
15 traceable to the Data Incident; and (c) \$250 for each verified and documented incident of fraud
16 (included in the cap of \$5,000 for unreimbursed expenses) incurred. The Settlement also provides
17 that Class Members who were residents of the State of California at the time of the Data Incident
18 are eligible for an additional benefit of \$100 upon submitting a claim and attesting that they were
19 a California resident at the time of the Data Incident. The Settlement Fund will also pay the cost
20 of notice and settlement administration, a \$5,000.00 service award to Plaintiff, attorneys’ fees of
21 \$233,333.33, and out-of-pocket case expenses of \$28,910.09 (if the service award, fees, and
22 expenses are approved by the Court).

23 Since the Court’s August 3, 2023 Order Granting Preliminary Approval of Class Action
24 Settlement and Conditionally Certifying Settlement Class (the “Preliminary Approval Order”), the
25 reaction of the Class has been overwhelmingly positive. In total, 399 claims for settlement benefits
26 were received from Class Members (after deduplication). Declaration of Jordan Turner Regarding
27 Implementation of Notice Program and Verification of Compliance with Notice Requirements
28

1 (“P&N Decl.”),¹ at ¶ 15, Table 2. This represents a 2.5% claims rate. To date, no persons have
2 requested exclusion from the Settlement nor have any objected to it. *Id.* ¶¶ 16-17. This Settlement
3 comes after significant efforts between PCB and Class Counsel to mediate Plaintiff’s claims,
4 which has ultimately resulted in a settlement that is better for all parties than continued litigation.
5 The Settlement is plainly fair, reasonable, and adequate, enjoys overwhelming Class support, and
6 meets all requirements for final approval. The Court should grant this motion, finally certify the
7 Class for settlement purposes and finally approve the Settlement and grant the separately-filed
8 motion for attorneys’ fees, expenses, and service award.

9 **II. BACKGROUND AND PROCEDURAL HISTORY**

10 In the interest of judicial efficiency, for factual and procedural background on this case,
11 Plaintiff refers the Court to, and hereby incorporates, his Memorandum in Support of the
12 Unopposed Amended Motion for Preliminary Approval of Class Action Settlement filed on
13 August 1, 2023 and its accompanying exhibits. Plaintiff also incorporates his Motion for Approval
14 of Attorneys’ Fees, Expenses, and Service Award and supporting Declaration, filed on October
15 18, 2023.

16 **III. SUMMARY OF THE TERMS OF THE PROPOSED SETTLEMENT**

17 **A. Definition of the Class.**

18 **1. Definition of the Class.**

19 The Settlement contemplates resolution of claims on behalf of a Settlement Class now
20 comprised of 15,738 individuals. P&N Decl. ¶ 14, Table 1. The Settlement Class is defined as:
21 All natural persons residing in the United States who were sent a Notice Letter
22 notifying them that their Private Information was potentially compromised in the
Data Incident.

23 Settlement Agreement (“S.A.”),² ¶ 1.8. The Settlement Agreement also contemplates the
24 following California Subclass:
25
26

27 ¹ Attached as **Exhibit 1**.

28 ² Exhibit 1 to the August 1, 2023 Memorandum of Points and Authorities in Support of Plaintiffs’
Unopposed Amended Motion for Preliminary Approval of Class Action Settlement.

1 All natural persons residing in California who were sent a Notice Letter notifying
2 them that their Private Information was potentially compromised in the Data
3 Incident.

4 S.A. ¶ 1.3. The 9,844 members of the California Subclass are also members of the Settlement
5 Class. Excluded from the Settlement Class and California Subclass are any judge presiding over
6 this matter and any members of their first-degree relatives, judicial staff, PCB's officers, directors,
7 and members, and persons who timely and validly request exclusion from the Settlement Class.

8 Plaintiff Min Woo Bae was mailed notice from Defendant informing him that his Private
9 Information was compromised in the Data Incident. He therefore has standing to represent the
10 Settlement Class. Moreover, Plaintiff is a resident of California and thus has standing to assert
11 claims under the California Consumer Privacy Act, California Civil Code §§ 1798.100 *et seq.* on
12 behalf of California residents.³

12 2. The Settlement Fund.

13 The Settlement establishes a non-reversionary Settlement Fund of \$700,000.00. S.A. ¶
14 1.34. All Administrative Fees for Settlement Administration, which include the costs of notice and
15 administration, the costs of any Attorneys' Fees and Expenses Award, any Service Award to
16 Representative Plaintiff, payments of Valid Claims to the Settlement Class Members, and all other
17 expenses or costs related to the Settlement, will be paid out of the Settlement Fund. No portion of
18 the Settlement fund will revert to PCB.

19 To the extent any funds remain in the Net Settlement Fund after the distribution of the *Pro*
20 *Rata* Cash Payment Settlement Class Members, the Remainder Funds that shall escheat to the State
21 Controller's Unclaimed Property Fund. S.A. ¶ 2.2. Neither Proposed Class Counsel nor Plaintiff
22 have any involvement with or relationship to the Unclaimed Property Fund outside the context of
23 this lawsuit. Declaration of Joseph Lyon in Support of Plaintiff's Motion for Final Approval
24 ("Lyon Final Approval Decl.") ¶ 16 (attached as **Exhibit 2**).

25 B. Settlement Terms and Benefits to the Class.

26
27 ³ The assertions regarding Plaintiff's standing are for settlement purposes only and are not and
28 should not be construed as a concession or admission from PCB that Plaintiff has standing for any
other purposes.

1 The Settlement reached by Plaintiff confers valuable benefits on the Settlement Class that
2 could not have been obtained without this litigation.

3 **1. Settlement Benefits to the Class**

4 The following benefits were available to be claimed by Settlement Class Members:

5 i. \$50 Pro-Rata Cash Payment. After the distribution of attorneys’ fees, Class Counsel’s
6 litigation expenses, Administrative Fees, Service Award, Out-of-Pocket Expense Claims, and Lost
7 Time Claims (each of which is defined below in this Section), the Settlement Administrator will
8 make a \$50 cash payment to each Class Member who submits a claim. The \$50 cash payment may
9 increase or decrease *pro rata* depending on the Valid Claims received. No documentation or
10 attestation is required.

11 ii. Out-of-Pocket Expense Claims. Class Members can submit a Claim Form for
12 reimbursement of documented out-of-pocket losses reasonably traceable to the Data Incident up
13 to \$5,000.00 per individual (“Out-of-Pocket-Expense Claims”). Out-of-Pocket-Expense Claims
14 will include, without limitation, unreimbursed losses relating to fraud or identity theft; professional
15 fees including attorneys’ fees, accountants’ fees, and fees for credit repair services; costs
16 associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring
17 costs that were incurred on or after August 30, 2021 that the claimant attests under penalty of
18 perjury were caused or otherwise incurred as a result of the Data Incident, through the date of
19 claim submission; and miscellaneous expenses such as notary, data charges (if charged based on
20 the amount of data used) fax, postage, copying, mileage, cell phone charges (only if charged by
21 the minute), and long distance telephone charges.

22 Class Members with Out-of-Pocket-Expense Claims must submit documentation and
23 attestation supporting their claims. This may include receipts or other documentation, not “self-
24 prepared” by the claimant, that documents the costs incurred. “Self-prepared” documents such as
25 handwritten receipts are, by themselves, insufficient to receive reimbursement, but may be
26 considered to add clarity or support to other submitted documentation.

27 iii. Lost-Time Claims. Class Members may submit a Claim Form for reimbursement for
28 time spent remedying issues related to the Data Incident for up to four (4) total hours at a rate of

1 \$25 per hour capped at \$100 (“Lost-Time Claims”). No documentation need be submitted in
2 connection with Lost-Time Claims, but Class Members must attest that the time claimed was
3 actually spent as a result of the Data Incident.

4 iv. Verified Fraud: \$250 per incident. Class Members can submit a Claim Form for
5 documented incidents of fraud for \$250 per incident capped at \$5,000.00 per individual for verified
6 and documented incidents of fraud (“Verified Fraud”). Verified Fraud Claims will include, without
7 limitation, any verified incident regardless of reimbursement. This may include fraudulent bank or
8 credit card charges, tax filings, opening of bank and/or credit accounts, unemployment filings, etc.
9 Class Members with Verified Fraud Claims must submit documentation and attestation supporting
10 their claims. Receipts or other documentation, not “self-prepared” by the claimant, that documents
11 the incident are required. “Self-prepared” documents such as handwritten receipts are, by
12 themselves, insufficient to receive reimbursement, but may be considered to add clarity or support
13 to other submitted documentation.

14 v. CCPA Payment. California Subclass Members may submit a claim for a \$100 cash
15 payment due to the CCPA claim available to them as California residents. The CCPA Payment,
16 for California residents, is in addition to the Settlement benefits available Paragraph 2.1(a)-(e)
17 above. No documentation is required to make this claim, but California Class Members must attest
18 that they were California residents at the time of the Data Incident.

19 **2. Attorneys’ Fees, Expenses, and Service Award**

20 The Settling Parties did not discuss the payment of attorneys’ fees, costs, expenses, or
21 service award to Representative Plaintiff until after the primary terms of the settlement had been
22 agreed upon, other than that Settlement Class Counsel would apply to the Court for an award of
23 attorneys’ fees, expenses, and a service award for Plaintiff out of the Settlement Fund. *See* S.A. ¶
24 7.1.

25 Settlement Class Counsel now seek (by way of a separate motion filed on October 18,
26 2023) reasonable attorneys’ fees in the amount of \$233,333.33, as contemplated by the Settlement
27 Agreement. *See id.* ¶ 7.2. Settlement Class Counsel also seek their reasonable costs and expenses
28 in the amount of \$28,910.09 from the Settlement Fund. *See id.* Settlement Class Counsel further

1 request that a reasonable Service Award for Representative Plaintiff in the amount of \$5,000.00
2 be paid from the Settlement Fund, subject to Court approval.⁴ *See id.* ¶ 7.3. Such an award is
3 justified as Plaintiff has assisted counsel at each step of the litigation, including by contacting
4 counsel and assisting counsel’s investigation into the Data Incident, the factual allegations
5 regarding his experience with PCB and the Data Incident, reviewing the complaints, and approving
6 the terms of the Settlement. August 1, 2023 Declaration of Min Woo Bae in Support of Plaintiff’s
7 Motion for Preliminary Approval (“Bae Decl.”) ¶¶ 8-9. Plaintiff has continued to expend
8 considerable time and effort representing the Settlement Class after preliminary approval.

9 **C. The Release is Appropriately Limited.**

10 The Release for Settlement Class Members (who do not exclude themselves) in this case
11 encompasses claims that were asserted, or could have been asserted, in this case against PCB and
12 the Released Parties, relating to, concerning, or arising out of the Data Incident and alleged
13 compromise of Private Information arising from the Data Incident, or the allegations, facts, or
14 circumstances described in the Complaint and Unknown Claims. *See* S.A. ¶ 1.27. The release of
15 Unknown Claims encompasses:

16 any and all claims and causes of action stated within the Complaint including, but
17 not limited to, any causes of action arising under or premised upon any statute,
18 constitution, law, ordinance, treaty, regulation, or common law of any country,
19 state, province, county, city, or municipality, including 15 U.S.C. § 45, et seq., and
20 all similar statutes in effect in any states in the United States, that could have been
21 asserted, by any Class Member against any of the Released Persons based on,
22 relating to, concerning or arising out of the alleged Data Incident. Released Claims
23 shall not include the right of any Class Member or any of the Released Persons to
24 enforce the terms of the settlement contained in this Settlement Agreement, and
25 shall not include the claims of any Person who has timely excluded themselves
26 from the Class.

27 *Id.* ¶ 1.27.

28 The release is limited to the operative facts in the Complaint and is compliant with *Amaro*
v. Anaheim Arena Management, LLC (2021) 69 Cal.App.5th 521, 538, *review denied* (Dec. 29,

⁴ The requested service award is comparable to other settlements. *See Lee v. Glob. Tel*Link Corp.*, No. 2:15-cv-02495-ODW (PLA), 2018 U.S. Dist. LEXIS 163410, at *34-35 (C.D. Cal. Sept. 24, 2018) (“[I]n the Ninth Circuit, a \$5,000 incentive award is presumed reasonable.”).

1 2021) (“Releases must be appropriately tethered to the complaint’s factual allegations.”). The
2 entire Settlement Agreement, which includes the definitions of “Released Claims” (S.A. ¶ 1.27),
3 “Released Persons” (*id.* ¶ 1.29), and other provisions of the Release (*id.* ¶ 6.1), is posted on the
4 Settlement Website (<https://www.pcbdatassettlement.com>).

5 Also, no Settlement Class Member was required to release their claims against Defendant
6 or be bound by the terms of the Settlement Agreement. Any Settlement Class Members who had
7 timely submitted a Request for Exclusion would not have been bound by the terms of the
8 Settlement Agreement, and would be free to pursue any individual claims they may have against
9 Defendant arising out of the Data Security Incident. *Id.* ¶ 5.1. As of the opt-out deadline, however,
10 no Settlement Class Member exercised the option to be excluded from this Class.

11 **D. Settlement Notice to the Class.**

12 After Preliminary Approval was granted on August 3, 2023, Defendant provided P&N an
13 Excel file with a total of 15,738 records. P&N Decl. ¶ 14. P&N coordinated and caused the Short
14 Notice (“Postcard Notice”) to be mailed via First-Class Mail to Settlement Class Members for
15 which a mailing address was available from the class data. *Id.* ¶ 6. The Postcard Notice included
16 (a) a “tear-off” Claim Form with prepaid return postage, (b) the web address to the settlement
17 website for access to additional information, (c) rights and options as a Class Member and the
18 dates by which to act on those options, and (d) the date of the Final Approval Hearing. *Id.* The
19 Notice mailing was completed prior to September 2, 2023, in accordance with the Preliminary
20 Approval Order. *Id.*

21 Prior to the mailing, all mailing addresses were checked against the National Change of
22 Address (NCOA) database maintained by the United States Postal Service (“USPS”). *Id.* ¶ 7. In
23 addition, the addresses were certified via the Coding Accuracy Support System (CASS) to ensure
24 the quality of the zip code and verified through Delivery Point Validation (DPV) to verify the
25 accuracy of the addresses. *Id.* Of the 15,748 Settlement Class Member records, 48 records did not
26 successfully pass the address validation procedures noted above. *Id.* P&N executed skip tracing
27 on the 48 records that did not pass address validation and was able to mail the Postcard Notice to
28 an additional 14 Class Members. *Id.* ¶ 8. P&N also executed supplemental mailings for 473 Class

1 Members for which an initial Postcard Notice was not deliverable but for which P&N was able to
2 obtain an alternative mailing address through (1) forwarding addresses provided by the USPS, (2)
3 skip trace searches using the LexisNexis third-party vendor database, or (3) requests received
4 directly from Class Members. *Id.*

5 Simultaneously with the mailing of initial notice, P&N established the Settlement Website,
6 posting the Long-Form Notice, Settlement Agreement, Preliminary Approval Order, and other
7 important documents for download. *Id.* ¶ 11. The Settlement Website also has a “Frequently Asked
8 Questions” page providing Class Members with answers to common inquiries about the
9 Settlement. *Id.* As of April 30, 2024, the Settlement Website had 6,331 visitors. *Id.* P&N also
10 created a toll-free hotline devoted to the Settlement. *Id.* ¶ 12. The hotline was made accessible 24
11 hours a day, 7 days a week. *Id.*

12 A Reminder Notice was also sent to the 14,498 Settlement Class Members who were yet
13 to submit a claim as of the original Claims Deadline. P&N Decl. ¶ 14, Table 1.

14 **E. The Notice Program was Successful.**

15 Through the Notice procedures outlined above, P&N sent direct notice to 15,096 of the
16 15,738 Settlement Class Members. *Id.* The Notice Program reached 95.9% of Settlement Class
17 Members. *Id.*

18 **F. The Reaction of the Settlement Class is Overwhelmingly Positive.**

19 The reaction of the Class has been positive. No Class Members have opted-out, and none
20 has objected. *Id.* ¶¶ 16-17.

21 The 2.5% claims rate for this Settlement is further evidence of the Class’s support for this
22 Settlement. This Claims Rate was bolstered by the “tear-off” claim form that Class Counsel
23 implemented, which made it simple and easy for Class Members to claim the Cash Payment. This
24 claims rate far exceeds data breach class action settlements that have received final approval from
25 their respective courts. *See, e.g., Corona v. Sony Pictures.,* No. 2:14-cv-9600 (C.D. Cal.), ECF No.
26 145-1 at 11 n.8 & ECF 164 at 2 (Claims Rate 0.7%); *In re LinkedIn User Privacy Litig.,* No. 12-
27 cv03088-EJD (N.D. Cal.), ECF No. 122 at 2 & ECF 145-2 at ¶ 12 (Claims Rate 0.7%); *Hashemi,*
28 *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

1 (Claims Rate 0.9%).

2 **G. The Estimated Payments to the Class are Significant.**

3 Based upon the current claims data, the Class will likely receive a total of \$356,553.59⁵
4 from the Settlement Fund. This amount includes fully funding all of the *pro-rata* payments,
5 reimbursements, lost time claims, and CAFA payments for the Subclass. This means that
6 Settlement Class Members who submitted Valid Claims for the *Pro Rata* Cash Payment will be
7 approximately \$949.17 each and 264 California Subclass Members will \$100 each for their valid
8 CCPA Payment claims. At that level, the Cash Payments to California Subclass Members are more
9 than equal to the minimum statutory damage amount of \$100 under the CCPA. *See* Cal. Civ. Code
10 § 1798.150(a)(1)(A). Furthermore, California Subclass Members were also eligible to receive Out-
11 of-Pocket Loss Payments, Lost Time Payments, Verified Fraud Payments, and *Pro Rata* Cash
12 Payments. Many of the California Class Members who submitted Valid Claims also received other
13 cash settlement benefits in addition to the \$100 CCPA Payment. This is a real, significant value,
14 delivered by Plaintiff and Class Counsel to this Settlement Class. This outstanding result further
15 supports Plaintiff’s request for reasonable attorneys’ fees in the amount of \$233,333.33. *See*
16 *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 40 (“the lodestar formula does not
17 limit consideration to hours expended and hourly rate, though that is the foundation of the
18 calculation. The base amount produced by multiplying hours spent on the case by a reasonable
19 hourly rate “may then be increased or reduced by application of a ‘multiplier’ after the trial court
20 has considered other factors concerning the lawsuit.”) (quoting *Press v. Lucky Stores, Inc.* (1983)
21 34 Cal.3d 311, 322; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 61 (citing *Ketchum v. Moses*
22 (2001) 24 Cal.4th 1122, 1139 (a lodestar multiplier is appropriate when representation “far exceeds
23 the quality ... that would have been provided by an attorney of comparable skill and experience
24 billing at the hourly rate used in the lodestar calculation”). In addition to the superb result
25 accomplished by Class Counsel here, the case was prosecuted entirely on a contingent basis and,
26 absent settlement, there existed a real risk that Class Counsel would receive nothing for their work

27 _____
28 ⁵ This \$356,553.59 is the current estimate of the Net Settlement Fund and represents an increase
from the amount previously estimated by Class Counsel.

1 on behalf of Plaintiff and the Class. *Sonoma Land Tr. v. Thompson* (2021) 63 Cal.App.5th 978,
2 986 (“In contingent fee cases, a fee enhancement compensates the lawyer for having taken the case
3 despite the risk of receiving no payment in the event of a loss or the risk of a delayed payment in
4 the event of a victory.”) Accordingly, Plaintiff’s request for an award of reasonable attorneys’ fees
5 in the amount of \$233,333.33 should be granted.

6 **IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE, AND MERITS**
7 **FINAL APPROVAL**

8 The Settlement is ready for the Court’s final approval, as required by California Rules of
9 Court, Rule 3.769(a). When entertaining a request for final approval of a class action settlement, a
10 court’s fundamental consideration is whether the settlement is fair. *Dunk v. Ford Motor Co.* (1996)
11 48 Cal.App.4th 1794, 1801; Cal. Rules of Court, Rule 3.769(g). In making this determination, the
12 trial court has broad discretion to determine whether the settlement is fair and is to be exercised
13 through the application of several well-recognized relevant factors. *Dunk*, 48 Cal.App.4th at 1801;
14 *Wershba v. Apple Computer, Inc.* (2009) 91 Cal.App.4th 224, 235; *Cellphone Termination Fee*
15 *Cases* (2009) 180 Cal.App.4th 1110, 1117; *Chavez*, 162 Cal.App.4th at 52; *In Re Microsoft I-V Cases*
16 (2006) 135 Cal.App.4th 706, 723.

17 These relevant factors include “the strength of plaintiffs’ case, the risk, expense,
18 complexity and likely duration of further litigation, the risk of maintaining class action status
19 through trial, the amount offered in settlement, the extent of discovery completed and stage of the
20 proceedings, the experience and views of counsel, the presence of a governmental participant, and
21 the reaction of the class members to the proposed settlement.” *Dunk*, 48 Cal.App.4th at 1801.
22 However, the *Dunk* court stated,

23 The list of factors is not exhaustive and should be tailored to each case. Due regard
24 should be given to what is otherwise a private consensual agreement between the
25 parties. The inquiry “must be limited to the extent necessary to reach a reasoned
26 judgment that the agreement is not the product of fraud or overreaching by, or
collusion between, the negotiating parties, and that the settlement, taken as a whole,
is fair, reasonable and adequate to all concerned.”

27 *Id.*

1 Importantly, the *Dunk* court further emphasized, “A presumption of fairness exists where:
2 (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
3 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
4 litigation; and (4) the percentage of objectors is small.” *Id.* at 1802. The California decisions
5 upholding settlements in class actions applying these factors, including *Dunk*, are fully consistent
6 with a finding that the settlement here is fair, adequate and reasonable. Specifically, *Dunk* noted
7 that “[t]he maximum damages to each member of the plaintiff class was \$600 (the highest repair
8 estimate), and the settlement coupons represented two-thirds of that amount, or \$400. Although
9 several people objected, their numbers were small in comparison to the entire class of over
10 65,000.” *Id.* at 1802. In upholding the trial court’s approval of the settlement, the *Dunk* appellate
11 court “h[e]ld that the trial court’s scrutiny . . . , particularly in light of the substantial questions
12 raised and information presented, was adequate to support its conclusion.” *Id.* at 1805. All four
13 factors establishing a presumption of fairness exist here, as set forth below, and their application
14 supports the granting of final approval of the Settlement.

15 **A. The Strength of the Case, and Risk, Expense, Complexity and Likely Duration**
16 **of Further Litigation Favors Final Approval of the Settlement**

17 “The proposed settlement is not to be judged against a hypothetical or speculative measure
18 of what might have been achieved had plaintiffs prevailed at trial.” *Wershba*, 91 Cal.App.4th at
19 246. “In the context of a settlement . . . the test is not the maximum amount plaintiffs might have
20 obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the
21 circumstances.” *Ochinero v. Ladera Lending, Inc.*, 2021 WL 2295519, at *5 (C.D. Cal. Feb. 26,
22 2021) (citation and internal quotations omitted). The relatively early resolution of this action
23 comes with the benefit of a relatively rapid and guaranteed recovery. *See California v. eBay, Inc.*,
24 2015 WL 5168666, at *4 (N.D. Cal. Sept. 3, 2015) (“Since a negotiated resolution provides for a
25 certain recovery in the face of uncertainty in litigation, this factor weighs in favor of settlement”,
26 citing *Curtis-Bauer v. Morgan Stanley & Co., Inc.*, 2008 WL 4667090, at *4 (N.D. Cal. Oct. 22,
27 2008) (“The uncertainty and complexity of proceeding to trial would be substantial.
28 Settlement avoids the complexity, delay, risk and expense of continuing with the litigation and

1 will produce a prompt, certain, and substantial recovery for the Plaintiff class.”.) In this case, were
2 the litigation to go forward, Class Counsel understand the uncertainty of prevailing on the Class’s
3 claims through trial and inevitable appeals due to the defenses that have been or could be asserted
4 by PCB. Data breach cases present unique challenges. If the case were to proceed without
5 settlement, there would be considerable expense incurred from expert reports, discovery, and
6 numerous factual and legal arguments regarding liability, damages, and injunctive relief, without
7 any guarantee of relief for the Settlement Class. *See In re Anthem, Inc. Data Breach Litig.*, 327
8 F.R.D. 299, 317 (N.D. Cal. 2018) (finding that “[d]ata-breach litigation is in its infancy with
9 threshold issues still playing out in the courts” and that “[c]ourts have noted that legal uncertainty
10 supports approval of a settlement.”).

11 Here, Class Counsel obtained a recovery for Plaintiff and the Settlement Class that provides
12 significant benefits to all members of the Settlement Class who made a Valid Claim and who did
13 not opt-out. This sure and certain cash recovery far outweighs the risk of recovering nothing. The
14 Settlement affords immediate and certain relief to Class Members and eliminates the risks
15 attendant at trial and the possibility of lengthy appeals. “Avoiding such a trial and the subsequent
16 appeals in this complex case strongly militates in favor of settlement rather than further protracted
17 and uncertain litigation.” *Nat’l Rural Telecomms. Coop v. DirecTV*, 221 F.R.D. 523, 527 (C.D.
18 Cal. 2004). Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
19 preferable to lengthy and expensive litigation with uncertain results.” *Id.* at 526. This factor
20 therefore weighs in favor of approval of the Settlement. *See In re Omnivision Techs., Inc.*, 559 F.
21 Supp. 2d 1036, 1042 (N.D. Cal. 2008).

22 **B. The Settlement is the Product of Non-Collusive, Arm’s-Length, and Informed**
23 **Negotiations**

24 It is well established that a presumption of fairness exists where a settlement is reached
25 through arm’s-length bargaining. *See, e.g., Dunk*, 48 Cal.App.4th at 1802; and *Wershba*, 91
26 Cal.App.4th at 245. This presumption is warranted here. The Settlement in this case is the result
27 of non-collusive, arms-length, and informed negotiations between experienced counsel who
28 understood the strengths and weaknesses of their positions in this case. The Settling Parties’ good

1 faith negotiations included a formal mediation session, and PCB produced informal discovery to
2 Plaintiff, including information about the size of the class, California residents affected by the Data
3 Incident, types of personal information involved in the breach and the breadth of the Data Incident.
4 *See Lyon Final Approval Decl.*, ¶¶ 3-5; *Dunk*, 48 Cal.App.4th at 1802. Following the mediation
5 session, the Settling Parties agreed to the principal terms of the Settlement. *See Lyon Final*
6 *Approval Decl.* ¶ 5. The Settling Parties then spent the next several months negotiating the finer
7 details of the Settlement and its exhibits. *See id.* ¶ 6. While negotiations were always collegial and
8 professional between the Settling Parties, there is no doubt that they were also adversarial in nature,
9 with both Settling Parties forcefully advocating the position of their respective clients and the
10 negotiation nearly terminating before an agreement was reached. *See id.*

11 Consistent with best practices, the Settlement was reached after Settlement Class Counsel
12 was amply informed of the size of the Settlement Class and the nature of information at issue in
13 the Data Incident. *See Lyon Final Approval Decl.* ¶ 3. Because the Settlement was negotiated at
14 arm's length by experienced and knowledgeable counsel, it is entitled to a presumption of fairness.
15 *See Dunk*, 48 Cal.App.4th at 1802–03. Thus, the Court is permitted to give considerable weight to
16 the competency and integrity of counsel and the involvement of a neutral mediator in assuring
17 itself that a settlement agreement represents an arm's-length transaction entered without self-
18 dealing or other potential misconduct. This factor therefore weighs in favor of approval of
19 the Settlement.

20 **C. Investigation and Discovery Conducted in This Matter Are Sufficient to Allow**
21 **Class Counsel and the Court to Act Intelligently**

22 The Settling Parties conducted sufficient investigation and discovery prior to reaching an
23 agreement to settle. Indeed, Plaintiff and Settlement Class Counsel conducted thorough pre-
24 complaint investigations into the circumstances that led up to the Data Incident, PCB's response,
25 the scope of the Data Incident, the injuries experienced by the victims, the applicable law and
26 available causes of action, and the resulting potential damages available to Settlement Class
27 Members. *See Lyon Final Approval Decl.* ¶¶ 3, 6.
28

1 Prior to the mediation, Plaintiff obtained informal discovery from PCB, including the
2 production of relevant documents that further informed Plaintiff as to the scope of the Data
3 Incident and the nature of the information compromised. *See* Lyon Final Approval Decl. ¶ 3. The
4 information provided by PCB was appropriately targeted at information relevant to the Data
5 Incident and to properly inform Plaintiff’s counsel during Settlement negotiations. *See In re Mego*
6 *Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (“[F]ormal discovery is not a necessary
7 ticket to the bargaining table where the parties have sufficient information to make an informed
8 decision about settlement.”); *Manual for Complex Litigation* § 13.12 (recognizing the benefits of
9 settlement are diminished if it is postponed until discovery is completed and approving of targeting
10 early discovery at information needed for settlement negotiations). Informal discovery is a
11 recognized method of minimizing the cost, delay, and burden associated with formal discovery.
12 *See Manual for Complex Litigation* § 11.423. Accordingly, this factor also supports final approval.

13 **D. No Objections to the Settlement Have Been Received from Class Members**

14 The Class Notice was mailed to all 15,738 discrete physical addresses identified in the
15 Class List and published on the Settlement Website informing Settlement Class Members of their
16 right to object to the Settlement or to request exclusion from the Settlement Class. *See* P&N Decl.
17 ¶ 14. As set forth in the Class Notice, the deadline to object to the Settlement or to request exclusion
18 from the Class was November 6, 2023. By that date, no Settlement Class Members had submitted
19 an objection to the Settlement or to the requested attorneys’ fees, expenses, and service award, and
20 no persons requested exclusion from the Class. P&N Decl. ¶¶ 16-17. Thus, the reaction of the
21 Class is overwhelmingly positive. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.*
22 (2000) 85 Cal.App.4th 1135, 1152-53 (finding that class member response was “overwhelmingly
23 positive” when nine (9) objected and eighty (80) opted-out of a class of only 5,454). This factor
24 therefore heavily weighs in favor of approval of the Settlement, especially when compared to 7-
25 *Eleven Owners for Fair Franchising*.

26 As demonstrated above, all of the factors establishing a presumption of fairness under *Dunk*
27 exist here.

28 ///

1 **E. Class Notice Satisfied the Requirement of Due Process**

2 The manner of giving notice and the content of notice must “fairly apprise the prospective
3 members of the class of the terms of the proposed settlement and of the options that are open to
4 them in connection with [the] proceedings.” *7-Eleven Owners for Fair Franchising*, 85
5 Cal.App.4th at 1164 (citations omitted). An appropriate notice has a “reasonable chance of
6 reaching a substantial percentage of the class members.” *Wershba*, 91 Cal.App.4th at 251 (citation
7 omitted); *Cellphone Termination*, 186 Cal.App.4th at 1392; *see also* Cal. Rules of Court, Rule
8 3.766.

9 The Notice Program was carefully tailored to reach Settlement Class Members and fairly
10 apprise them of the Settlement. The Notice provided a brief, clear, and thorough explanation of
11 the case, the terms of the proposed Settlement, the maximum amount Class Counsel may seek for
12 attorneys’ fees, the amount Plaintiff may seek as a Service Award, the date, time, and place of the
13 Final Approval Hearing, and the steps for Settlement Class Members to follow to opt out or object
14 to the Settlement. The Notice also described how to appear at the Final Approval Hearing. *See* Cal.
15 Rules of Court, Rule 3.769(f).

16 Pursuant to the Notice Program, individual notice was transmitted to all Settlement Class
17 Members for whom PCB provided physical addresses. P&N Decl. ¶ 14. Notice reached 95.9% of
18 the Class, after all remailings. *Id.* This readily satisfies California’s notice requirements. *Wershba*,
19 91 Cal.App.4th at 251. As the above makes clear, the Notice was reasonable and satisfied the
20 requirements of California law.

21 **V. THE CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES**

22 The Court’s Preliminary Approval Order analyzed the requirements of California Code of
23 Civil Procedure § 382, found the requirements satisfied, and certified the Settlement Class.
24 Nothing has changed that would affect the Court’s ruling on class certification. For the reasons
25 stated in the Preliminary Approval Motion and the Preliminary Approval Order, the Court’s
26 certification of the Settlement Class and Subclass for settlement purposes only should be affirmed.
27 Notice of the final judgment will be given to the class on the claims administrator’s website
28 pursuant to Ca. Rules of Court, Rule 3.771(b).

1 **VI. CONCLUSION**

2 Based upon the foregoing, Plaintiff and Class Representative Bae respectfully requests the
3 Court grant this motion for final approval of the Settlement and for entry of the Final Approval
4 Order and Judgment submitted herewith.

5
6 **DATED: May 16, 2024**

BRADLEY/GROMBACHER LLP

7 By: /s/ Kiley L. Grombacher
8 Marcus J. Bradley, Esq.
9 Kiley L. Grombacher, Esq.

10 **THE LYON FIRM**
Joseph M. Lyon

11 **MARKOVITS, STOCK & DEMARCO, LLC**
12 TERENCE R. COATES (*pro hac vice*)

13 *Attorneys for Plaintiff and the Proposed Class*
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28