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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF SANTA CLARA**

15 **RAJ KUMAR SINGH PARIHAR**, on behalf  
16 of himself and all others similarly situated,

17 Plaintiff,

18 v.

19 **MIPS HOLDING, INC.**,

20 Defendant.

Case No. 24CV448267

Assigned for all purposes to the Honorable  
Theodore C. Zayner, Dept. 19 (Complex)

Complaint Filed: September 26, 2024

Trial Date: Not Set

21 **MEMORANDUM IN SUPPORT OF**  
22 **PLAINTIFF’S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL**  
23 **OF CLASS ACTION SETTLEMENT**

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1 **I. Introduction**

2 Plaintiff Raj Kumar Singh Parihar (“Plaintiff”), respectfully moves the Court to grant  
3 preliminary approval of the class action settlement (“Settlement”) with Defendant MIPS Holding,  
4 Inc. (“Defendant”) (together the “Parties”). The terms of the Settlement are set forth in the  
5 settlement agreement (“Settlement Agreement” or “S.A.”) which is attached as Exhibit 1 to the  
6 Declaration of Cassandra P. Miller (“Miller Decl.”).<sup>1</sup> This case arises out of a data breach (the  
7 “Data Security Incident”) that allegedly impacted the personal information (“Personal  
8 Information”) of Defendant’s current and former employees (the “Settlement Class” or  
9 “Settlement Class Members”). In total, there are approximately 621 Settlement Class Members.  
10 Notably, the Settlement was the product of an arm’s length mediation session with the Honorable  
11 Ronald B. Leighton (Ret.) of WAMS.

12 The Settlement provides timely and tailored relief to the Settlement Class—whereby each  
13 Settlement Class Member can claim: (1) up to \$3,000.00 for extraordinary losses; (2) up to \$500.00  
14 for ordinary losses (including up to \$80.00 for lost time); and (3) three years of credit monitoring  
15 services (which includes \$1 million in identity theft protection insurance). In the alternative,  
16 Settlement Class Members can claim a \$75.00 cash payment (without needing to provide any  
17 documentation). Critically, Defendant will pay for all valid claims subject only to a high aggregate  
18 cap of \$120,000.00. Separately, the Settlement mandates that Defendant pay for substantial  
19 improvements to its data security systems.

20 Simply put, the Settlement provides the exact relief sought by the lawsuit—and satisfies  
21 the requirements for preliminary approval. Thus, Plaintiff respectfully requests that the Court enter  
22 an Order: (i) granting preliminary approval of the Settlement; (ii) preliminarily certifying the  
23 Settlement Class for settlement purposes; (iii) appointing Raj Kumar Singh Parihar as Class  
24 Representative; (iv) appointing Cassandra P. Miller of Strauss Borrelli PLLC as Settlement Class  
25 Counsel; (v) appointing Analytics LLC as Settlement Administrator; (vi) approving the proposed

26 \_\_\_\_\_  
27 <sup>1</sup> Capitalized terms have the same meaning as in the Settlement Agreement.

1 Notice Program; (vii) approving the form and content of the Short Form Notice (Ex. A), Long  
2 Form Notice (Ex. B), and Claim Form (Ex. C); (viii) approving the proposed Opt-Out and  
3 Objections Procedures; and (ix) scheduling a Final Approval Hearing—wherein the Court will  
4 consider final approval of the Settlement, final certification of the Settlement Class for settlement  
5 purposes, and any Motion for Attorney Fees, Costs, and Service Award.

## 6 **II. Background**

### 7 **A. Litigation History**

8 Defendant is a computing company that sells software and designs processors. *See* Class  
9 Action Complaint (“*Compl.*”), ¶17. Plaintiff is a former employee of Defendant—who alleged that  
10 his Personal Information was exposed in the Data Security Incident that impacted Defendant on or  
11 around June 26, 2024. *Id.* ¶¶21–35. On September 26, 2024, Plaintiff filed his Class Action  
12 Complaint in this Court and brought claims for (1) negligence, (2) negligence *per se*, (3) breach  
13 of implied contract, (4) unjust enrichment, (5) invasion of privacy, and (6) violations of  
14 California’s Unfair Competition Law. *Id.* ¶¶93–161. On December 24, 2024, Defendant filed its  
15 Demurrer and argued that Plaintiff failed to state a claim. *See* Miller Decl., ¶5.

16 Recognizing the benefits of timely resolution, on April 24, 2025, the Parties engaged in  
17 formal mediation under the guidance of Hon. Ronald B. Leighton (Ret.) of WAMS—who served  
18 for eighteen years as a United States district judge in Tacoma, Washington. *Id.* ¶¶6, 9. Prior to the  
19 mediation session, the Parties exchanged informal discovery and confidential mediation  
20 statements (which enabled the Parties to gain a more fulsome understanding of the strengths and  
21 weaknesses of the underlying claims and defenses). *Id.* ¶¶7, 9. During the mediation session, the  
22 Parties engaged in extensive arm’s length negotiations and fought for the interests of their  
23 respective clients. *Id.* ¶¶7–10.

24 Eventually, under the guidance of Hon. Ronald B. Leighton (Ret.), the Parties succeeded  
25 in reaching an agreement on the core terms of the Settlement. *Id.* ¶10. The Parties did not negotiate  
26 attorneys’ fees or the Service Award until the core terms of the settlement were reached (as to  
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1 avoid any conflicts). *Id.* ¶8. Thereafter, the Parties continued to negotiate the finer terms of the  
2 Settlement and draft the Settlement Agreement. *Id.* ¶10. Then, on May 19, 2025, the Parties filed  
3 their Joint Notice of Settlement and Request to Stay. *Id.*

#### 4 **B. The Settlement Class**

5 The Settlement Class is defined as “all individuals residing in the United States whose  
6 Personal Information was compromised in the Data Security Incident experienced by MIPS,  
7 including all those who received notice of the Data Security Incident.” S.A. ¶35. In total, there are  
8 approximately 621 Settlement Class Members. Miller Decl. ¶11. Excluded from the Settlement  
9 Class are “(i) Defendant (ii) all Settlement Class Members who timely and validly request  
10 exclusion from the Settlement Class; (iii) any judges assigned to this case and their staff and  
11 family; and (iv) any other person found by a court of competent jurisdiction to be guilty under  
12 criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the  
13 Security Incident or who pleads nolo contendere to any such charge.” S.A. ¶35.

#### 14 **C. Settlement Benefits**

15 The Settlement provides timely and tailored relief to the Settlement Class—whereby  
16 Defendant will pay for all valid claims subject only to a high aggregate cap of \$120,000.00. S.A.  
17 ¶43. The types of relief provided are:

18 ***Extraordinary Losses.*** The Settlement will pay up to \$3,000.00 per Settlement Class  
19 Member for any extraordinary losses (e.g., identity theft or fraud). S.A. ¶43(c). To be valid, claims  
20 must include third-party documentation of the losses. *Id.*

21 ***Ordinary Losses.*** The Settlement will pay up to \$500.00 per Settlement Class Member for  
22 any ordinary losses (e.g., credit monitoring costs, lost time). *Id.* ¶43(a). To be valid, claims must  
23 include third-party documentation of the losses. *Id.*

24 ***Lost Time.*** The Settlement will pay up to \$80.00 (i.e., \$20.00 per hour for up to four hours)  
25 per Settlement Class Member for time “spent dealing with the Data Security Incident.” *Id.* ¶43(b).  
26 Notably, Settlement Class Members do not need to provide third-party documentation to receive  
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1 compensation for lost time. *Id.* Claims for lost time are subject to the \$500.00 cap on ordinary  
2 losses. *Id.*

3 ***Credit Monitoring Services.*** The Settlement will pay for each participating Settlement  
4 Class Member to receive credit monitoring services “through IDX which will include three (3)  
5 years of one-bureau credit monitoring and \$1 million in identity theft protection insurance, among  
6 other features.” *Id.* ¶42.

7 ***Alternative Cash Payments.*** In the alternative to claims for extraordinary losses, ordinary  
8 losses, lost time, or credit monitoring, each Settlement Class Member can claim a \$75.00 cash  
9 payment (the “Alternative Cash Payment”). *Id.* ¶43(d). No third-party documentation is required  
10 to receive this benefit. *Id.*

11 ***Injunctive Relief.*** Defendant has agreed to “Business Practice Commitments” whereby  
12 Defendant will pay for “information security improvements” that “will be paid by Defendant  
13 separate and apart from all other settlement benefits.” *Id.* ¶44. Notably, “Defendant will provide a  
14 confidential declaration to Settlement Class Counsel and, if requested, to the Court for *in camera*  
15 review, describing its information security improvements since the Data Security Incident and an  
16 estimate of the cost of those improvements.” *Id.*

17 Compared to a “checks-mailed” approach, this “claims-made” structure is superior because  
18 the monetary relief is tailored to the exact injuries suffered by the different Settlement Class  
19 Members. *See Guidelines for Motions Relating to Preliminary and Final Approval of Class*  
20 *Actions* (hereinafter, “*Guidelines*”), ¶I(B); *see also* Miller Decl. ¶19. For example, a Settlement  
21 Class Member who lost thousands of dollars—due to fraudulent charges by identity thieves—can  
22 claim the exact amount of lost money. *Id.* In contrast, a Settlement Class Member, who never  
23 suffered identity theft, can still claim the Alternative Cash Payment of \$75.00. *Id.*

24 **D. Settlement Administration**

25 The Parties recommend that the Court appoint Analytics LLC (“Analytics”) as the  
26 Settlement Administrator. Miller Decl. ¶20. Analytics is a well-regarded Settlement Administrator

1 and has substantial experience in administering complex data breach class action settlements. *Id.*  
2 The Settlement Administrator will establish a “dispute resolution process” whereby Settlement  
3 Class Members with deficient claims will be notified and given twenty-one (21) days to cure the  
4 deficiencies. *Guidelines*, ¶I(G); *see also* S.A. ¶46(h–i). If the deficiencies are not cured, then  
5 Settlement Class Members can appeal (and the Parties will confer regarding the appeal). *Id.*

6 **E. Notice Plan**

7 The proposed Settlement includes a comprehensive Notice Plan that satisfies due process,  
8 complies with California Rule of Court 3.766, and is consistent with notice procedures approved  
9 in analogous data breach class actions. See Settlement Agreement. S.A. ¶¶51–53; Miller Decl. ¶21.  
10 Under the Settlement Agreement, the Settlement Administrator, Analytics, will provide direct  
11 notice to all Settlement Class Members for whom a physical mailing address or email address is  
12 available. Specifically, the Administrator will send the Court-approved Short Form Notice via First  
13 Class U.S. Mail in the form of a postcard to those with mailing addresses on the Settlement Class  
14 List. S.A. ¶52. In addition, for Class Members with known email addresses, the Settlement  
15 Administrator will also send the Notice via email. *Id.*

16 To ensure that direct notice reaches as many Class Members as possible, the Administrator  
17 will take additional steps, including performing National Change of Address (“NCOA”) searches  
18 on the Settlement Class List (S.A. ¶ 57(c)), and making reasonable efforts (such as skip tracing)  
19 to locate updated addresses and resend notice postcards that are returned as undeliverable. S.A.  
20 ¶52.

21 The Notice will inform Class Members of the material terms of the Settlement, their right  
22 to submit a claim, opt out, or object, and provide instructions for doing so. It will also include the  
23 date, time, and location of the Final Approval Hearing and inform Class Members of procedures  
24 for appearing, including by remote means if permitted by the Court.

25 Supplemental notice will be provided via a dedicated Settlement Website, established and  
26 maintained by the Settlement Administrator. The website will include relevant documents such as

1 the Long Form Notice, Claim Form, Settlement Agreement, Plaintiff’s motions for preliminary  
2 approval and attorneys’ fees, the Preliminary Approval Order, the operative Complaint, and other  
3 important information. S.A. ¶53. The website will also list all key deadlines.

4 In addition, the Settlement Administrator will establish a toll-free telephone number, an  
5 email address, and a mailing address through which Settlement Class Members may seek  
6 assistance or obtain additional information. *Id.*

7 The Settlement Administrator will commence dissemination of notice no later than thirty  
8 (30) days after the entry of the Preliminary Approval Order, in accordance with the schedule set  
9 forth in the Settlement. S.A. ¶54.

10 Based on similar data breach class actions, Class Counsel anticipates a claims rate of  
11 approximately 2-5%.

12 **F. Attorney Fees, Costs, & Service Award**

13 Pursuant to the Settlement Agreement, Class Counsel will move the Court for an award of  
14 up to \$95,000 for attorney fees and up to \$5,000 for Court approved costs. S.A. ¶71. Additionally,  
15 Class Counsel will request a Service Award of \$3,000 for Plaintiff in recognition of his  
16 contributions and dedication to the Settlement Class. *Id.* ¶69; *see also Schumacher v. Bank of*  
17 *Hope*, No. 18STCV02066, 2023 Cal. Super. LEXIS 23306, \*10 (Los Angeles County, April 12,  
18 2023) (approving a service award of \$25,000 for a class representative in a data breach class  
19 action).

20 **G. Opt-Outs & Objections**

21 Settlement Class Members can “opt-out” (a.k.a. “exclude themselves”) from the Settlement  
22 by submitting a “Request for Exclusion” to the Settlement Administrator postmarked no later than  
23 the Opt-Out Deadline. S.A. ¶55. To be valid, opt-outs “must include the name of the proceeding,  
24 the individual’s full name, current address, personal signature, and the words ‘Request for  
25 Exclusion’ or a comparable statement[.]” *Id.* ¶55(a). Additionally, Class Members can “object” to  
26 the Settlement by “filing written objections with the Court no later than the Objection Deadline.”

1 *Id.* ¶56. To be valid, objections must (i) include the case name; (ii) include the objector’s full name  
2 and mailing address; (iii) state the grounds for the objection (and include any supporting  
3 documents); (iv) identify any attorney(s); (v) state whether the Settlement Class Member (or their  
4 attorney) intends to appear at the Final Approval Hearing; (vi) identify the objector as a Settlement  
5 Class Member (i.e., proof that the objector is in the Settlement Class); and (vii) include the  
6 signature of the Settlement Class Member (or their attorney). *Id.*

### 7 **III. Legal Standard**

8 “As a general rule, settlement of a class action requires the approval of the court after a  
9 hearing.” *Luckey v. Superior Court*, 228 Cal. App. 4th 81, 93 (2014). Under California Rules of  
10 Court, Rule 3.769, “[a] settlement or compromise of an entire class action, or of a cause of action  
11 in a class action, or as to a party, requires the approval of the court after hearing.” Cal. R.  
12 Ct. 3.769(a). The court “must determine the settlement is fair, adequate, and reasonable.” *Luckey*,  
13 228 Cal. App. 4th at 93 (quoting *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996)).  
14 For class actions that are “settled *prior* to class certification . . . certification and settlement  
15 approval occur simultaneously” under California Rules of Court, Rule 3.769. *Id.* (emphasis added).

16 The approval of a class action settlement is a “two-step process[.]” *Cellphone Termination*  
17 *Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009). **First**, the court must hold a “hearing” on a motion  
18 for “preliminary approval of the settlement.” *Luckey*, 228 Cal. App. 4th at 93 (quoting Cal. Rules  
19 of Court, Rule 3.769(c)). After the hearing, the court must enter “an order approving or denying  
20 ‘certification of a provisional settlement class.’” *Id.* (quoting Cal. Rules of Court, Rule 3.769(d)).  
21 If the court grants preliminary approval, then “it must set a final approval hearing and provide for  
22 notice to be given to the class.” *Id.* **Second**, at the final approval hearing, “the court must conduct  
23 an inquiry into the fairness of the proposed settlement.” *Id.* (quoting Cal. Rules of Court, Rule  
24 3.769(g)). If the court grants final approval, then it must “enter[] judgment accordingly.” *Id.* (citing  
25 Cal. Rules of Court, Rule 3.769(h)).



1 2022) (granting final approval of a data breach settlement that paid each class member  
2 “approximately \$3.30”); *Newman v. Jm Bullion*, No. BCV-21-100436, 2022 Cal. Super. LEXIS  
3 37967, \*1(Kern County, June 30, 2022) (granting final approval of a data breach settlement). Here  
4 too, the Court should grant preliminary approval.

5 **A. The Settlement Class satisfies Code of Civil Procedure section 382.**

6 The Settlement Class satisfies Code of Civil Procedure section 382—which authorizes  
7 class actions “when the question is one of a common or general interest, of many persons, or when  
8 the parties are numerous, and it is impracticable to bring them all before the court[.]” *Carter v.*  
9 *City of L.A.*, 224 Cal. App. 4th 808, 817 (2014). As such, the movant “must demonstrate the  
10 existence of an ascertainable and sufficiently numerous class, a well-defined community of  
11 interest, and substantial benefits from certification that render proceeding as a class superior to the  
12 alternatives.” *Id.* (quoting *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1021 (2012)).  
13 In other words, a proposed class must satisfy “(1) ascertainability; (2) numerosity; (3)  
14 commonality; (4) typicality; (5) adequacy; and (6) superiority.” *Magallanes v. Discovery Prac.*  
15 *Mgmt., Inc.*, No. 30-2021-01213556, 2025 Cal. Super. LEXIS 3376, \*10 (Orange County, Jan. 24,  
16 2025) (citing *Brinker*, 53 Cal. 4th at 1021). As explained below, the Settlement Class satisfies all  
17 of these requirements. Miller Decl. ¶44.

18 **1. The Settlement Class is ascertainable.**

19 The Settlement Class is ascertainable—which requires that plaintiff “describe the proposed  
20 class by specific and objective criteria.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 918 (2010)  
21 (citing *Glob. Minerals*, 113 Cal. App. 4th at 858). Here, the Settlement Class is defined as “all  
22 individuals residing in the United States whose Personal Information was compromised in the Data  
23 Security Incident experienced by MIPS, including all those who received notice of the Data  
24 Security Incident.” S.A. ¶35. Thus, the Settlement Class is circumscribed using objective criteria  
25 (i.e., the individuals whose information was maintained by Defendant and then exposed). Miller  
26 Decl. ¶11. Indeed, Defendant has already ascertained that the Settlement Class consists of  
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1 approximately 621 individuals. *Id.* Thus, ascertainability is satisfied. *See, e.g., Stoffers*, 2023 Cal.  
2 Super. LEXIS 26400, \*37 (holding that “[t]he proposed Settlement Class is ascertainable through  
3 Defendant’s records”); *In re Planned Parenthood*, 2024 Cal. Super. LEXIS 2, \*34 (same).

4 **2. The Settlement Class is numerous.**

5 The Settlement Class is numerous because “classes of ten to forty-two individuals [are]  
6 sufficiently numerous[.]” *Ramirez v. Target Precision*, No. 19STCV16949, 2021 Cal. Super.  
7 LEXIS 128135, \*8 (Los Angeles County, March 1, 2021) (collecting cases). Here, there are  
8 hundreds of Settlement Class Members, and joinder would be impracticable. Miller Decl. ¶11.

9 **3. The Settlement Class shares a community of interest.**

10 The Settlement Class shares a “community of interest” which embodies three factors: “(1)  
11 predominant common questions of law or fact; (2) class representatives with claims or defenses  
12 typical of the class; and (3) class representatives who can adequately represent the class.” *Luckey*,  
13 228 Cal. App. 4th at 92 (quoting *Glob. Minerals*, 113 Cal. App. 4th at 848). Here, the Settlement  
14 satisfies all three factors. Miller Decl. ¶12.

15 **Commonality.** This case centers on predominant common questions of law and fact. Miller  
16 Decl. ¶12. In analogous data breach cases, California courts recognize that commonality is  
17 satisfied because “questions of law and fact common to all Settlement Class Members exist  
18 including whether [defendant] had a duty to implement and maintain reasonable security  
19 procedures and practices appropriate to the nature of the PII it collected from the Settlement Class  
20 and whether [defendant] breached that duty.” *Stoffers*, 2023 Cal. Super. LEXIS 26400, \*38  
21 (finding commonality satisfied); *In re Planned Parenthood*, 2024 Cal. Super. LEXIS 2, \*35  
22 (same); *Fuentes*, 2024 Cal. Super. LEXIS 26827, \*2 (same); *Flores*, 2023 Cal. Super. LEXIS  
23 34426, \*3 (same); *Newman*, 2022 Cal. Super. LEXIS 37967, at \*3 (same). Here too, “questions of  
24 law and fact common to all Settlement Class Members exist including “Whether Defendant had a  
25 duty to use reasonable care in safeguarding Plaintiff’s and the Class’s PII; Whether Defendant  
26 failed to implement and maintain reasonable security procedures and practices appropriate to the  
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1 nature and scope of the information compromised in the Data Breach; Whether Defendant were  
2 negligent in maintaining, protecting, and securing PII . . . Whether the Data Breach caused  
3 Plaintiff’s and the Class’s injuries[.]” *See* Class Action Complaint (“Compl.”), ¶91(e). These  
4 questions satisfy commonality. Miller Decl. ¶12.

5 **Typicality.** The claims and relevant defenses of the Class Representative are typical of the  
6 Settlement Class. Miller Decl. ¶12. In analogous data breach cases, typicality is satisfied because  
7 “Plaintiffs’ and all other Settlement Class Members’ claims arise from [defendant’s] alleged  
8 failure to implement and maintain reasonable security measures and the ensuing Data Breach.”  
9 *Planned Parenthood*, 2024 Cal. Super. LEXIS 2, \*35 (finding typicality satisfied); *Fuentes*, 2024  
10 Cal. Super. LEXIS 26827, \*2 (same); *Stoffers*, 2023 Cal. Super. LEXIS 26400, \*38 (same); *Flores*,  
11 2023 Cal. Super. LEXIS 34426, \*3 (same); *Newman*, 2022 Cal. Super. LEXIS 37967, at \*3 (same).  
12 Likewise, typicality is satisfied here because the claims and defenses all arise from a singular  
13 event: the Data Security Incident that Defendant discovered on or around June 26, 2024. *See* S.A.  
14 ¶3. These similarities establish typicality. Miller Decl. ¶12; *see also Stoffers*, 2023 Cal. Super.  
15 LEXIS 26400, \*38 (noting that “typicality is satisfied because Plaintiff’s and all other Settlement  
16 Class Member’ claims arise from [defendant’s] alleged failure to implement and maintain  
17 reasonable security measures and the resulting Data Breach”).

18 **Adequacy.** The Class Representative and Class Counsel have provided, and will continue  
19 to provide, adequate representation. Miller Decl. ¶¶13–14. In analogous data breach cases,  
20 adequacy is satisfied when “Class Counsel has shown experience in class action litigation,  
21 including data breach cases.” *Planned Parenthood*, 2024 Cal. Super. LEXIS 2, \*36 (finding  
22 adequacy satisfied); *Fuentes*, 2024 Cal. Super. LEXIS 26827, \*2 (same); *Stoffers*, 2023 Cal. Super.  
23 LEXIS 26400, \*38–39 (same); *Flores*, 2023 Cal. Super. LEXIS 34426, \*3 (same); *Newman*, 2022  
24 Cal. Super. LEXIS 37967, at \*3–4 (same). Likewise, adequacy is satisfied because Class Counsel  
25 “has significant experience in complex class action litigation and is currently litigating over one  
26 hundred data breach cases in courts across the country.” Miller Decl. ¶14. Moreover, “Plaintiff has  
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1 adequately represented the Settlement Class because he spent time reviewing the complaint for  
2 accuracy, meeting with Class Counsel to answer numerous questions, providing information to  
3 assist in settlement negotiations, remaining available throughout the litigation process, and  
4 reviewing the settlement.” *Id.* ¶13. These facts establish adequacy. *See Stoffers*, 2023 Cal. Super.  
5 LEXIS 26400, \*38 (holding that “Plaintiff is an adequate representative because his interests are  
6 aligned with the class members” and “Class Counsel has shown experience in class action  
7 litigation”).

8 **4. This class action is superior to alternative methods.**

9 This class action is superior to alternative methods. Miller Decl. ¶15. After all, in analogous  
10 data breach cases, superiority is satisfied because “[g]iven the relatively small size of the individual  
11 claims, a class action appears to be superior to separate actions[.]” *Planned Parenthood*, 2024 Cal.  
12 Super. LEXIS 2, \*36 (finding superiority satisfied); *Stoffers*, 2023 Cal. Super. LEXIS 26400, \*39  
13 (same); *Flores*, 2023 Cal. Super. LEXIS 34426, \*3 (same); *Fuentes*, 2024 Cal. Super. LEXIS  
14 26827, \*2 (same); *Newman*, 2022 Cal. Super. LEXIS 37967, at \*4 (same). Likewise, this class  
15 action is superior to alternative methods because individualized litigation by 621 Settlement Class  
16 Members would be impracticable, and the class action avoids the risks of inconsistent  
17 adjudications. Miller Decl. ¶15.

18 In sum, the Settlement Class satisfies (1) ascertainability; (2) numerosity; (3) commonality;  
19 (4) typicality; (5) adequacy; and (6) superiority. *Id.* ¶15. Thus, class treatment is appropriate  
20 pursuant to Code of Civil Procedure section 382. *Id.*

21 **B. The Settlement is fair, reasonable, and adequate.**

22 Preliminary approval is warranted because the Settlement is fair, reasonable, and adequate.  
23 Miller Decl. ¶44. To evaluate the fairness, reasonableness, and adequacy of a settlement, California  
24 law provides two analytical standards.<sup>2</sup> *Id.* ¶45. *First*, California law provides that a “presumption  
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26 <sup>2</sup> Some courts have granted approval of data breach class action settlements without explicitly  
27 considering these standards—i.e., the courts grant approval after finding that the settlement is “fair,

1 of fairness” arises when four requirements are met (as explained below). *Luckey*, 228 Cal. App.  
2 4th at 94 n.13 (citing *Dunk*, 48 Cal. App. 4th at 1801). **Second**, California law provides a series of  
3 “well-recognized factors that the trial court should consider in evaluating the reasonableness of a  
4 class action settlement[.]” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008).  
5 However, these factors (i.e., the “*Kullar* Factors”) are “not exhaustive and should be tailored to  
6 each case.” *Id.* (quoting *Dunk*, 48 Cal. App. 4th at 1801). As explained below, the “presumption  
7 of fairness” applies—and the *Kullar* Factors support preliminary approval. Miller Decl. ¶45.

8 **1. The presumption of fairness applies.**

9 Under California law, “a presumption of fairness arises where (1) the settlement is reached  
10 through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow the court  
11 and counsel to act intelligently; (3) counsel is experienced in similar litigation; and (4) the  
12 percentage of objectors is small.” *Luckey*, 228 Cal. App. 4th at 94 n.13 (citing *Dunk*, 48 Cal. App.  
13 4th at 1801). Here, the presumption of fairness applies because three of the elements are satisfied  
14 (and one is inapplicable at this stage). Miller Decl. ¶45.

15 **First**, the settlement was “reached through arm’s-length bargaining.” *See Luckey*, 228 Cal.  
16 App. 4th at 94 n.13. After all, the Settlement was the product of extensive arm’s length negotiations  
17 and a formal mediation session with the Hon. Ronald B. Leighton (Ret.) of WAMS. Miller Decl.  
18 ¶¶9–10. While the negotiations were always collegial, cordial, and professional, there is no doubt  
19 that they were adversarial in nature, with both parties forcefully advocating the position of their  
20 respective clients over approximately five months.” *Id.* ¶10. Moreover, to avoid any conflict of  
21 interest, the Parties agreed to not negotiate attorney fees or the service award until after the core  
22 terms of the Settlement were agreed upon. *Id.* ¶8. Thus, this factor is satisfied. *See Planned*  
23 *Parenthood*, 2024 Cal. Super. LEXIS 2, \*23 (finding that “the settlement is entitled to a  
24 presumption of fairness” when the parties engaged in mediation).

25  
26 \_\_\_\_\_  
27 reasonable, and adequate[.]” *Fuentes*, 2024 Cal. Super. LEXIS 26827, \*2 (granting preliminary  
28 approval). However, for the sake of thoroughness, Class Counsel will apply both standards.

1           **Second**, the Parties engaged in sufficient “investigation and discovery . . . to allow the  
2 court and counsel to act intelligently[.]” *Luckey*, 228 Cal. App. 4th at 94 n.13. Indeed, prior to the  
3 mediation session, the Parties exchanged informal discovery and confidential mediation  
4 statements (which enabled the Parties to better evaluate the strengths and weaknesses of the  
5 underlying claims and defenses). Miller Decl. ¶9. Thus, this factor is satisfied. *See Planned*  
6 *Parenthood*, 2024 Cal. Super. LEXIS 2, \*23–24 (finding that “the settlement is entitled to a  
7 presumption of fairness” when the parties exchanged discovery); *Stoffers*, 2023 Cal. Super. LEXIS  
8 26400, \*30 (same).

9           **Third**, Class Counsel “is experienced in similar litigation[.]” *Luckey*, 228 Cal. App. 4th at  
10 94 n.13. Indeed, “Cassandra P. Miller of Strauss Borrelli PLLC is currently litigating over one  
11 hundred data breach cases in courts around the country as lead counsel or co-counsel on behalf of  
12 millions of data breach victims.” Miller Decl. ¶14. Thus, this factor is satisfied. *See Planned*  
13 *Parenthood*, 2024 Cal. Super. LEXIS 2, \*24 (finding that “the settlement is entitled to a  
14 presumption of fairness” because class counsel was “experienced in class action litigation,  
15 including data breach class actions”); *Stoffers*, 2023 Cal. Super. LEXIS 26400, \*30 (same).

16           **Fourth**, the “percentage of objectors is small” factor is inapplicable at this stage—because  
17 the Settlement Class has not received Notice of the Settlement. *Luckey*, 228 Cal. App. 4th at 94  
18 n.13; Miller Decl. ¶46. Rather, this factor is best considered at the Final Approval Hearing (i.e.,  
19 after Settlement Class Members have had the opportunity to formally object to the Settlement).  
20 Miller Decl. ¶46; *see also Planned Parenthood*, 2024 Cal. Super. LEXIS 2, \*24–25 (finding that  
21 “the settlement is entitled to a presumption of fairness” although this factor “cannot be determined  
22 until the fairness hearing”); *Stoffers*, 2023 Cal. Super. LEXIS 26400, \*30–31 (same). Thus, the  
23 “the presumption of fairness” applies because three of the elements are satisfied (and one is  
24 inapplicable at this stage). Miller Decl. ¶45.

1                   **2.       The *Kullar* Factors support preliminary approval.**

2                   Under California law, “the trial court should consider” the eight *Kullar* Factors “ in  
3 evaluating the reasonableness of a class action settlement[.]” 168 Cal. App. 4th at 128. The eight  
4 *Kullar Factors* are: “[1] the strength of plaintiffs’ case, [2] the risk, expense, complexity and likely  
5 duration of further litigation, [3] the risk of maintaining class action status through trial, [4] the  
6 amount offered in settlement, [5] the extent of discovery completed and the stage of the  
7 proceedings, [6] the experience and views of counsel, [7] the presence of a governmental  
8 participant, and [8] the reaction of the class members to the proposed settlement.” *Id.* (quoting  
9 *Dunk*, 48 Cal. App. 4th at 1801). As explained below, six of the *Kullar* Factors are satisfied (and  
10 two are inapplicable). Miller Decl. ¶47. Thus, on balance, the *Kullar* Factors support preliminary  
11 approval. *Id.*

12                   **First**, “the strength of plaintiffs’ case” supports preliminary approval. *Kullar*, 168 Cal.  
13 App. 4th at 128. On this point, California courts expound that “[t]he most important factor is the  
14 strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.”  
15 *Id.* at \*130. In analogous data breach cases, this factor supports preliminary approval “because of  
16 the relative scarcity of data-breach class certifications and the reality that data breach litigation  
17 involves the application of unsettled law[.]” *Planned Parenthood*, 2024 Cal. Super. LEXIS 2, \*27–  
18 28; *see also Onix Grp., LLC Data Breach Litig.*, No. 23-2288, 2024 U.S. Dist. LEXIS 225686,  
19 \*27 (E.D. Pa. Dec. 13, 2024) (“[T]here is a risk of establishing liability, and in turn, damages,  
20 because this case involves a number of open questions, including whether Defendant owed a duty  
21 to the class to safeguard sensitive information, whether Defendant breached that duty, whether the  
22 compromised information was actually viewed by bad actors . . . whether Defendant’s conduct  
23 was the proximate cause of the breach, and the extent to which the class is entitled to recovery.”).

24                   Likewise, the Settlement is favorable given the strengths—and substantial weaknesses—  
25 of Plaintiff’s case. Miller Decl. ¶48. Plaintiff faced serious risks prevailing on the merits, including  
26 proving causation, as well as risks at class certification and at trial, and surviving appeal. *Id.*; *see*

1 *also Canon*, 2024 U.S. Dist. LEXIS 138499, \*30 (“Plaintiffs likely would have encountered  
2 obstacles to establishing class-wide damages, particularly due to the inherent uncertainty of  
3 quantifying injury in a data breach case.”). Thus, a settlement today avoids the risks of continued  
4 litigation, and also provides benefits to the Settlement Class now (as opposed to after years of risky  
5 litigation). Miller Decl. ¶48. Thus, this factor supports approval. *Id*

6 **Second**, “the risk, expense, complexity and likely duration of further litigation” supports  
7 preliminary approval. *Kullar*, 168 Cal. App. 4th at 128 In analogous data breach cases, this factor  
8 supports preliminary approval. *See, e.g., Planned Parenthood*, 2024 Cal. Super. LEXIS 2, \*24–25  
9 (“Given the nature of the class claims, the case is likely to be expensive and lengthy to try.”);  
10 *Stoffers*, 2023 Cal. Super. LEXIS 26400, \*32 (same); *see also In re Canon United States Data*  
11 *Breach Litig.*, No. 20-CV-6239, 2024 U.S. Dist. LEXIS 138499, \*30 (E.D.N.Y. Aug. 5, 2024)  
12 (explaining that “data breach litigation is complex and largely undeveloped”). Likewise, further  
13 litigation of this data breach class action would be risky, expensive, complex, and likely protracted.  
14 Miller Decl. ¶49. Thus, this factor supports approval. *Id*.

15 **Third**, “the risk of maintaining class action status through trial” supports preliminary  
16 approval. *Kullar*, 168 Cal. App. 4th at 128. In analogous data breach cases, this factor supports  
17 preliminary approval. *See, e.g., Planned Parenthood*, 2024 Cal. Super. LEXIS 2, \*28 (“Even if a  
18 class is certified, there is always a risk of decertification.”); *Stoffers*, 2023 Cal. Super. LEXIS  
19 26400, \*32 (same). After all, “no data breach class action has reached the trial stage” and “the trial  
20 risk is difficult to quantify and raises the uncertainty involved in the case[.]” *Canon*, 2024 U.S.  
21 Dist. LEXIS 138499, \*30. Likewise, if this case proceeds to trial, then Plaintiff would face  
22 substantial risks of decertification. Miller Decl. ¶50. Thus, this factor supports approval. *Id*.

23 **Fourth**, “the amount offered in settlement” supports preliminary approval. *Kullar*, 168 Cal.  
24 App. 4th at 128. Notably, California courts have approved data breach settlements that provided  
25 *far less* in monetary compensation. *Planned Parenthood*, 2024 Cal. Super. LEXIS 2, \*28–29  
26 (explaining that “[g]iven the uncertain outcomes, the settlement appears to be within the ‘ballpark  
27

1 of reasonableness” even when the settlement “constitutes approximately 0.70-1.08% of  
2 Defendant’s maximum exposure”). For example, in *Fuentes*, the court granted preliminary  
3 approval of a settlement that provided \$25.00 cash payment to class members. 2024 Cal. Super.  
4 LEXIS 26827, \*14. In *Schumacher*, the court granted final approval of a settlement that provided  
5 “up to \$500” per class member for out-of-pocket losses. 2023 Cal. Super. LEXIS 23306, \*6–7.  
6 And in *Rodriguez*, the court granted final approval of a settlement that only paid “approximately  
7 \$3.30” per class member. 2022 Cal. Super. LEXIS 67840, \*48.

8 Here, Plaintiff asserted claims for negligence, negligence *per se*, breach of implied  
9 contract, unjust enrichment, invasion of privacy, and for violations of California’s Unfair  
10 Competition Law. Miller Decl. ¶51. Thus, Plaintiff sought equitable relief (e.g., restitution,  
11 disgorgement) and actual damages. *Id.* However, Plaintiff did not allege easily quantifiable forms  
12 of “actual damages” such as fraudulent charges or out-of-pocket costs. *Id.* Thus, the potential “cash  
13 value” of these claims at trial could be minimal. *Id.* For example, even if every single Class  
14 Member suffered a fraudulent charge of \$100.00, the “cash value” of these claims would be  
15 \$63,100.00. *Id.* However, the Settlement provides monetary relief up to \$120,000.00. *Id.* In other  
16 words, the “cash value” of these claims was not “discounted for settlement purposes.” *Id.*; *see also*  
17 *Guidelines*, ¶I(D).

18 Simply put, this Settlement provides substantial monetary and non-monetary relief—that  
19 meets, and even exceeds, the relief obtained in analogous data breach settlements. Miller Decl.  
20 ¶52; *see also In re Hudson’s Bay Co. Data Sec. Incident Consumer Litig.*, No. 18-cv-8472, 2022  
21 U.S. Dist. LEXIS 102805, at \*64 (S.D.N.Y. June 8, 2022) (granting final approval after noting  
22 “the difficulties of estimating a maximum range of likely recovery in a data breach case, given that  
23 no such claims have proceeded to jury verdict”). Thus, this factor supports approval. Miller Decl.  
24 ¶52.

25 ***Fifth***, “the extent of discovery completed and the stage of the proceedings” supports  
26 preliminary approval. *Kullar*, 168 Cal. App. 4th at 128. In analogous data breach cases, this factor  
27

1 supports preliminary approval. *See, e.g., Planned Parenthood*, 2024 Cal. Super. LEXIS 2, \*23–  
2 24, 31 (explaining that the parties exchanged discovery “prior to the mediation” which was  
3 “sufficient”); *Stoffers*, 2023 Cal. Super. LEXIS 26400, \*32 (“Were investigation and discovery  
4 sufficient to allow counsel and the court to act intelligently? Yes. Counsel represents that they  
5 conducted investigation on the data breach and Defendant’s response, and obtained through  
6 Defendant’s voluntary production, confirmatory information regarding its investigation of the  
7 Data Breach, the scope of the Data Breach and its response to the Data Breach.”).

8 Likewise, Class Counsel engaged in substantial pre-suit discovery about the Data Breach  
9 and the specific injuries suffered by Plaintiff. Miller Decl. ¶53. Moreover, prior to mediation with  
10 the Honorable Ronald B. Leighton (Ret.), the Parties exchanged mediation statements and informal  
11 discovery—including, *inter alia*, information about the scope of the Data Breach, the size of the  
12 Settlement Class, and Defendant’s response to the Data Breach.” *Id.* This exchange of information  
13 enabled the Parties to better evaluate the strengths and weaknesses of the underlying claims and  
14 defenses. *Id.* Thus, the “extent of discovery” was sufficient to ensure that the Settlement was the  
15 product of well-informed negotiations. *Id.* Thus, this factor supports approval. *Id.*

16 **Sixth**, “the experience and views of counsel” supports preliminary approval. *Kullar*, 168  
17 Cal. App. 4th at 128. In analogous data breach cases, this factor supports preliminary approval.  
18 *See, e.g., Planned Parenthood*, 2024 Cal. Super. LEXIS 2, \*31 (explaining that counsel “is  
19 experienced in class action litigation”); *Stoffers*, 2023 Cal. Super. LEXIS 26400, \*33 (same). Here,  
20 “Cassandra P. Miller of Strauss Borrelli PLLC is currently litigating over one hundred data breach  
21 cases in courts around the country as lead counsel or co-counsel on behalf of millions of data  
22 breach victims.” Miller Decl. ¶54. Based on this experience, Class Counsel believes that  
23 preliminary approval is proper given the substantial relief secured by the Settlement. *Id.* Thus, this  
24 factor supports approval. *Id.*

25 **Seventh**, “the presence of a governmental participant” is inapplicable. *Kullar*, 168 Cal.  
26 App. 4th at 128. In analogous data breach cases, courts recognize that this factor is inapplicable

1 when there is no “governmental participant.” *See, e.g., Planned Parenthood*, 2024 Cal. Super.  
2 LEXIS 2, \*31 (“This factor is not applicable here.”); *Stoffers*, 2023 Cal. Super. LEXIS 26400, \*33  
3 (same). Likewise, there is no “governmental participant” in this case. Miller Decl. ¶55. Thus, this  
4 factor is inapplicable. *Id.*

5 ***Eighth***, “the reaction of the class members to the proposed settlement” is inapplicable at  
6 this early stage (because the Settlement Class has not received Notice of the Settlement). *Kullar*,  
7 168 Cal. App. 4th at 128; *see also Planned Parenthood*, 2024 Cal. Super. LEXIS 2, \*31 (“The  
8 class members’ reactions will not be known until they receive notice and are afforded an  
9 opportunity to object, opt-out and/or submit claim forms. This factor becomes relevant during the  
10 fairness hearing.”); *Stoffers*, 2023 Cal. Super. LEXIS 26400, \*33 (same). Likewise, Settlement  
11 Class Members have not received Notice of the Settlement—and thus, they have not had an  
12 opportunity to voice their support (or lack thereof) to the Settlement. Miller Decl. ¶56. Thus, this  
13 factor is inapplicable. *Id.*

14 **V. Conclusion**

15 In sum, the Settlement Class satisfies Code of Civil Procedure section 382 and is fair,  
16 reasonable, and adequate—as evidenced by the “presumption of fairness” and the *Kullar* Factors.  
17 For these reasons, Plaintiff respectfully requests that this Court grant preliminary approval,  
18 preliminarily certify the Settlement Class for purposes of settlement, and enter the proposed  
19 preliminary approval order.

20  
21 DATE: August 25, 2025

Respectfully submitted,

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1 **CERTIFICATE OF SERVICE**

2 I, Andrew G. Gunem, hereby certify that on August 25, 2025, I electronically filed the  
3 foregoing with the Clerk of the Court using the OneLegal E-Filing system, which will send  
4 notification of such filing to counsel of record via the OneLegal system.

5 DATED this 25th day of August, 2025.

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7  
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