Exhibit B

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE SAN FRANCISCO 49ERS DATA BREACH LITIGATION,

This Document Relates To: All Actions

Case No. 3:22-cv-05138-JD

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF AMENDED CLASS ACTION SETTLEMENT; MEMORANDUM IN SUPPORT

Date: April 24, 2025
Time: 10:00 A.M.
Courtroom: 11
Judge: Hon. James Donato

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on April 24, 2025, at 10:00 AM, or as soon thereafter as counsel may be heard, before the Honorable James Donato, at San Francisco Courthouse, Courtroom 11, 19th Floor, 450 Golden Gate Avenue, San Francisco, California 94102, Plaintiffs will and hereby do move this Court, pursuant to Federal Rule of Civil Procedure 23, for an order granting Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

Plaintiffs seek provisional certification of the Settlement Class and California Subclass, appointment of undersigned counsel as Settlement Class Counsel, appointment of the named Plaintiffs in the consolidated actions as Class Representatives, and preliminary approval of the proposed Class Action Settlement.

Plaintiffs base their Motion for Preliminary Approval of Class Action Settlement on: this Notice; the Memorandum of Points and Authorities filed in support thereof; the Settlement Agreement and Release ("Settlement Agreement"); the Declaration of M. Anderson Berry in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Berry Decl."); the Declaration of Andrea R. Dudinsky of Kroll Settlement Administration LLC in Connection with Preliminary Approval ("Kroll Decl.") all other records and papers on file in this action; any oral argument on the Motion; and all other matters properly before the Court.

Plaintiffs seek an order pursuant to Federal Rule of Civil Procedure 23(b)(3) certifying the Settlement Class more fully described in the Settlement Agreement, attached hereto as **Exhibit 1**; preliminarily approving the Settlement as fair, reasonable, and adequate; directing notice to be disseminated to the Settlement Class in the form and manner proposed by the parties as set forth in the Settlement Agreement and attached to the Settlement Agreement as **Exhibits A and B** thereto; appointing Kroll Settlement Administration LLC to serve as the Claims Administrator; appointing Plaintiffs as Class Representatives and the undersigned attorneys as Class Counsel; and setting a hearing date and schedule for final approval of the Settlement and consideration of Class Counsel's forthcoming motion for an award of fees, costs, expenses, and service awards.

I. INTRODUCTION

Plaintiffs present a proposed class action settlement that would resolve their claims against Defendant 49ers Football Company LLC ("49ers"). In exchange for Plaintiffs and Settlement Class Members releasing their claims arising from the 2022 Data Incident, Defendant will fund a non-reversionary $610,000.00 Settlement Fund from which Settlement Class Members shall receive a *pro-rata* share of the Settlement Remainder (i.e. what remains in the Settlement Fund after payment for costs of notice and claims administration, incentive payments to the Plaintiffs, and attorneys' fees and costs), except that each California Settlement Subclass Member shall be allocated three shares of the Settlement Remainder in recognition of their release of their statutory claims against Defendant. Class Counsel estimates California Settlement Subclass Members will receive approximately $30 and other Settlement Class Members will receive approximately $10.

Significant changes to this Settlement were made to address the Court's concerns. The claims process was eliminated. Instead, all, Settlement Class Members will automatically receive a *pro rata* share of the Settlement via either electronic payment of physical check. And they have simplified the notice process, having located email address for approximately 1/3 of the class so that email can be the primary form of notice, with U.S. mail as a supplemental form of notice. The settlement timeline provides Class Members with sixty (60) days to opt-out following the Notice Commencement Date, and Class Counsel will file their motion for attorneys' fees, costs, and expenses prior to the Notice Commencement Date. Finally, this Motion includes a declaration from Defendant identifying changes to its data privacy practices and a chart comparing settlement outcomes in data breach cases.

In light of these substantial revisions, the Parties believe the proposed Settlement is fair, reasonable, adequate, and an excellent result for the Class. Therefore, Plaintiffs respectfully request that the Court (1) certify the proposed Settlement Class and California Settlement Subclass under Rule 23(b)(3), (2) preliminarily approve the proposed Settlement, and (3) approve the proposed notice plan.

II. ISSUES TO BE DECIDED

1) Whether the Settlement Class and California Subclass should be provisionally certified; 2) whether the proposed Class Action Settlement should be preliminarily approved; 3) whether notice should issue to the Settlement Class and California Subclass; 4) whether the named Plaintiffs in the consolidated actions should be named as Class Representatives, and 5) whether undersigned Plaintiffs' Counsel should be appointed as Settlement Class Counsel.

III. STATEMENT OF FACTS AND SUMMARY OF PROPOSED SETTLEMENT

This case arises from a ransomware attack involving Defendant's computer systems. Plaintiffs allege that on February 6, 2022, cybercriminals bypassed the 49ers' security systems undetected and accessed PII as part of a "ransomware" attack ("Data Incident"). Plaintiffs further allege that, as a result of the Data Incident, the criminals gained access to Plaintiffs' and "other consumers[']" personal information, including but not limited to name, date of birth, and Social Security Number" (collectively, "PII"). ECF. No. 28.

After discovering the Data Incident, the 49ers notified approximately 20,930 individuals of the Data Incident. 49ers offered individuals who also had their social security or driver's license number impacted one year of free credit monitoring.

Individuals, including Plaintiffs, were mailed notices of the Data Incident in or around August 31, 2022 and September 1, 2022. On September 9, 2022, Plaintiff Samantha Donelson filed a lawsuit asserting claims against the 49ers relating to the Data Incident. On December 22, 2022, Plaintiff James Sampson filed a separate lawsuit asserting claims against the 49ers relating to the Data Incident. On January 10, 2023, Plaintiff Katherine Finch filed a separate lawsuit asserting claims against the 49ers relating to the Data Incident. On February 23, 2023, the Court consolidated these matters, and on April 4, 2023, Plaintiffs filed the operative amended class-action complaint in the United States District Court for the Northern District of California. (ECF No. 28). The case is titled *In re San Francisco 49ers Data Breach Litigation,* Case No. 2:22-cv-05138-JD (N.D. Cal.) (the "Litigation"). Defendant filed a Motion to Dismiss Plaintiffs' Complaint on December 8, 2023. (ECF No. 42). On August 15, 2024, this Court issued an Order

granting Defendant's motion only as to Plaintiffs' causes of action for negligence *per se* and for violations of the Georgia Uniform Deceptive Trade Practices Act, Ga. Code Ann. § 10-1-370 *et seq*. but denying it as to all other causes of action. (ECF No. 58).

From the onset of the Litigation, and over the course of nearly two years, the Parties have engaged in settlement negotiations. The Parties participated in a formal mediation presided over by Bruce Friedman, Esq. on January 23, 2023. As a result of these negotiations and the mediation, the Parties reached an initial settlement, which this Court recommended certain changes to on separate occasions (ECF Nos. 35, 63). The Parties engaged in continued negotiations in light of the Court's comments and, as a result of those negotiations, have reached the instant Settlement which Plaintiffs believe to be advantageous to the Settlement Class.

IV. SETTLEMENT TERMS

1. INFORMATION ABOUT THE SETTLEMENT

a. Any differences between the settlement class and the class proposed in the operative complaint (or, if a class has been certified, the certified class) and an explanation as to why the differences are appropriate.

The settlement classes are substantially similar to the classes proposed in the operative complaint. *Cf.* the Settlement Agreement ("S.A."), §§ 1.2, 1.25, *to* the First Amended Consolidated Class Action Complaint ("CAC"), ECF No. 28, ¶78.

In the CAC, the classes are defined as follows:

- All individuals whose PII was compromised in the Data Breach disclosed by the San Francisco 49ers on or about August 31, 2022 ("Nationwide Class" or "Class").
- All individuals residing in California whose PII was compromised in the data breach first announced by Defendant on or about August 31, 2022 (the "California Subclass").
- All individuals residing in Georgia whose PII was compromised in the data breach first announced by Defendant on or about August 31, 2022 (the "Georgia Subclass").

CAC, ECF No. 28, ¶78.

> The Settlement Class is defined as follows:
>
> All United States residents who were mailed notice by the 49ers that their personal and/or financial information was impacted in a data incident occurring between February 6, 2022 and February 11, 2022.

S.A. § 1.25. The following persons are excluded from the class definition: "(i) the 49ers, the Related Entities, and their officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) any judges assigned to this case and their staff and family; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge." *Id.* The Settlement Class includes 20,930 individuals. *Id.* at p. 1. The California Settlement Subclass includes:

> All persons who were mailed notification of the Data Incident from the 49ers at a California address.

Id. § 1.2.

The substantive differences between the definitions in the CAC and the Settlement Agreement include: (1) membership in the settlement classes is limited to individuals whom the 49ers already mailed notice of the data breach (*id*; ECF Nos. 43, 48, and 53); (2) the Settlement does not contain a Georgia subclass; and (3) the Settlement explicitly identifies certain exclusions from the Settlement Class.

The differences are appropriate. First, the individuals to whom the 49ers already mailed notice of the data breach are ascertainable for purposes of administering the Settlement and confirming class membership. Second, Plaintiffs cannot pursue claims on behalf of a Georgia subclass because on August 15, 2024, this Court issued an Order granting Defendant's motion to dismiss as to Plaintiffs' cause of for violations of the Georgia Uniform Deceptive Trade Practices Act, Ga. Code Ann. § 10-1-370 *et seq.* ECF No. 58. Third, in negotiating the settlement, the Parties agreed to the aforementioned common-sense exclusions. Declaration of M. Anderson Berry ("Berry Decl."), ¶ 17.

b. Any differences between the claims to be released and the claims in the operative complaint (or, if a class has been certified, the certified class) and an explanation as to why the differences are appropriate.

The claims to be released only include those which arise from the February 6, 2022 "ransomware" attach of the 49ers' security systems (the "Data Incident"). The surviving claims in the CAC include: Negligence; Negligence Per Se; Breach of Implied Contract; Violation of California's Consumer Records Act ("CCRA"), Cal. Civ. Code § 1798.80, *et seq.*; Violation of California's Unfair Competition Law ("UCL"), Cal. Bus. Code. § 17200 *et seq.*; and Violation of the California Consumer Privacy Act ("CCPA"), Cal. Civ. Code § 1798.150.

For settlement purposes the "Released Claims" are described in §1.21 of the Settlement Agreement. Members of the Settlement Classes who do not opt out will release "any and all past, present, and future claims" against the 49ers that concern or arise from "the Data Incident and alleged theft of personal information or the allegations, transactions, occurrences, facts, or circumstances alleged in otherwise described in this Litigation." This is a standard release, carefully tailored to release only those claims that arise from the data incident.

c. The class recovery under the settlement (including details about and the value of injunctive relief), the potential class recovery if plaintiffs had fully prevailed on each of their claims, claim by claim, and a justification of the discount applied to the claims.

Defendant will establish a $610,000 non-reversionary cash fund. S.A., § 1.27. Following payment of settlement administration costs, approved attorneys' fees and expenses, and approved incentive payments, the fund will be distributed on a *pro rata* basis to the Settlement Classes, with California Settlement Subclass members receiving three shares (estimated at $30 each), and non-California settlement class members receiving one share (estimated at $10 each), until the fund is exhausted. *Id.* at § 2.3. These numbers are estimates and may change based on court orders, settlement costs, or redistribution of funds from unclaimed checks sent to Settlement Class Members. Additionally, as part of the Settlement, Defendant has confirmed that it has made information security improvements, with a declaration from Defendant, attached as **Exhibit E** to the Settlement Agreement, confirming those changes. *Id.* at § 2.4. and **Exhibit E**.

The settlement benefits compare favorably to the result that Class Members could obtain at trial. If Plaintiffs had fully prevailed on each of their claims, they would have sought recovery for their out-of-pocket losses, nominal damages, punitive damages, declaratory relief, and for statutory damages under the California Consumer Privacy Act ("CCPA"). However, the quantum of their damages is highly variable; some, though not all, will likely suffer varying degrees of unnecessary expenses, out-of-pocket losses, and so forth, and class members will continue to be at increased risk of identity theft and fraud for years to come. Regarding declaratory relief, the result prevailing Plaintiffs would achieve at trial is similar to the result received here, as Defendant has agreed to confirm the improvements made to its information security, as is necessary to protect the interests of Plaintiffs and the Class, with the steps it has or will take outlined in detail in **Exhibit E** to the Settlement Agreement. At trial, the potential award of exemplary and punitive damages is unlikely, given the fact punitive damages require that Plaintiffs prove Defendant act egregiously or intentionally exposed personally information, which Defendant disputes.

At trial, Plaintiffs would have sought recovery for their loss of privacy, through statutory damages of $100–$750 for California Settlement Subclass members (CAL. CIV. CODE § 1798.150(a)(1)(A)) and by requesting an award from the jury that compensates the class for the value of their privacy injuries, *see, e.g.*, *Flores-Mendez v. Zoosk, Inc.*, 2021 U.S. Dist. LEXIS 18799, at *11 (N.D. Cal. Jan. 30, 2021). The structure here, awarding California Settlement Subclass members three shares of the *pro rata* distribution, provides for benefits to compensate all Settlement Class Members for their loss of privacy and makes a cash payment in recognition of the California Settlement Subclass members. While the payment is unlikely to equal the statutory damages had this case gone to trial and been won by Plaintiffs, the risk and expense of taking this case through to trial is substantial.

Indeed, while Plaintiffs are confident of the ultimate outcome of the case, they face several challenges going forward, which justify the discount applied to the claims. On the merits, if they were to proceed to litigate their claims through trial, Plaintiffs would encounter risks in obtaining

and maintaining certification of the class. The class has not yet been certified, and Defendant will certainly oppose certification if the case proceeds. Thus, Plaintiffs "necessarily risk losing class action status." *Grimm v. Am. Eagle Airlines, Inc.*, 2014 WL 1274376, at *10 (C.D. Cal. Sept. 24, 2014). Class certification in contested consumer data breach cases is not common. *See, e.g.*, *In re Brinker Data Incident Litig.*, 2021 WL 1405508, at *14 (M.D. Fla. Apr. 14, 2021); *Smith v. Triad of Ala., LLC*, No. 1:14-CV-324-WKW, 2017 WL 1044692, at *13 (M.D. Ala. Mar. 17, 2017) (certifying negligence class in data-breach suit), *aff'd on reconsideration*, 2017 WL 3816722 (M.D. Ala. Aug. 31, 2017); *Kostka v. Dickey's Barbecue Restaurants, Inc.*, 2022 WL 16821665 (N.D. Tex. Nov. 8, 2022) *adopting report and recommendation* 2022 WL 16821685 (N.D. Tex. Oct. 14, 2022) (recommending certification class claiming CCPA violations). While certification of additional consumer data breach classes may well follow, it still remains a substantial risk for Plaintiffs in this case.

In addition, class certification and summary judgment motions will take, at a minimum, a year to brief, and to obtain rulings from the Court. While summary judgment might have been able to narrow some of the legal questions, it is highly likely that a jury would have to decide whether or not Defendant exercised proper care in protecting its data. This means that a jury trial could be held no earlier than the early portion of 2026. In the rare case where a class action proceeds to judgment, the defendant has a due process right to contest certain issues that may affect its total liability. *See Mullins v. Direct Digital, LLC*, 795 F.3d 654, 672 (7th Cir. 2015) ("In all cases, the defendant has a right not to pay in excess of its liability and to present individual defenses, but both rights are protected by other features of the class device and ordinary civil procedure."). Both Rule 23 and due process allow those proceedings to occur in a post-judgment claims administration process before a special master. *See Brown v. DirecTV, LLC*, 562 F. Supp. 3d 590, 604 (C.D. Cal. 2021). Moreover, to the best of Class Counsel's knowledge, no data breach case has gone to trial. As such, a trial of on the merits would be truly uncharted territory, making the risks difficult to fully evaluate by any party. This is on top of the complexities and risks of class trials that, while manageable, are more significant than a single plaintiff litigation.

Moreover, data breach cases may present a situation where a claims process is necessary even in the event of a favorable jury verdict. Plaintiffs assert that all class members necessarily suffered an injury by virtue of the improper disclosure of their PII. *See Mehta v. Robinhood Fin. LLC*, 2021 U.S. Dist. LEXIS 253782, at *19 (N.D. Cal. May 6, 2021) (holding that "Plaintiffs adequately allege damages," including from "loss of control over the use of their identity" and other "privacy injuries"); *Flores-Mendez*, 2021 U.S. Dist. LEXIS 18799, at *11 (similar). However, the quantum of their damages is highly variable; some, though not all, will likely suffer varying degrees of unnecessary expenses, out-of-pocket losses, and so forth. This potential issue "of individualized damages cannot, by itself, defeat class certification under Rule 23(b)(3)." *Leyva v. Medline Indus.*, 716 F.3d 510, 514 (9th Cir. 2013). What it can do is result in class members being required to file claims before they can recover. *See Brown*, 562 F. Supp. 3d at 604 n.17. If class members may have been required to file a claim if they had won at trial, then this Settlement, which forgoes a cumbersome claim process, is to the benefit of the class.

In light of these complexities and difficulties, the Settlement provides recovery to all Settlement Class members regardless of whether they have yet suffered concrete harm.

d. Any other cases that will be affected by the settlement, an explanation of what claims will be released in those cases if the settlement is approved, the class definitions in those cases, their procedural posture, whether plaintiffs' counsel in those cases participated in the settlement negotiations, a brief history of plaintiffs' counsel's discussions with counsel for plaintiffs in those other cases before and during the settlement negotiations, an explanation of the level of coordination between the two groups of plaintiffs' counsel, and an explanation of the significance of those factors on settlement approval. If there are no such cases, counsel should so state.

The Parties are not aware of any other cases that will be affected by the settlement.

e. The proposed allocation plan for the settlement fund.

Defendant will establish a $610,000 non-reversionary cash fund. S.A. § 1.27. Following payment of settlement administration costs, approved attorneys' fees and expenses, and approved incentive payments, the fund will be distributed on a *pro rata* basis to the Settlement Classes, with California Settlement Subclass members receiving three shares (estimated at $30), and non-

California Settlement Class members receiving one share (estimated at $10), until the fund is exhausted. *Id.* at § 2.3. These numbers are estimates and may change based on court orders, settlement costs, or redistribution of funds from unclaimed checks sent to Settlement Class Members.

f. If there is a claim form, an estimate of the expected claim rate in light of the experience of the selected claims administrator and/or counsel based on comparable settlements, the identity of the examples used for the estimate, and the reason for the selection of those examples.

No claim needs to be filed to receive payment. *Id.* at § 2.3. If Settlement Class Members do nothing, a check will be mailed to them at the address in the 49ers' records. *Id.* If a Settlement Class Member wishes to confirm or change their address, or request payment electronically, the Class Notice will instruct them to do via the Settlement Website or by contacting the Claims Administrator. *Id.*

g. In light of Ninth Circuit case law disfavoring reversions, whether and under what circumstances money originally designated for class recovery will revert to any defendant, the expected and potential amount of any such reversion, and an explanation as to why a reversion is appropriate

This case involves the creation of a non-reversionary Settlement Fund which shall be exhausted by the Settlement Remainder payment, no funds shall ever revert to Defendant. *Id.* at § 2.3.

2. SETTLEMENT ADMINISTRATION—The parties are expected to get multiple competing bids from potential settlement administrators. In the motion for preliminary approval, the parties should:

a. Identify the proposed settlement administrator, the settlement administrator selection process, how many settlement administrators submitted proposals, what methods of notice and claims payment were proposed, and the lead class counsel's firms' history of engagements with the settlement administrator over the last two years.

After a competitive bidding process, the parties have agreed to a robust notice program to be administered by Kroll Settlement Administration (S.A., § 1.5), a nationally recognized and well-regarded class action settlement administrator experienced in administering class action claims generally and specifically those of the type provided for and made in data breach litigation.

Kroll has a trusted and proven track record of supporting thousands of class action administrations, with over 50 years of legal administration experience. Kroll Decl., ¶ 2.

Kroll was selected as the lowest bidder after the Parties solicited blind, competitive bids from three experienced and reputable claims administrators. Berry Decl. ¶ 34. The proposed methods of notice to the settlement class are email and U.S. mail, as well as establishment of a settlement website, and a toll-free help line. *Id.* ¶ 25; Kroll Decl. ¶¶ 7-16.

In addition to the direct notice, the Administrator will also establish a dedicated Settlement Website and will maintain and update the website, which will include links to the Short Notice, and Long Notice forms approved by the Court, as well as the Settlement Agreement. S.A. § 3.2(b). The Claims Administrator will also make a toll-free help line staffed with a reasonable number of live operators available to provide Settlement Class Members with additional information about the settlement. S.A. § 3.2(e).

Class counsel's history of engagements with Kroll over the past two years is identified in Exhibit A to the Kroll Declaration.

b. Address the settlement administrator's procedures for securely handling class member data (including technical, administrative, and physical controls; retention; destruction; audits; crisis response; etc.), the settlement administrator's acceptance of responsibility and maintenance of insurance in case of errors, the anticipated administrative costs, the reasonableness of those costs in relation to the value of the settlement, and who will pay the costs.

Kroll is an industry leader in data security. Kroll is CCPA, HIPAA, and GDPR compliant and maintains numerous industry certifications related to data security, including SOC2 and ISO 2700 certification. Kroll Decl., ¶ 20. Kroll has technical, physical, and procedural protocols and safeguards in place to ensure the security and privacy of Settlement Class Member data. These include standards related to data retention and document destruction; fully redundant environmental systems and redundant storage; regular audits; and documented plans for both incident and crisis response, including breach protocols and physical controls. *Id.* Kroll's information security program includes vulnerability management, compliance, security

monitoring and security engineering supported by a team of information security professionals, including a Chief Information Security Officer and Chief Privacy Officer. *Id.*

Kroll's administrative policies incorporate commitment to ethical rules and setting forth standards of ethical and legal behavior. Kroll's administrative policies include pre-hire background checks; controls for accessing systems; annual code of ethics training and certification; annual information security training and certification; and HIPAA training for all staff. *Id.* at ¶ 22.

Kroll has a "disaster plan" for immediate response to security incidents such as a data breach. *Id.* at ¶ 23. Kroll has defined and tested incident response and disaster recovery plans that it employs across the organization. *Id.* Should an incident occur, Kroll will take immediate action, which will include notification to clients and claimants of the incident consistent with privacy laws and regulations or as otherwise provided in any contractual agreements with its clients. *Id.* Kroll also has detailed vendor on-boarding and management policies. *Id.*

Security keycard access is required to enter Kroll's facilities. Additionally, keycard access is required for employees to use the facility elevators and to enter Kroll's office spaces. *Id.* at ¶ 24.

Kroll only requires the collection of data necessary to effectively administer the settlement. data provided to the administrator for purposes of notice, settlement, or award administration will be used solely for settlement implementation and for no other purpose. *Id.* at ¶ 25. Since personally identifiable information ("PII") (e.g., Social Security Numbers, account information, dates of birth, etc.) are not necessary for administration, the Parties will not provide Kroll with such PII. Kroll does not and will not share Settlement Class Member data with third parties unless authorized or directed to do so by the Parties or the Court. *Id.* Internally, access to data is limited to only those employees working on the particular matter. *Id.* In addition, Kroll has standard practices for data retention and destruction. *Id.* Upon termination of Kroll's services as Claims Administrator, for all documents containing Sensitive Data other than claims (which shall be treated in accordance with Kroll's retention order), Kroll shall not use or disclose the Sensitive

Data retained by Kroll other than for the purposes for which such Sensitive Data was retained and subject to the same conditions which applied prior to termination. *Id.* Kroll shall return to the Client, or, if agreed to by the Client in writing, destroy, the Sensitive Data retained by Kroll when it is no longer needed by Kroll for its proper management and administration or to carry out its responsibilities. *Id.*

Kroll maintains standard business insurance, including professional liability insurance, cyber insurance, and crime insurance. *Id.* at ¶21.

Based on Kroll's current understanding of the Settlement Class size and requested Claims Administration services, estimated Claims Administration fees are approximately $81,849 for fees, costs and other expenses incurred for Claims Administration pursuant to the Amended Settlement Agreement. *Id.* ¶ 18. In counsel's extensive experience in similar class action settlements, the estimated settlement administration costs are reasonable. The settlement administration costs will be paid out of the settlement fund established by Defendant.

3. NOTICE—The parties should ensure that the class notice is easily understandable, in light of the class members' communication patterns, education levels, and language needs.

The class notice contains all of the information required by the Northern District Guidelines. Notably, the Parties revised and simplified the class notice to address the Court's concerns regarding the length and complexity of the initial notice submitted for approval. *See* **Exhibit A** (the proposed Short-Form Notice) and **Exhibit B** (the proposed Long-Form Notice) attached to the Settlement Agreement.

The notice distribution plan is designed to achieve the best notice that is practicable under the circumstances, consistent with Federal Rule of Civil Procedure 23(c)(2). Notably, it relies on U.S. mail and email. Email is the primary form of notice, where the Parties were able to locate the email addresses for the class members, with U.S. mail as a supplemental form of notice.

The Parties were able to locate email addresses for approximately 6,400 settlement class members. For those class members for whom the Parties located an email address, notice of the settlement will be distributed via email. For those class members for whom no email was located,

short form notice of the settlement will be distributed via U.S. Mail. If email was attempted, but the Administrator received confirmation that the email address is not valid, notice will be distributed via U.S. Mail. S.A., § 3.2(c). *See also* Kroll Decl., ¶ 10.

Before any mailing occurs, the Claims Administrator shall run the postal addresses of Settlement Class Members through the United States Postal Service National Change of Address database to update any change of address on file with the USPS. S.A., 3.2(c). If a mailed notice is returned to the Claims Administrator by the USPS because the address of the recipient is no longer valid, the Claims Administrator shall re-send the notice to the forwarding address, or if the envelope does not contain a new forwarding address, the Claims Administrator shall perform a standard skip trace to attempt to ascertain the current address of the particular Settlement Class Member in question and, re-send the short-form notice if the address is found. S.A., 3.2(c). *See also* Kroll Decl., ¶¶ 11-14.

Because U.S. Mail is part of the distribution plan, the Short Notice is designed to enhance the chance that it will be opened by conspicuously stating that it relates to a proposed settlement in a class action lawsuit involving the San Francisco 49ers Data Breach Litigation. S.A., **Exhibit A**.

The proposed class settlement notice contains the identical language proposed by the Northern District Guidelines regarding how to obtain more information about the Settlement, including by contacting Class Counsel or the Clerk of the Court. *See* S.A., **Exhibit B, § 20**.

Finally, in light of the Court's concern that the distribution of settlement payments via paper checks sent through U.S. mail may result in a lower realization rate, the Settlement Class Members have the option of receiving payment via electronic payment or physical check.

Because the notice plan ensures that Settlement Class Members' due process rights are amply protected, this Court should approve it. *See Hartranft v. TVI, Inc.*, 2019 WL 1746137, at *3 (C.D. Cal. Apr. 18, 2019).

4. OPT-OUTS—The notice should instruct class members who wish to opt out of the settlement to send a letter, setting forth their name and information needed

> **to be properly identified and to opt out of the settlement, to the settlement administrator and/or the person or entity designated to receive opt outs. It should require only the information needed to opt out of the settlement and no extraneous information or hurdles. The notice should clearly advise class members of the deadline, methods to opt out, and the consequences of opting out.**

The proposed notices instruct Class Members who wish to opt out to send a letter to the Settlement Administrator, setting forth their name and i intent to opt out of settlement. The notices clearly advise class members of the deadline to opt out and the consequences of opting out.

The proposed Short-Form Notice contains the following instructions regarding opting out of the settlement:

> **Exclude yourself**: You can get out of the settlement and keep your right to sue the 49ers related to the Data Incident, but you will not receive any compensation from the settlement. You must submit a valid and timely request for exclusion to the Claims Administrator by <<Opt-Out Date>>.

See S.A., **Exhibit A**.

The proposed Long-Form Notice contains additional information as well about how to opt out, the address to mail opt outs, how to opt out via the settlement website, and the consequences of opting out. *See* S.A., **Exhibit B, § 10**.

> **5. OBJECTIONS—Objections must comply with Federal Rule of Civil Procedure 23(e)(5). The notice should instruct class members who wish to object to the settlement to send their written objections only to the court. All objections will be scanned into the electronic case docket, and the parties will receive electronic notices of filings. The notice should make clear that the court can only approve or deny the settlement and cannot change the terms of the settlement. The notice should clearly advise class members of the deadline for submission of any objections.**

The proposed Short-Form Notice contains instructions regarding objecting to the settlement, which comply with the Northern District Guidelines by identifying how and where to submit objections, information about the Final Fairness Hearing date and time, and information about the attorneys' fees and costs and service awards that will be sought. *See* S.A., **Exhibit A**.

The Long-Form Notice contains nearly the exact language recommended by the Northern District Guidelines, with Class Counsel making clear that the objections must be submitted only

to the court and postmarked by no later than the objection date, in bold. *See* S.A., **Exhibit B, § 14**.

> **6. ATTORNEYS' FEES AND COSTS—Although attorneys' fee requests will not be approved until the final approval hearing, class counsel should include information about the fees and costs (including expert fees) they intend to request, their lodestar calculation (including total hours), and resulting multiplier in the motion for preliminary approval. In a common fund case, the parties should include information about the relationship between the amount of the common fund, the requested fee, and the lodestar. To the extent counsel base their fee request on having obtained injunctive relief and/or other non-monetary relief for the class, counsel should discuss the benefit conferred on the class.**

The Settlement Agreement also provides that Class Counsel will apply to this Court for an order awarding up to twenty-five percent (25%) of the $610,000.00 Settlement Fund in attorneys' fees ($152,500.00), and for reimbursement of reasonable costs and expenses. S.A. § 7.2. This amount was negotiated only after the substantive terms of the Settlement were agreed upon, and the Settlement is not contingent upon an award of fees. *See* S.A. §§ 7.1, 7.5; *Tarlecki v. Bebe Stores, Inc.*, 2009 WL 3720872, at *2 (N.D. Cal. Nov. 3, 2009) (noting that "the approval of the settlement agreement as a whole does not depend on the quantum of the fees"). This fact is included in the long-form class settlement notice, as set forth below:

> Class Counsel will apply to the Court for an award of attorneys' fees up to twenty-five percent (25%) of the Settlement Fund ($152,500) as well as costs and litigation expenses. A copy of Proposed Settlement Class Counsel's application for attorneys' fees, costs, and expenses will be posted on the Settlement Website, [INSERT WEBSITE], before the Final Fairness Hearing. The Court will make the final decisions as to the amounts to be paid to Proposed Settlement Class Counsel, and may award less than the amount requested by Proposed Settlement Class Counsel.

See S.A., **Exhibit B, § 13**.

Class Counsel's projected attorneys' fee request of 25% of the common fund is consistent with the well-accepted "percentage-of-the-fund" method and the Ninth-Circuit's 25% benchmark. *Hanlon v. Chrysler Group*, 150 F.3d 1011, 1029 (9th Cir. 1998), *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-49 (9th Cir. 2002). And the value ascribed to the information security

changes enacted by Defendant is not included in the valuation of the Settlement Fund for attorneys' fee purposes.

Class Counsel's projected attorneys' fees request of $152,500.00 will be justified by Class Counsel's accrued lodestar, which includes the time spent investigating the Data Incident pre-suit, post-suit informal discovery and investigation, extensive settlement negotiations over the course of approximately two years, briefing and arguing Defendants' motion to dismiss, communicating with Plaintiffs, finalizing the terms of the Settlement Agreement, drafting and filing preliminary approval filings, supplemental filing, this motion for preliminary approval, and continuing to communicate with Plaintiffs. Berry Decl. ¶ 37. To date, Class Counsel has spent 561.86 hours, which equates to $464,333.30 in lodestar, litigating this matter. Berry Decl. ¶ 38. This results in a substantial negative multiplier. *Id.* A negative lodestar multiplier strongly suggests that Class Counsel's requested fee is reasonable. *See, e.g., Lymburner v. U.S. Fin. Funding, Inc.*, No. C-08-00325 EDL, 2012 WL 398816, at *6 (N.D. Cal. Feb. 7, 2012) (negative multiplier supports reasonableness of the fee request). Class Counsel anticipate accruing additional lodestar totals to get this case through settlement administration, final approval, and any other hearings the Court may request. *Id.* Additionally, to date, Class Counsel has incurred $10,729.85 in expenses, which include costs for filing fees, mediation, and travel. Berry Decl. ¶ 40.

Class Counsel will make detailed arguments in support for the requested attorneys' fees and costs in a separate motion that substantiates the reasonableness of their requests ,to be submitted to the Court before the Notice Commencement Date. S.A. § 7.5.

7. **SERVICE AWARDS—Judges in this district have different perspectives on extra payments to named plaintiffs or class representatives that are not made available to other class members. Counsel seeking approval of service awards should consult relevant prior orders by the judge reviewing the request. Although service award requests will not be approved until the final approval hearing, the parties should include information about the service awards they intend to request as well as a summary of the evidence supporting the awards in the motion for preliminary approval. The parties should ensure that neither the size nor any conditions placed on the incentive awards undermine the adequacy**

of the named plaintiffs or class representatives. In general, unused funds allocated to incentive awards should be distributed to the class pro rata or awarded to cy pres recipients.

Class Counsel will seek services awards in the amount of $2,500.00 for each representative Plaintiff. S.A., § 7.3. "Class representative service awards are well-established as legitimate in the Ninth Circuit." *Ramirez v. Rite Aid Corp.*, 2022 U.S. Dist. LEXIS 109069, *21 (C.D. Cal. May 3, 2022). A service award of $2,500 is reasonable and in line with awards approved by federal courts in California. *See, e.g.*, *In re Nat'l Collegiate Athletic Ass'n*, 2017 WL 6040065, at *11 (N.D. Cal. Dec. 6, 2017) (approving $20,000 service awards to each class representative and collecting cases approving similar awards); *Horton v. Cavalry Portfolio Servs., LLC*, 2020 WL 13327499, at *1 (S.D. Cal. Oct. 13, 2020) ($10,000 service award).

Based on extensive experience with similar class action settlement, Class Counsel believe this amount is reasonable and does not undermine the adequacy of the representative plaintiffs. The factors Class Counsel considered in deciding the appropriate service awards were the representative Plaintiffs' efforts in obtaining relief for the settlement class, balanced against the fact that the representative Plaintiffs were not required to respond to written discovery or be deposed in the case. The Class Members will be notified that class counsel will seek this service award for each Plaintiff. *See* S.A., **Exhibit B, § 13**.

8. **CY PRES AWARDEES—If the settlement contemplates a cy pres award, the parties should identify their chosen cy pres recipients, if any, and how those recipients are related to the subject matter of the lawsuit and the class members' claims. The parties should also identify any relationship they or their counsel have with the proposed cy pres recipients. In general, unused funds allocated to attorneys' fees, service awards, settlement administration costs, and class member payments should be distributed to the class pro rata if feasible, or else awarded to cy pres recipients or to the relevant government authorities.**

In lieu of designating a *cy pres* awardee, the Parties elected to redistribute funds from unclaimed checks to Settlement Class Members on an equal *pro rata* basis to Settlement Class Members who elected to receive payment electronically. S.A., § 8.4.

9. **TIMELINE—The parties should ensure that class members have at least thirty-five days to opt out or object to the settlement and the motion for attorneys' fees and costs.**

The settlement timeline provides class members with sixty (60) days to opt-out following the Notice Commencement Date. Class Counsel will file their motion for attorney's fees, costs and expenses, and service awards prior to the Notice Commencement Date, giving class members well over 35 days to opt out or object after the fee and cost motion is filed. S.A., § 4.1

10. CLASS ACTION FAIRNESS ACT (CAFA) AND SIMILAR REQUIREMENTS—The parties should address whether CAFA notice is required and, if so, when it will be given. In addition, the parties should address substantive compliance with CAFA. For example, if the settlement includes coupons, the parties should explain how the settlement complies with 28 U.S.C. § 1712. In addition, the parties should address whether any other required notices to government entities or others have been provided, such as notice to the Labor & Workforce Development Agency (LWDA) pursuant to the Private Attorneys General Act (PAGA).

The Parties will instruct Kroll to provide notice of the proposed settlement pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715(b) (the "CAFA Notice"). Kroll will send the CAFA Notice, which identifies how to access required documents relating to the settlement, via first-class certified mail to (a) the Attorney General of the United States and (b) the applicable state Attorneys General. The CAFA Notice will direct the recipients to the website www.CAFANotice.com, a site that will contain all the documents relating to the settlement referenced in the CAFA Notice. The CAFA notice will be sent within ten (10) days of the filing of the instant Motion. The Parties are not aware of any other required notices to government agencies.

11. COMPARABLE OUTCOMES—Lead class counsel should provide information about comparable cases, including settlements and litigation outcomes. Lead class counsel should provide the following information for as many as feasible (and at least one) comparable class settlements (i.e., settlements involving the same or similar claims, parties, issues):

Class Counsel's opinion that this $610,000 Settlement is fair and reasonable for the roughly 20,930 Class Members is informed by other data breach class action settlements based on the per class member recovery amount. For example, the following chart identifies the per

class member value based on the common fund settlement amount for certain recent cases that also involved sensitive, private information such as Social Security Numbers:

Case	Settlement Amount	Class Size	Average Value Per Class Member
Cochran v. Kroger Co., No. 5:21-cv-01887 (N.D. Cal.)	$5,000,000	3,825,200	$1.31
Marshall v. Lamoille Health Partners, No. 1:24-cv-00642 (D. Vt.)	$520,000	59,831	$9.03
In re Stanley Steemer International Data Breach Litigation, No. 2:23-cv-3932 (S.D. Ohio)	$700,000	63,000	$11.11
Rodriguez v. Mena Hospital Commission, No. 2:23-cv-2002 (W.D. Ark.)	$500,000	42,000	$11.90
Lamie v. Lendingtree, LLC, No. 3:22-cv-00637 (W.D.N.C.)	$875,000	69,142	$12.66
Kohn v. Loren Stark Co., Inc., No. 4:23-cv-3035 (S.D. Tex.)	$750,000	58,065	$12.92
Prutsman v. Nonstop Admin and Ins. Services, No. 3:23-cv-91131 (N.D. Cal.)	$1,600,000	115,649	$13.83
Lutz v. Electromed, Inc., No. 21-cv-2198 (D. Minn.)	$825,000	47,000	$17.55
Bitmouni v. Paysafe Payment Processing Solutions, LLC, No. 3:21-cv-00641-JCS (N.D. Cal.)	$2,000,000	91,000	$21.97
Abrams v. Savannah College of Art & Design, No. 1:22-cv-04297 (N.D. Ga.)	$375,000	16,890	$22.20
Stein v. Ethos Technologies, No. 3:22cv09203-SK (N.D. Cal.)	$1,000,000	36,000	$27.78 (not including credit monitoring that was funded separately)
***In re San Francisco 49ers Data Breach Litigation,* No. 3:22-cv-05138-JD (N.D. Cal.)**	**$610,000**	**20,930**	**$29.14** *estimated $30 to California Subclass Members and $10 to all other Class Members
Garges v. Liberty Partners, Case No. 22CV01190 (Sup. Ct. CA, Santa Cruz)	$675,000	19,127	$35.29

Following the Northern District's Procedural Guidance for Class Action Settlements, Class Counsel compares this settlement to a recent similar settlement where some of them (in addition to other attorneys) participated as counsel for plaintiffs, in more detail: *Bitmouni v. Paysafe Payment Processing Solutions, LLC,* No. 3:21-cv-00641-JCS (N.D. Cal.) ("*Bitmouni*").

Bitmouni contains similar facts and nearly identical claims: negligence, invasion of privacy, violation of UCL, and violation of the CCPA. *Bitmouni,* No. 3:21-cv-00641-JCS (N.D. Cal.), ECF. No. 52. There, over roughly 91,000 individuals had their PII compromised in a 2020 data breach. *Id.,* at ECF. No. 94-1. Because of the similar facts and causes of actions, the total exposure of defendant in *Bitmouni* if plaintiffs had prevailed on every claim is similar to the total exposure in this case – including out-of-pocket losses, nominal damages, and for statutory damages under the CCPA ranging from $100 to $750.

Like this case, *Bitmouni* was resolved on a non-reversionary common fund basis. *Id.* There, a settlement fund of $2,000,000 was created, representing a recovery of approximately $22 per Class Member. *Id. Bitmouni* had a claims process, whereby class members could submit a claim for up to $25,000 for reimbursement of out-of-pocket losses. *Id.* Here the $610,000.00 Settlement Fund represents a recovery of approximately $29 per Settlement Class Member, a substantially better result for the Class than in *Bitmouni,* and does not involve a claims process for out-of-pocket losses. The release in *Bitmouni,* like the release here, was carefully tailored to release only those claims that arise from the data incident. *Id.* Additionally, the defendant in *Bitmouni* agreed to take steps to enhance its data security measures (*id.*), like the Defendant agrees here.

In *Bitmouni,* Kroll served as claims administrator. *Id.,* at ECF. No. 97-2. Notice was sent to 91,132 class members, via U.S. mail. *Id.* Notices likely reached 89,552 of the 91,132 persons to whom notice was mailed, which equates to a reach rate of approximately 98.3%. *Id.* Kroll received a total of 1,093 Claim Forms, representing approximately 1% of the settlement class submitted claims forms. *Id.* The parties did not petition the Court for a *cy pres* distribution in *Bitmouni* because after out-of-pocket losses were paid, all Class Members received a *pro rata* share of what remained in the net settlement fund. *Id.,* at ECF. No. 94-1.

Kroll billed and the Court awarded $146,257.66 for Notice and Administrative Expenses in the *Bitmouni* matter, which is significantly more than Class Counsel's and Kroll's estimate of administrative costs in this case ($81,849). *Id.,* at ECF. Nos. 101, 103. The Court also gave Kroll

permission to petition the Court for reimbursement of the remaining costs of administration at the completion of administration, and Kroll estimated it would seek an additional $169,596.50. *Id.* The class in *Bitmouni* was approximately five times the size of the class here, which helps account for the high administrative costs. Additionally, in *Bitmouni,* the claims administrator did not send notice by email, whereas here, approximately 1/3 of the class will receive notice by email, which will significantly reduce administrative costs.

United States Magistrate Judge Joseph R. Spero granted preliminary approval of the class action settlement in *Bitmouni* on August 1, 2023 and final approval on February 2, 2024. The Court awarded $500,000 in attorneys' fees and litigations costs in the amount of $28,174.55. Because the Settlement forged for Plaintiffs and Class Members here provides Settlement benefits consistent with and better than those that were preliminarily and finally approved in *Bitmouni*, Plaintiffs and the Class respectfully request that the Court grant preliminary approval of class action settlement in this case.

V. ARGUMENT

1. The Court should certify the Settlement Class.

The parties have agreed (for settlement purposes only) to certification of the Settlement Class and California Settlement Subclass, *see* S.A. § 2.8, but the Court must still determine whether each of Rule 23(a)'s requirements and at least one of Rule 23(b)'s requirements are satisfied. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 622 (1997). That standard is satisfied here.

a. The Proposed Class is sufficiently numerous.

Class certification under Rule 23(a)(1) is appropriate where a class contains so many individuals "that joinder of all members is impracticable." FED. R. CIV. P. 23(a)(1). "[W]here the number of class members exceeds forty, and particularly where class members number in excess of one hundred, the numerosity requirement will generally be found to be met." *In re Linkedin User Privacy Litig.,* 309 F.R.D. 573, 583 (N.D. Cal. 2015) (citation omitted). There are 20,930

members of the Settlement Class and approximately 9,620 members of the California Settlement Subclass. S.A. at p. 2. This is well over the threshold to establish numerosity.

b. There are questions of law and fact common to the Class.

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." FED. R. CIV. P. 23(a)(1). This standard may be satisfied by "even a single common question." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011) (cleaned up). Here, the central question raised by the litigation is whether Defendant took reasonable steps to protect the personal information of class members that resided in Defendant's systems. That issue depends on the acts and omissions of Defendant and thus is a question common to the class. *See Hashemi v. Bosley, Inc.,* 2022 U.S. Dist. LEXIS 119454, at *7 (C.D. Cal. Feb. 22, 2022) (finding commonality where "Plaintiffs maintain that there are multiple common question of law or fact—i.e., whether Defendant breached its duty to safeguard the Class's PII, whether Defendant unreasonably delayed in notifying the Class about the data breach, and whether Defendant's security measures or lack thereof violated various statutory provisions."). Therefore, commonality is satisfied.

c. The Class Representatives' claims and defenses are typical of those they seek to represent.

"Typicality requires a showing that the named plaintiffs are members of the class they represent and that their claims are 'reasonably co-extensive with those of absent class members,' but not necessarily 'substantially identical.'" *Hashemi,* 2022 U.S. Dist. LEXIS 119454, at *7 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)). "The test of typicality 'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" *Id*. at *7-8 (quoting *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011) (internal citations omitted)).

As with commonality, typicality is routinely met in data breach cases, as both the class representative and the other members of the class were subject to the same event that gives rise the claims in the case, and thus subject to the same consequences of the allegedly improper data

protection. *See In re Yahoo!*, 2020 U.S. Dist. LEXIS 129939, at *25 ("the Settlement Class Representatives, like the Settlement Class as a whole, were all Yahoo users who allegedly either suffered identity theft and/or were placed at substantial risk for identity theft. Accordingly, Yahoo's allegedly inadequate data security harmed the Settlement Class Representatives in a common way as the rest of the Settlement Class Members."). Similarly here, the claims of Plaintiffs are the same as those of the other members of the class, as they stem from the same Incident and are the result of the same alleged action (or lack of action) on the part of Defendant.

d. Class counsel and the Class Representatives are adequate.

Rule 23(a)(4) is satisfied if "the representative parties will fairly and adequately protect the interests of the class." FED. R. CIV. P. 23(a)(4). The Court must measure the adequacy of representation by two standards: "(1) Do the representative plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the representative plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *In re Wireless Facilities*, 253 F.R.D. 607, 611 (S.D. Cal. 2008) (quoting *Staton*, 327 F.3d at 958). Class Counsel are experienced data privacy litigators with the knowledge to effectively evaluate and prosecute this case. Berry Decl. ¶ 45. The class representatives diligently represented the class by taking the initiative to commence this litigation, reviewing and approving the pleadings, and staying abreast of developments in the case. Berry Decl. at ¶ 43. Therefore, adequacy is satisfied.

e. Common questions predominate, such that classwide resolution is superior to individual adjudication.

Settlement class Certification is proper under Rule 23(b)(3) if "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." FRCP 23(b)(3).[1] Both predominance and superiority are satisfied here.

[1] Because Plaintiffs seek certification of a settlement class, the Court need not consider manageability concerns. *See Amchem*, 521 U.S. at 619–20; *In re Hyundai & Kia Fuel Economy Litig.*, 926 F.3d 539, 558 (9th Cir. 2019) (en banc).

When evaluating predominance, courts evaluate "whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016). That test is satisfied here because "Plaintiffs' case for liability depends, first and foremost, on whether [Defendant] used reasonable data security to protect Plaintiffs' personal information." *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 312 (N.D. Cal. 2018). As a result, "the focus" of this case is "on the extent and sufficiency of the specific security measures that [Defendant] employed," which presents "the precise type of predominant question that makes class-wide adjudication worthwhile." *Id.* Therefore, predominance is satisfied. *See In re Yahoo!,* 2020 U.S. Dist. LEXIS 129939, at *37–38 (applying same reasoning as *Anthem*).

Classwide resolution is also superior to individual adjudication. When evaluating superiority, courts ask whether "the aggregation of these claims can be expected to save time, effort and expense, and to promote uniformity without sacrificing procedural fairness," such that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." *Toolajian v. Air Methods Corp.*, 2020 U.S. Dist. LEXIS 250904, at *17 (N.D. Cal. Apr. 24, 2020) (internal quotation marks and citations omitted). "Where recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, [the superiority] factor weighs in favor of class certification." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010). Here, individual damages are relatively modest, as it is unlikely that many class members suffered significant out-of-pocket losses. *See* Summary of Proposed Settlement, *supra*, Part I.C.2. This makes it unlikely that a class member would retain their own attorney to pursue an individual claim. Moreover, even if class members were to pursue their claims individually, the efficiency gain obtained from having a single resolution of all the common issues dwarfs the benefit of allowing 20,930 individuals to pursue their own cases.

Therefore, the Court should certify the Settlement Class and California Settlement Subclass under Rule 23(b)(3).

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1. The Court Should Preliminarily Approve the Proposed Settlement.

Courts may approve a class settlement if it is "fair, reasonable, and adequate." FED. R. CIV. P. 23(e)(2). Relevant considerations include whether: (A) "the class representatives and class counsel have adequately represented the class"; (B) "the proposal was negotiated at arm's length"; (C) "the relief provided for the class is adequate"; and (D) "the proposal treats class members equitably relative to one another." *Id.* At the preliminary approval stage, the question is whether "the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls with the range of possible approval." *In re Facebook Biometric Info. Privacy Litig.*, 2020 U.S. Dist. LEXIS 151269, at *9 (N.D. Cal. Aug. 19, 2020) (quotation marks omitted). That standard is satisfied here.

a. The Class was adequately represented.

When considering adequacy of representation under Rule 23(e)(2)(A), courts ask two questions: "(a) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (b) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *In re MyFord Touch Consumer Litig.*, 2019 U.S. Dist. LEXIS 53356, at *24 (N.D. Cal. Mar. 28, 2019) (quoting *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000)). Here, and as discussed above, neither class counsel nor the class representatives have any conflicts of interest. Moreover, class counsel vigorously represented the interests of the class. This factor weighs in favor of approval.

b. The settlement was negotiated at arm's length.

Another important consideration is whether the settlement "was negotiated at arm's length." FED. R. CIV. P. 23(e)(2)(B). Although this factor does not create a presumption of fairness, *see Saucillo v. Peck*, 25 F.4th 1118, 1132 (9th Cir. 2022), "such negotiations can weigh in favor of approval," *Community Res. For Indep. Living v. Mobility Works of Cal.*, 533 F. Supp. 3d 881, 888 (N.D. Cal. 2020). *See also Rodriguez v. W. Publishing Corp.*, 563 F.3d 948, 965 (9th

Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution."). In this case, the parties' interactions were at all times adversarial. The parties spent considerable time and effort negotiating the settlement, including through private mediation with Bruce Friedman, Esq of JAMS, and subsequent negotiations spanning over a year and a half. *See* S.A. at p. 2. Class Counsel and Counsel for 49ers are well-versed in handling data breach class actions such as this one and fully understand the values recovered in similar cases. Therefore, the Court can be assured that the negotiations were not collusive.

When analyzing Rule 23(e)(2)(B), courts also ask whether any of the *Bluetooth* factors are present, which could suggest the presence of collusion. *See Cottle v. Plaid Inc.*, 340 F.R.D. 356, 376 (N.D. Cal. 2021) (citing *Briseno v. Henderson*, 998 F.3d 1014 (9th Cir. 2021)); *see also In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011). "These *Bluetooth* factors are (1) when counsel receive a disproportionate distribution of the settlement or when the class receives no monetary distribution but class counsel are amply rewarded; (2) when the payment of attorneys' fees is separate and apart from class funds; and (3) when the parties arrange for benefits that are not awarded to revert to the defendants rather than being added to the class fund." *Cottle*, 340 F.R.D. at 376 (quotation marks omitted) (quoting *Briseno*, 998 F.3d at 1023). None of these factors are at issue here, with payment of attorneys' fees coming from the Settlement Fund, there being no reversion of any funds to Defendant, and the Settlement Agreement countenancing Plaintiffs requesting, at most, twenty-five percent (25%) of the Settlement Fund which, as discussed above in Section IV.6, is consistent with Ninth Circuit precedent and will be justified by Class Counsel's accrued lodestar. Berry Decl., ¶¶ 37-39.

Therefore, this Settlement was non-collusive and negotiated at arm's length.

b. The settlement provides adequate relief.

Rule 23(e)(2)(C) requires courts to consider whether "the relief provided for the class is adequate, taking into account: "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of

processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." FED. R. CIV. P. 23(e)(2)(C). All of those factors support approval in this case.

The relief provided by the settlement is discussed at length in Section IV. Specifically, the cost, risks, and delay of trial and appeal are discussed in subsection 1.c. The effectiveness of the distribution method is discussed in subsection 1.e and 1.f. Attorneys' fees are discussed in Section IV.6. Finally, the Parties did not make any side agreements subject to disclosure under FED. R. CIV. P. 23(e)(3).

c. The settlement treats Class Members equitably.

When considering whether the settlement "treats class members equitably relative to each other," FED. R. CIV. P. 23(e)(2)(D), courts seek "to ensure that similarly situated class members are treated similarly and that dissimilarly situated class members are not arbitrarily treated as if they were similarly situated," *Mandalevy v. Bofi Holding, Inc.*, 2022 U.S. Dist. LEXIS 89205, *28 (S.D. Cal. Mar. 17, 2022) (quoting 4 William Rubenstein, *Newberg on Class Actions* § 13:56 (5th ed. 2020)). "Matters of concern could include whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." FED. R. CIV. P. 23, 2018 advisory committee note.

The Settlement recognizes that California Settlement Subclass members had claims for statutory damages not available to class members in other states, and thus provides them with additional shares of the *pro rata* Settlement Remainder payment. S.A. § 2.5. This is precisely the type of difference that settlements must take into account. *See Loreto v. Gen. Dynamics Info. Tech., Inc.*, 2021 U.S. Dist. LEXIS 138831, *24–26 (S.D. Cal. July 26, 2021) (approving settlement that treated class members differently based on genuine differences between the strength of their claims).

In addition, each class representative will request a $2,500 service award. S.A. § 7.3.

"Class representative service awards are well-established as legitimate in the Ninth Circuit." *Ramirez v. Rite Aid Corp.*, 2022 U.S. Dist. LEXIS 109069, *21 (C.D. Cal. May 3, 2022). A service award of $2,500 is reasonable and in line with awards approved by federal courts in California. *See, e.g.*, *In re Nat'l Collegiate Athletic Ass'n*, 2017 WL 6040065, at *11 (N.D. Cal. Dec. 6, 2017) (approving $20,000 service awards to each class representative and collecting cases approving similar awards); *Horton v. Cavalry Portfolio Servs., LLC*, 2020 WL 13327499, at *1 (S.D. Cal. Oct. 13, 2020) ($10,000 service award).

3. The Proposed Notice Plan is Consistent with Rule 23 and Due Process

If the court determines that it will "likely be able to" approve the settlement, it must "direct notice in a reasonable manner to all class members who would be bound" by the proposed settlement. FED. R. CIV. P. 23(e)(1)(B). Class members are entitled to the "best notice that is practicable under the circumstances" of any proposed settlement before it is finally approved by the Court. FED. R. CIV. P. 23(c)(2)(B). "The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means." *Id.* To comply with due process, notice must be "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *Amchem Prods. v. Windsor*, 521 U.S. 591, 617 (1997). Notice must state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3). FED. R. CIV. P. 23(c)(2)(B). "Notice is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Toolajian*, 2020 U.S. Dist. LEXIS 250904, at *31 (quoting *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (internal quotation marks and citation omitted).

The notice plan is discussed at length in Section IV, subsection 3, and is clearly the best notice practicable under the circumstances.

Because the notice plan ensures that Settlement Class Members' due process rights are amply protected, this Court should approve it. *See Hartranft v. TVI, Inc.*, 2019 WL 1746137, at *3 (C.D. Cal. Apr. 18, 2019).

VI. CONCLUSION

The Court should (1) certify the Settlement Class and California Settlement Subclass, (2) preliminarily approve the proposed settlement, and (3) approve the proposed notice plan.

Dated: March 17, 2025

By: */s/ M. Anderson Berry*

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