

# Exhibit B

1 Joseph M. Lyon (SBN 351117)  
2 **THE LYON FIRM**  
3 9210 Irvine Center Drive, Suite 200  
4 Irvine, CA 92618  
5 Telephone: (513) 381-2333  
6 Facsimile: (513) 766-9011

7 John J. Nelson (SBN 317598)  
8 **MILBERG COLEMAN BRYSON**  
9 **PHILLIPS GROSSMAN, PLLC**  
10 280 S. Beverly Drive  
11 Beverly Hills, CA 90212  
12 Telephone: (858) 209-6941

*Interim Co-Lead Class Counsel*

[additional counsel listed on signature page]

13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**

15  
16 IN RE: HOUSER LLP DATA  
17 BREACH LITIGATION

CASE NO. 8:24-CV-00468-WLH-ADS

18 **PLAINTIFFS' NOTICE OF MOTION**  
19 **AND UNOPPOSED MOTION FOR**  
20 **PRELIMINARY APPROVAL OF CLASS**  
21 **ACTION SETTLEMENT**

22 **Date:** March 21, 2025  
23 **Time:** 1:30 p.m.  
24 **Courtroom:** 9B  
25 **Judge:** Hon. Wesley L. Hsu

1           **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**  
2           **PLEASE TAKE NOTICE THAT on March 21, at 1:30 P.M.,** or as soon thereafter as  
3 counsel may be heard, before the Honorable Judge Wesley L. Hsu, at First Street  
4 Courthouse, 350 West 1<sup>st</sup> Street, Courtroom 9B, 9<sup>th</sup> Floor, Los Angeles, California  
5 90012-4565, Plaintiffs will and hereby do move this Court, pursuant to Federal Rule of  
6 Civil Procedure 23, for an order granting Plaintiffs' Unopposed Motion for Preliminary  
7 Approval of Class Action Settlement.

8           Plaintiffs base this Motion for Preliminary Approval of Class Action Settlement  
9 on: this Notice; the Memorandum of Points and Authorities filed in support thereof; the  
10 Settlement Agreement and Release ("Settlement Agreement") and all exhibits attached  
11 thereto; the Joint Declaration of Joseph M. Lyon and John J. Nelson in Support of  
12 Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement  
13 ("Nelson Decl."); all other records and papers on file in this action; any oral argument  
14 on the Motion; and all other matters properly before the Court.

15           Plaintiffs seek an order pursuant to Federal Rule of Civil Procedure 23(b)(3)  
16 certifying the Settlement Class more fully described in the Settlement Agreement,  
17 attached to the Motion for Preliminary Approval as Exhibit 1; preliminarily approving  
18 the Settlement as fair, reasonable, and adequate; directing notice to be disseminated to  
19 the Settlement Class in the form and manner proposed by the parties as set forth in the  
20 Settlement Agreement and attached as Exhibits A, B, and C thereto; appointing Kroll to  
21 serve as the Settlement Administrator; appointing Plaintiffs as the Class Representative  
22 and Joseph M. Lyon and John J. Nelson as Class Counsel; and setting a hearing date and  
23 schedule for final approval of the Settlement and consideration of Class Counsels'  
24 forthcoming motion for an award of fees, costs, expenses, and service awards.

25           This Motion is made following the conference of counsel pursuant to L.R. 7-3  
26 which took place on February 5, 2025.

1 Date: February 12, 2025

Respectfully Submitted,

2 /s/ John J. Nelson

3 John J. Nelson (SBN 317598)

4 **MILBERG COLEMAN BRYSON**

5 **PHILLIPS GROSSMAN, PLLC**

6 280 S. Beverly Drive

7 Beverly Hills, CA 90212

8 Telephone: (858) 209-6941

9 Joseph M. Lyon (SBN 351117)

10 **THE LYON FIRM**

11 9210 Irvine Center Drive, Suite 200

12 Irvine, CA 92618

13 Telephone: (513) 381-2333

14 Facsimile: (513) 766-9011

15 *Interim Co-Lead Class Counsel*

16 M. Anderson Berry (SBN 262879)

17 Gregory Haroutunian (SBN 330263)

18 Brandon P. Jack (SBN 325584)

19 **CLAYEO C. ARNOLD**

20 **A PROFESSIONAL CORPORATION**

21 12100 Wilshire Boulevard, Suite 800

22 Los Angeles, CA 90025

23 Telephone: (747) 777-7748

24 Paul M. DeMarco (SBN 112834)

25 **MARKOVITS, STOCK &**

26 **DEMARCO, LLC**

27 119 East Court Street, Suite 530

28 Cincinnati, OH 45202

Telephone: (513) 651-3700

Facsimile: (513) 665-0219



Zachary O. Chambers\*  
**MIGLIACCIO & RATHOD LLP**  
412 H Street NE, no. 302,  
Washington, DC, 20002  
Office: (202) 470-3520

Robert Mackey (SBN 125961)  
**LAW OFFICES OF ROBERT MACKEY**  
660 Baker Street  
Building A, Ste. 201  
Costa Mesa, CA 92626

*Attorneys for Plaintiffs and the Settlement Class*

*\* Admitted Pro Hac Vice*

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on February 12, 2025 the foregoing document was filed via the Court's ECF system, which will cause a true and correct copy of the same to be served electronically on all ECF-registered counsel of record.

/s/ John J. Nelson  
John J. Nelson (SBN 317598)

1 Joseph M. Lyon (SBN 351117)  
2 **THE LYON FIRM**  
3 9210 Irvine Center Drive, Suite 200  
4 Irvine, CA 92618  
5 Telephone: (513) 381-2333  
6 Facsimile: (513) 766-9011

7 John J. Nelson (SBN 317598)  
8 **MILBERG COLEMAN BRYSON**  
9 **PHILLIPS GROSSMAN, PLLC**  
10 280 S. Beverly Drive  
11 Beverly Hills, CA 90212  
12 Telephone: (858) 209-6941  
13 Email: jnelson@milberg.com

14 *Interim Co-Lead Class Counsel*

15 [additional counsel listed on signature page]

16 **IN THE UNITED STATES DISTRICT COURT**  
17 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

18 IN RE: HOUSER LLP DATA  
19 BREACH LITIGATION

20 Case No. 8:24-CV-00468-WLH-ADS

21 **MEMORANDUM OF POINTS AND**  
22 **AUTHORITIES IN SUPPORT OF**  
23 **PLAINTIFFS' UNOPPOSED**  
24 **MOTION FOR PRELIMINARY**  
25 **APPROVAL OF CLASS ACTION**  
26 **SETTLEMENT**

27 **Date: March 21, 2025**  
28 **Time: 1:30 p.m.**  
**Courtroom: 9B**  
**Judge: Hon. Wesley L. Hsu**

## **TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....	iii
I. INTRODUCTION .....	1
II. STATEMENT OF FACTS .....	1
III. PROCEDURAL HISTORY .....	2
IV. THE SETTLEMENT TERMS.....	3
A. Proposed Class.....	3
B. Settlement Benefits – Monetary Relief .....	4
1. California Subclass Payment.....	5
2. Washington Subclass Payment. ....	5
3. Pro Rata Cash Payment.....	5
C. Non-Monetary Settlement Benefits – Business Practice Changes.....	5
D. Class Notice and Settlement Administration.....	6
E. Attorneys’ Fees and Expenses.....	6
F. Class Representative Service Awards .....	7
G. Release.....	7
V. LEGAL AUTHORITY .....	8
VI. ARGUMENT .....	8
A. The Settlement Satisfies Rule 23(a). ....	9
1. The proposed Class is sufficiently numerous. ....	9
2. The Class Satisfies the Commonality Requirement.....	10
3. Plaintiffs’ claims and defenses are typical to those of the Class. ....	11
4. Plaintiffs will adequately protect the interests of the Class. ....	11
B. The Requirements of Rule 23(b)(3) Are Met for Purposes of Settlement. ...	12
C. The Settlement Should Be Preliminarily Approved Under Rule 23(e).....	14
1. The Strength of Plaintiffs’ Case.....	16
2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation	

1	.....	17
2	3. The Risk of Maintaining Class Action Status Through Trial .....	18
3	4. The Amount Offered in Settlement.....	18
4	5. The Extent of Discovery Completed and the Stage of Proceedings .....	19
5	6. The Experience and Views of Counsel .....	20
6	7. Governmental Participants.....	20
7	8. The Reaction of the Class Members to the Proposed Settlement .....	20
8	9. Lack of Collusion Among the Parties .....	20
9	10. The Settlement Treats Class Members Equitably .....	21
10	D. The Court Should Approve the Proposed Notice Program .....	21
11	E. Appointment of the Settlement Administrator .....	23
12	F. Appointment of Class Counsel .....	23
13	VII.CONCLUSION .....	23

## TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Acosta v. Trans Union LLC</i> , 243 F.R.D. 377 (C.D. Cal. 2007).....	9
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997) .....	9, 12, 13
<i>Bykov v. DC Trans. Services, Inc.</i> , No. 2:18-cv-1692 DB, 2019 WL 1430984 (E.D. Cal. Mar. 29, 2019) .....	14
<i>Calderon v. Wolf Firm</i> , No. SACV 16-1622-JLS(KESx), 2018 WL 6843723 (C.D. Cal. Mar. 13, 2018) .....	18
<i>Chester v. TJX Cos.</i> , No. 5:15-cv-01437-ODW(DTB), 2017 WL 6205788 (C.D. Cal. Dec. 5, 2017) .	16
<i>Corona v. Sony Pictures Ent'mt., Inc.</i> , No. 14-cv-09600 RGK (C.D. Cal. 2016) .....	19
<i>Dennis v. Kellogg Co.</i> , No. 09-cv-1786-L (WMC), 2013 WL 6055326 (S.D. Cal. Nov. 14, 2013) .....	16
<i>Eisen v. Carlisle &amp; Jacquelin</i> , 417 U.S. 156 (1974) .....	22
<i>Ellis v. Costco Wholesale Corp.</i> , 657 F.3d 970 (9th Cir. 2011).....	9, 11
<i>Franklin v. Kaypro Corp.</i> , 884 F.2d 1222 (9th Cir. 1989) .....	15
<i>Gautreaux v. Pierce</i> , 690 F.2d 616 (7th Cir. 1982) .....	15
<i>Gribble v. Cool Transports Inc.</i> , No. CV 06-4863 GAF (SHx), 2008 WL 5281665 (C.D. Cal. Dec. 15, 2008).....	14

1	<i>Grimm v. American Eagle Airlines, Inc.,</i>	
2	No. LA CV 11-00406 JAK(MANx), 2014 WL 1274376 (C.D. Cal. Sept. 24, 2014)	
3	.....	18
4	<i>Hillman v. Lexicon Consulting, Inc.,</i>	
5	No. 16-01186-VAP(SPx), 2017 WL 10433869 (C.D. Cal. April 27, 2017).....	20
6	<i>Holly v. Alta Newport Hospital,</i>	
7	No. 2:19cv07496, 2020 WL 1853308 (April 10, 2020).....	10
8	<i>In re Bluetooth Headset Prods. Liab. Litig.,</i>	
9	654 F.3d 935 (9th Cir. 2011).....	15
10	<i>In re Google LLC St. View Elec. Commc'ns Litig.,</i>	
11	No. 10-MD-02184-CRB, 2020 WL 1288377 (N.D. Cal. Mar. 18, 2020) .....	10
12	<i>In re Google Plus Profile Litig.,</i>	
13	No. 518CV06164EJDVKD, 2021 WL 242887 (N.D. Cal. Jan. 25, 2021) .....	19
14	<i>In re Hyundai &amp; Kia Fuel Economy Litig.,</i>	
15	926 F.3d 539 (9th Cir. 2019).....	10
16	<i>In re LinkedIn User Priv. Litig.,</i>	
17	309 F.R.D. 573 (N.D. Cal. 2015) .....	19
18	<i>In re Marriott Int'l, Inc., Customer Data Sec. Breach Litig.,</i>	
19	341 F.R.D. 128 (D. Md. May 3, 2022).....	18
20	<i>In re Online DVD-Rental Antitrust Litig.,</i>	
21	779 F. 3d 934 (9th Cir. 2015).....	22
22	<i>In re Pauley,</i>	
23	2020 WL 5809953 (C.D. Cal. July 23, 2020) .....	7
24	<i>In re Tableware Antitrust Litig.,</i>	
25	484 F. Supp. 2d 1078 (N.D. Cal. 2007).....	14
26	<i>In re the Home Depot, Inc., Customer Data Sec. Breach Litig.,</i>	
27	No. 1:14-MD-02583-TWT, 2016 WL 6902351 (N.D. Ga. Aug. 23, 2016) .....	10
28	<i>In re U.S. Office of Pers. Mgmt. Data Sec. Breach Litig.,</i>	
	266 F. Supp. 3d 1 (D.D.C. 2017).....	17

1	<i>In re Yahoo! Inc. Customer Data Sec. Breach Litig.,</i>	
2	No. 5:16-md-02752-LHK (N.D. Cal. July 20, 2019).....	13
3	<i>In re Yahoo Mail Litig.,</i>	
4	No. 13-CV-4980, 2016 WL 4474612 (N.D. Cal. Aug. 25, 2016).....	21
5	<i>In re: Vizio, Inc., Consumer Privacy Litigation,</i>	
6	No. 8:16-ml-02693-JLS-KES (C.D. Cal. July 31, 2017) .....	19
7	<i>Just Film, Inc. v. Buono,</i>	
8	847 F.3d 1108 (9th Cir. 2017) .....	11, 13
9	<i>Linney v. Cellular Alaska P’ship,</i>	
10	151 F.3d 1234 (9th Cir. 1998) .....	17, 19
11	<i>Local Joint Exec. Bd. of Culinary/ Bartender Trust Fund v. Las Vegas Sands, Inc.,</i>	
12	244 F.3d 1152 (9th Cir. 2001) .....	13
13	<i>Longest v. Green Tree Servicing LLC,</i>	
14	308 F.R.D. 310 (C.D. Cal. 2015).....	11
15	<i>Lucas v. Kmart Corp.,</i>	
16	234 F.R.D. 688 (D. Colo. 2006) .....	15
17	<i>Meyer v Portfolio Recovery Associates,</i>	
18	707 F.3d 943 (9th Cir. 2012) .....	11
19	<i>Murillo v. Pacific Gas &amp; Elec. Co.,</i>	
20	266 F.R.D. 468 (E.D. Cal. 2010).....	15
21	<i>Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.,</i>	
22	221 F.R.D. 523 (C.D. Cal. 2004).....	20
23	<i>Norton v. Maximus, Inc.,</i>	
24	No. 1:14-cv-0030, 2017 WL 1424636 (D. Idaho Apr. 17, 2017) .....	20
25	<i>Orantes-Hernandez v. Smith,</i>	
26	541 F. Supp. 351 (C.D. Cal. 1982).....	10
27	<i>Parsons v. Kimpton Hotel &amp; Rest. Group, LLC,</i>	
28	No. 3:16-cv-05387-VC (N.D. Cal. Jan. 9, 2019) .....	13

1	<i>Perkins v. LinkedIn Corp.</i> ,	
2	2016 WL 613255 (N.D. Cal. Feb. 16, 2016).....	19
3	<i>Plaintiffs v. City of Seattle</i> ,	
4	955 F.2d 1268 (9th Cir. 1992) .....	8
5	<i>Rannis v. Recchia</i> ,	
6	380 F. App’x 646 (9th Cir. 2010).....	10
7	<i>Reyes v. Experian Info. Sols., Inc.</i> ,	
8	No. SACV1600563AGAFMX, 2020 WL 466638 (C.D. Cal. Jan. 27, 2020) .....	14
9	<i>Smith v. Triad of Ala., LLC</i> ,	
10	No. 1:14-CV-324-WKW, 2017 WL 1044692 (M.D. Ala. Mar. 17, 2017) .....	18
11	<i>Tyson Foods, Inc. v. Bouaphakeo</i> ,	
12	136 S. Ct. 1036 (2016).....	12

## **Rules**

## **Page**

14	Fed. R. Civ. P. 23 .....	10, 11, 21, 23
15	Fed. R. Civ. P. 23(a).....	9, 10, 11, 12
16	Fed. R. Civ. P. 23(a)(1).....	9
17	Fed. R. Civ. P. 23(a)(3).....	11
18	Fed. R. Civ. P. 23(a)(4).....	11
19	Fed. R. Civ. P. 23(b)(1).....	12
20	Fed. R. Civ. P. 23(b)(2).....	12
21	Fed. R. Civ. P. 23(b)(3).....	12, 21
22	Fed. R. Civ. P. 23(b)(3)(D) .....	13
23	Fed. R. Civ. P. 23(c)(2)(B) .....	6, 21, 22
24	Fed. R. Civ. P. 23(e).....	8, 14, 15, 21



1	Fed. R. Civ. P. 23(e)(1).....	14
2	Fed. R. Civ. P. 23(e)(1)(B) .....	21
3	Fed. R. Civ. P. 23(e)(2).....	14
4	Fed. R. Civ. P. 23(e)(2)(D) .....	21
5	Fed. R. Civ. P. 23(g)(1)(A)(i–iv) .....	23
6	Fed. R. Civ. P. 23(g)(1)(B) .....	23
7		
8		

9	<b><u>Statutes</u></b>	<b><u>Page</u></b>
---	------------------------	--------------------

10	Cal. Civ. Code § 1798.100, <i>et seq.</i> .....	2, 4, 16
11	RCW 19.86.010, <i>et seq.</i> .....	2, 4
12	RCW 19.86.020.....	16
13		

14	<b><u>Other Authorities</u></b>	<b><u>Page</u></b>
----	---------------------------------	--------------------

15	Manual for Complex Litigation (Fourth) (2004) § 21.63 .....	8, 9
16	Newberg on Class Actions § 11.41 (4th ed. 2002).....	8
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1       **I.       INTRODUCTION**

2           Plaintiffs Richard McMillen, Mark Giannelli, Joseph Kausse, Scott Miller,  
3 Jennifer Rivera, and Karie Simmons (“Plaintiffs”) respectfully submit this  
4 Unopposed Motion for Preliminary Approval of Class Action Settlement and  
5 Memorandum in Support of a \$1,300,000 non-reversionary common fund settlement.  
6 Houser LLP (“Houser” or “Defendant”) does not oppose certification of the Class for  
7 settlement purposes.<sup>1</sup> Plaintiffs believe the Settlement is fair, reasonable, and  
8 adequate. Accordingly, the Court should grant preliminary approval, and notice  
9 should be distributed to the Class.

10       **II.       STATEMENT OF FACTS**

11           This matter concerns a putative class action resulting from an alleged Data  
12 Incident Houser experienced between May 7 and May 9, 2023 (herein the “Data  
13 Incident”). Plaintiffs allege that cybercriminals accessed Defendant’s computer  
14 network and copied and exfiltrated files containing Plaintiffs’ and Class Members’  
15 sensitive personal identifiable information (“Private Information”), including their  
16 full names, Social Security numbers, driver’s license numbers, individual tax  
17 identification numbers, and financial account information. In February 2024, Houser  
18 notified approximately 325,000 individuals of the Data Incident.

19           Plaintiffs brought this action on behalf of all persons whose Private Information  
20 was compromised as a result of Houser’s failure to: (i) adequately protect Private  
21 Information; (ii) warn of its inadequate information security practices; and (iii)  
22 effectively monitor its network and systems for security vulnerabilities and incidents.

23           Plaintiffs allege they and Class Members have suffered injury as a result of  
24 Houser’s conduct. These injuries include: (i) actual identity theft; (ii) the compromise,  
25

---

26       <sup>1</sup> Although Defendant does not oppose the relief sought by this Motion, it continues to deny liability  
27 for Plaintiffs’ claims and dispute any wrongdoing, and reserves the right to dispute Plaintiffs’  
28 characterization of events and allegations.

1 publication, and theft of their Private Information; (iii) out-of-pocket expenses  
2 associated with the prevention, detection, and recovery from identity theft and  
3 unauthorized use of their Private Information; (iv) lost opportunity costs associated  
4 with effort expended and the loss of productivity addressing and attempting to  
5 mitigate the actual and future consequences of the Data Incident; (v) the continued  
6 risk to their Private Information, which remains in Defendant's possession and is  
7 subject to further unauthorized disclosures so long as Defendant fails to undertake  
8 appropriate and adequate measures to protect the Private Information in their  
9 continued possession; (vi) future costs in terms of time, effort, and money that will  
10 be expended for the remainder of the lives of Plaintiffs and Class Members; (vii) the  
11 cost of future credit monitoring; and (viii) the diminished value of Defendant's  
12 services they received.

### 13 **III. PROCEDURAL HISTORY**

14 On March 4, 2024, Plaintiff Richard McMillen filed a class action complaint  
15 in the Central District of California (Case No. 8:24-cv-00468-WLH-ADS). In the  
16 following days, three other Plaintiffs filed complaints with nearly identical claims in  
17 this Court against Houser (Case Nos. 8:24-cv-00470, 8:24-cv-00480, 8:24-cv-00495).

18 On May 15, 2024, the Court consolidated these actions under Lead Case No.  
19 8:24-cv-00468-WLH-ADS (together with the consolidated actions, the "Litigation").  
20 See ECF No. 21. On August 8, 2024, Plaintiffs filed a Consolidated Class Action  
21 Complaint ("CCAC"). ECF No. 32. In addition to Plaintiffs McMillen, Rivera,  
22 Giannelli, and Kausse, the CCAC added Plaintiffs Scott Miller and Karie Simmons  
23 to this Litigation. Plaintiffs asserted claims for (i) Negligence; (ii) Third-Party  
24 Beneficiary Contract; (iii) violations of the California Consumer Privacy Act  
25 ("CCPA"), Cal. Civ. Code § 1798.100, *et seq.*; (iv) violation of the Washington  
26 Consumer Protection Act ("WCPA"), RCW 19.86.010, *et seq.*; and (v) Declaratory  
27 and Injunctive Relief. Thereafter, the Parties began negotiating resolution of the  
28

1 Litigation.

2 After months of hard bargaining and negotiations between the Parties, and after  
3 reviewing and analyzing important information regarding the details of the Data  
4 Incident, the Parties agreed to resolve the Litigation and began drafting the terms of  
5 the Settlement Agreement (“S.A”). This Settlement Agreement, which is attached to  
6 the Joint Declaration of Joseph M. Lyon and John J. Nelson in support of Plaintiffs’  
7 Unopposed Motion for Preliminary Approval of Class Action Settlement (“Joint  
8 Decl.”) as Exhibit 1, was negotiated at arm’s-length, in good faith, and without  
9 collusion, by capable and experienced counsel, with full knowledge of the facts, the  
10 law, and the inherent risks in the Litigation.

11 **IV. THE SETTLEMENT TERMS**

12 **A. Proposed Class**

13 The Settlement provides relief for the following Class: “All persons whose  
14 Private Information was actually or potentially accessed or acquired during the Data  
15 Incident that is subject of the Notice of Data Incident that Defendant published to  
16 Plaintiffs and other Settlement Class Members starting on or around February 28,  
17 2024.” S.A. ¶ 1.28.

18 Additionally, the Settlement creates a California Subclass, consisting of “all  
19 California residents whose Private Information was actually or potentially accessed  
20 or acquired during the Data Incident that is the subject of the Notice of Data Incident  
21 that Defendant published to Plaintiffs and other Class Members starting on or around  
22 February 28, 2024.” S.A. ¶ 1.31.

23 The Settlement also creates a Washington Subclass, which includes “all  
24 Washington State residents whose Private Information was actually or potentially  
25 accessed or acquired during the Data Incident that is the subject of the Notice of Data  
26 Incident that Defendant published to Plaintiffs and other Class Members starting on  
27 or around February 28, 2024. S.A. ¶ 1.31.

**B. Settlement Benefits – Monetary Relief**

The Settlement negotiated on behalf of the Class provides significant benefits through a non-reversionary \$1,300,000 common fund from which Class Members may receive up to four separate forms of monetary relief: (1) reimbursement of verified out-of-pocket losses; (2) California Subclass cash payment; (3) Washington Subclass cash payment; and (4) a *pro rata* cash payment. S.A. ¶¶ 2.1-2.3. The California and Washington Subclass payments are provided to residents of the respective states in recognition of their claims under the CCPA and WCPA.

**1. Out-of-Pocket Losses and Expenses Reimbursement**

The first category of payments is designed to provide compensation to Class Members for Out-of-Pocket Losses and Expenses, which are unreimbursed costs, expenditures, or losses incurred by a Class Member that are fairly traceable to the Data Incident, up to \$5,000. S.A. ¶ 2.3.1. Notably, this category of reimbursements specifically includes, without limitation, the following:

- 1) unreimbursed costs, expenses, losses or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of a Class Member's Social Security number;
- 2) unreimbursed costs incurred on or after May 7, 2023, associated with accessing or freezing/unfreezing credit reports with any credit reporting agency;
- 3) other unreimbursed miscellaneous expenses incurred related to any Out-of-Pocket Expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges;
- 4) other mitigative costs that were incurred on or after May 7, 2023, through the date of the Class Member's claim submission; and
- 5) unpaid time off work to address issues fairly traceable to the Data Incident at the actual hourly rate of that Class Member.

1 *Id.*

2 1. California Subclass Payment.

3 In addition to the above benefits, California Subclass Members are eligible for  
4 a separate damages award. The amount awarded to California Subclass Members who  
5 submit a Valid Claim shall be \$100 that can be combined with a claim for Out-of-  
6 Pocket Losses and Expenses and a *Pro Rata* Cash Payment. S.A. ¶¶ 2.3.2, 2.3.4.

7 2. Washington Subclass Payment.

8 The Washington Subclass Members are eligible for a separate damages award.  
9 The amount awarded to California Subclass Members who submit a Valid Claim shall  
10 be \$25, which can be combined with a claim for Out-of-Pocket Losses and Expenses  
11 and a *Pro Rata* Cash Payment. *Id.* ¶ 2.3.3-2.3.4.

12 3. *Pro Rata* Cash Payment.

13 All Class Members may file a claim for a *pro rata* cash payment estimated to  
14 be \$50.00. *Id.* ¶ 2.3.4. The amount of this benefit shall be increased or decreased  
15 based on the funds remaining in the Settlement Fund following the payment of  
16 Attorneys' Fees and Expenses Award, any Service Awards, the Costs of Claims  
17 Administration, claims for Out-of-Pocket Losses, and the California and Washington  
18 Subclass Payments. *Id.*

19 **C. Non-Monetary Settlement Benefits – Business Practice Changes**

20 In addition to the potential cash benefits, Houser has agreed to maintain steps  
21 to secure sensitive personal information within its platform,. *Id.* ¶ 2.4. Houser has  
22 agreed it will provide Class Counsel with a confidential declaration outlining those  
23 measures. *Id.* Houser is responsible for all costs associated with implementing and  
24 maintaining these business practice commitments, which costs are separate and apart  
25 from the Settlement Fund. *Id.* These changes will benefit Class Members whose  
26 information remains in Houser's possession, and also those who entrust their Private  
27 Information to Houser in the future.

1       **D. Class Notice and Settlement Administration**

2       Notice will be paid from the Settlement Fund. *Id.* ¶ 3.3. Notice will be given to  
3 the Class via individual notice, attached as Exhibit C to the Settlement Agreement,  
4 which will be given by U.S. Mail and email, to the postal addresses and emails  
5 associated with the accounts of Class Members. *Id.* The Long Notice, attached to the  
6 Settlement Agreement as Exhibit B, will also be posted on the Settlement Website  
7 along with other important documents such as the Settlement Agreement and the  
8 motions for final approval and for attorneys' fees, expenses, and service awards. *Id.*  
9 The notice documents are clear and concise and directly apprise Class Members of  
10 all the information necessary to make a claim or to opt-out or object to the Settlement  
11 in accord with Fed. R. Civ. P. 23(c)(2)(B). Furthermore, a toll-free number with  
12 interactive voice response, frequently asked questions, and an option to speak to a  
13 live operator will be made available to address Class Members' inquiries. *Id.* ¶ 3.3(h).

14       Moreover, the Parties have agreed to retain Kroll Settlement Administration, a  
15 nationally recognized and well-regarded class action settlement administrator, to  
16 serve as Claims Administrator, subject to the Court's approval. *Id.* ¶ 1.7; *see also*  
17 Joint Decl. ¶ 20. The Claims Administrator has estimated that notice and  
18 administration costs will total approximately \$235,252.41. *Id.*

19       **E. Attorneys' Fees and Expenses**

20       Plaintiffs will separately seek an award of attorneys' fees not to exceed  
21 \$433,333.33, which includes reimbursement of their reasonable costs and litigation  
22 expenses incurred. Using the conservative estimate set forth above about the value of  
23 the equitable measures negotiated and business practices changes, and the \$1,300,000  
24 in monetary settlement benefits, the value of the attorneys' fees and litigation  
25 expenses request is less than 30% of the Settlement Fund. Defendant has agreed to  
26 take no position with regard to Plaintiffs' Counsel's request for attorneys' fees and  
27 expenses under the Settlement.



1       **F. Class Representative Service Awards**

2       Plaintiffs in this case have been vital in litigating this matter and have been  
3 personally involved in the case and support the Settlement. Joint Decl. ¶¶ 30-33.  
4 Plaintiffs will separately petition the Court for awards of \$2,000 each in recognition  
5 of the time, effort, and expense they incurred pursuing claims that benefited the Class.  
6 *See* S.A., § 7.3; *In re Pauley*, 2020 WL 5809953, at \*4 (C.D. Cal. July 23, 2020)  
7 (finding class representative service awards of \$5,000 to be “presumptively  
8 reasonable”).

9       **G. Release**

10       Upon entry of the Final Approval Order, Plaintiffs and the Class will be deemed  
11 to have “fully, finally, and forever released, relinquished, and discharged all Released  
12 Claims.” S.A. ¶ 6.1. “Released Claims” are defined, *inter alia*, as:

13       any and all past, present, and future claims, causes of action, demands,  
14 damages, debts, liabilities, remedies, proceedings, actions, suits,  
15 allegations, assertions of wrongdoing, and any demand for injunctive  
16 relief or any other type of equitable or legal relief including, but not  
17 limited to, any causes of action arising under or premised upon any statute,  
18 constitution, law, ordinance, treaty, regulation, or common law of any  
19 country, state, province, county, city, or municipality, suspected or  
20 unsuspected, asserted or unasserted, discovered or undiscovered,  
21 liquidated or unliquidated, accrued or unaccrued, fixed or contingent,  
22 direct or derivative, and any other form of legal or equitable relief that  
23 either has been asserted, was asserted, or could have been asserted by any  
24 Settlement Class Member against any of the Released Parties with respect  
25 to the Data Incident on a similar factual predicate. Released Claims shall  
26 not include the right of any Settlement Class Member or any of the  
27 Released Parties to enforce the terms of the settlement contained in this  
28 Settlement Agreement, and shall not include the claims of individuals in  
the Settlement Class who have timely excluded themselves from the  
Settlement. Additionally, Defendant shall release and discharge  
Settlement Class Members, Plaintiffs, and Class Counsel from any claims  
that arise out of or relate in any way to the institution, prosecution, or  
settlement of this litigation against Defendant, except for claims relating  
to the enforcement of the Settlement, and for the submission of false or



1 fraudulent claims for settlement benefits.

2 *Id.* ¶ 1.25. Released Claims do not include the right of any Class Member or any of  
3 the Released Persons to enforce the terms of the Settlement Agreement, and do not  
4 include the claims of those who have timely excluded themselves from the Class.

5 **V. LEGAL AUTHORITY**

6 Plaintiffs bring this motion under Federal Rule Civil Procedure 23(e), under  
7 which court approval is required to finalize a class action settlement. Courts,  
8 including those in this Circuit, endorse a three-step procedure for approval of class  
9 action settlements: (1) preliminary approval of the proposed settlement followed by  
10 (2) dissemination of court-approved notice to the class and (3) a final fairness hearing.  
11 Manual for Complex Litigation (Fourth) (2004) § 21.63. Here, Plaintiffs request the  
12 Court take the first step and grant preliminary approval of the Settlement Agreement.

13 **VI. ARGUMENT**

14 Federal courts strongly favor and encourage settlements, particularly in class  
15 actions and other complex matters where the inherent costs, delays, and risks of  
16 continued litigation might otherwise overwhelm any potential benefit the class could  
17 hope to obtain. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir.  
18 1992) (noting the “strong judicial policy that favors settlements, particularly where  
19 complex class action litigation is concerned”); 4 Newberg on Class Actions § 11.41  
20 (4th ed. 2002) (citing cases). More traditional means of handling claims like those at  
21 issue here—individual litigation—would unduly burden the court system, require  
22 massive expenditures of resources, and would be impracticable. Thus, a settlement  
23 now provides the best vehicle for Class Members to receive the relief to which they  
24 are entitled in a prompt and efficient manner.

25 The Manual for Complex Litigation (Fourth) advises that in cases presented for  
26 both preliminary approval and class certification, the “judge should make a  
27 preliminary determination that the proposed class satisfies the criteria.” § 21.632.

1 Because a court evaluating certification of a class action that settled is considering  
2 certification only in the context of settlement, the court’s evaluation is somewhat  
3 different than in a case that has not yet settled. *Amchem Prods., Inc. v. Windsor*, 521  
4 U.S. 591, 620 (1997). The preliminary evaluation of class action settlements focuses  
5 only on whether the proposed settlement is within the range of possible approval  
6 because the Court will make its final determination on adequacy at the final approval  
7 hearing. *See Acosta v. Trans Union LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007).

8 Plaintiffs seek certification of a Class consisting of: “[A]ll persons whose  
9 Private Information was actually or potentially accessed or acquired during the Data  
10 Breach event that is subject of the Notice of Data Incident that Defendant published  
11 to Plaintiffs and other Class Members starting on or around February 28, 2024.” S.A.  
12 ¶ 1.28. Additionally, the Settlement creates a “California Subclass” and a  
13 “Washington Subclass”, defined above, which include residents from those states,  
14 and their claims under the respective consumer protection statutes, whose Private  
15 Information was involved in the Data Incident. *Id.* ¶ 1.31. For the reasons set forth  
16 below, the Court should certify the Class and Subclasses for settlement purposes and  
17 preliminarily approve the Settlement.

18 **A. The Settlement Satisfies Rule 23(a).**

19 Before assessing the Parties’ settlement, the Court should first confirm the  
20 underlying settlement class meets the requirements of Rule 23(a). *See Amchem*, 521  
21 U.S. at 620; Manual for Complex Litigation (Fourth), § 21.632. The requirements are  
22 well known: numerosity, commonality, typicality, and adequacy—each of which is  
23 met here. Fed. R. Civ. P. 23(a); *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 979–  
24 80 (9th Cir. 2011).

25 **1. The proposed Class is sufficiently numerous.**

26 Courts find numerosity where there are so many class members as to make  
27 joinder impracticable. *See* Fed. R. Civ. P. 23(a)(1). “Where the exact size of the class  
28

1 is unknown but general knowledge and common sense indicate that it is large, the  
2 numerosity requirement is satisfied.” *Orantes-Hernandez v. Smith*, 541 F. Supp. 351,  
3 370 (C.D. Cal. 1982). Generally, Courts will find numerosity is satisfied where a class  
4 includes at least 40 members. *Holly v. Alta Newport Hospital*, No. 2:19cv07496, 2020  
5 WL 1853308, at \*7 (April 10, 2020), *citing Rannis v. Recchia*, 380 F. App’x 646, 651  
6 (9th Cir. 2010). Numbering approximately 350,000 individuals, the proposed Class  
7 easily satisfies Rule 23’s numerosity requirement. Furthermore, the California  
8 Subclass consists of approximately 50,048 Class Members and the Washington  
9 Subclass consists of approximately 7,791 Class Members, each independently  
10 satisfying the numerosity requirement under Fed. R. Civ. P. 23(a). Joint Decl. ¶¶ 11-  
11 12.

12 2. The Class Satisfies the Commonality Requirement.

13 The Class satisfies the commonality requirement. As in most data breach cases,  
14 “[t]hese common issues all center on [Defendant’s] conduct, satisfying the  
15 commonality requirement.” *In re the Home Depot, Inc., Customer Data Sec. Breach*  
16 *Litig.*, No. 1:14-MD-02583-TWT, 2016 WL 6902351, at \*2 (N.D. Ga. Aug. 23,  
17 2016). For the same reason, Plaintiffs allege that predominance is readily met here  
18 “where the class is a ‘cohesive group of individuals [who] suffered the same harm in  
19 the same way because of the [defendant’s] conduct.’ *In re Google LLC St. View Elec.*  
20 *Comm’n Litig.*, No. 10-MD-02184-CRB, 2020 WL 1288377, at \*5 (N.D. Cal. Mar.  
21 18, 2020) (quoting *In re Hyundai & Kia Fuel Economy Litig.*, 926 F.3d 539, 559 (9th  
22 Cir. 2019)). Thus, common questions include, *inter alia*, whether Houser engaged in  
23 wrongful conduct; whether the Private Information was compromised; whether  
24 Houser owed duties; whether Houser breached its duties; whether Houser  
25 unreasonably delayed in notifying individuals of the Data Incident; and whether  
26 Houser violated the common law and statutory violations as alleged in the CCAC.  
27 Thus, Plaintiffs have met the commonality requirement of Rule 23(a).

1                   3. Plaintiffs' claims and defenses are typical to those of the Class.

2           Plaintiffs satisfy the typicality requirement of Rule 23 because Plaintiffs'  
3 claims, which are based on Defendant's alleged failure to protect the Private  
4 Information, are "reasonably coextensive with those of the absent class members."  
5 See Fed. R. Civ. P. 23(a)(3); *Meyer v Portfolio Recovery Associates*, 707 F.3d 943,  
6 1041-42 (9th Cir. 2012) (upholding typicality finding). Plaintiffs allege their Private  
7 Information was compromised, and they were therefore impacted by the same  
8 allegedly inadequate data security that they allege harmed the rest of the Class. See  
9 *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1118 (9th Cir. 2017) ("[I]t is sufficient for  
10 typicality if the plaintiff endured a course of conduct directed against the class.").

11                   4. Plaintiffs will adequately protect the interests of the Class.

12           The adequacy requirement of Rule 23 is satisfied where (1) there are no  
13 antagonistic or conflicting interests between the class representatives and their  
14 counsel and the absent class members; and (2) the class representatives and their  
15 counsel will vigorously prosecute the action on behalf of the class. Fed. R. Civ. P.  
16 23(a)(4); see also *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011);  
17 *Longest v. Green Tree Servicing LLC*, 308 F.R.D. 310, 325 (C.D. Cal. 2015).

18           Here, Plaintiffs have no conflicts of interest with other Class Members, have  
19 no unique defenses, and they and their counsel have and continue to vigorously  
20 prosecute this case on behalf of the Class. Plaintiffs are members of the Class who  
21 experienced the same injuries and seek, like other Class Members, compensation for  
22 Houser's data security shortcomings. Further, counsel for Plaintiffs have extensive  
23 experience representing plaintiffs in data privacy class action such as this one. See  
24 Joint Dec. ¶¶ 44-47. Thus, Plaintiffs satisfy the requirement of adequacy.

25           For these reasons, the Class meets the requirements of Rule 23(a).  
26  
27  
28

**B. The Requirements of Rule 23(b)(3) Are Met for Purposes of Settlement.**

“In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class certification must also show that the action is maintainable under Fed. R. Civ. P. 23(b)(1), (2) or (3).” *Amchem*, 521 U.S. at 614. Here, Plaintiffs allege that the Class is maintainable for purposes of settlement under Rule 23(b)(3), as common questions predominate over any questions affecting only individual members and class resolution is superior to other available methods for a fair and efficient resolution of the controversy. *Id.*

Rule 23(b)(3) requires that a district court determine that “a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” In determining whether the “superiority” requirement is satisfied, a court may consider: (1) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely to be encountered in the management of a class action. Fed. R. Civ. P. 23(b)(3).

Plaintiffs’ claims depend, first and foremost, on whether Houser used reasonable data security measures to protect Plaintiffs’ and the Class Members’ Private Information. That question can be resolved, for purposes of settlement, using the same evidence for all Class Members, and thus is precisely the type of predominant question that makes a class-wide settlement worthwhile. *See, e.g., Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (“When ‘one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) ... .’”) (citation omitted).

Additionally, for purposes of settlement, a class action is the superior method of adjudicating claims arising from the Data Incident—just as in other data breach

1 cases where class-wide settlements have been approved. *See, e.g., In re Yahoo! Inc.*  
2 *Customer Data Sec. Breach Litig.*, No. 5:16-md-02752-LHK (N.D. Cal. July 20,  
3 2019); *Parsons v. Kimpton Hotel & Rest. Group, LLC*, No. 3:16-cv-05387-VC (N.D.  
4 Cal. Jan. 9, 2019). Adjudicating individual actions here is impracticable: the amount  
5 in dispute for individual class members is too small, the technical issues involved are  
6 too complex, and the required expert testimony and document review too costly. *See*  
7 *Just Film*, 847 F.3d at 1123.

8 Also, because Plaintiffs seek to certify a class in the context of a settlement,  
9 this Court need not consider any possible management-related problems as it  
10 otherwise would. *See Amchem*, 521 U.S. at 620 (“Confronted with a request for  
11 settlement-only class certification, a district court need not inquire whether the case,  
12 if tried, would present intractable management problems, see Fed. R. Civ. P.  
13 23(b)(3)(D), for the proposal is that there be no trial.”).

14 In any event, no one member of the class has an interest in controlling the  
15 prosecution of this action because Plaintiffs’ claims and the claims of the Class  
16 Members are the same. Alternatives to a class action are either no recourse for  
17 thousands of individuals, or a multiplicity of suits resulting in an inefficient and  
18 possibly disparate administration of justice. Classwide resolution is the only practical  
19 method of addressing the alleged violations at issue in this case. There are thousands  
20 of class members with modest individual claims, most of whom likely lack the  
21 resources necessary to seek individual legal redress. *See Local Joint Exec. Bd. of*  
22 *Culinary/ Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th  
23 Cir. 2001) (cases involving “multiple claims for relatively small individual sums” are  
24 particularly well suited to class treatment). A class action is therefore superior for the  
25 fair and efficient adjudication of Plaintiffs and the Class’s claims.



**C. The Settlement Should Be Preliminarily Approved Under Rule 23(e).**

“[U]nder Rule 23(e)(1), the issue at preliminary approval turns on whether the Court ‘will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.’” *Reyes v. Experian Info. Sols., Inc.*, No. SACV1600563AGAFMX, 2020 WL 466638, at \*1 (C.D. Cal. Jan. 27, 2020). Rule 23(e) provides that a proposed class action may be “settled, voluntarily dismissed, or compromised only with the court’s approval.” Moreover, “[t]he parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.” If the parties make a sufficient showing that the Court will likely be able to “approve the proposal” and “certify the class for purposes of judgment on the proposal,” “[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e). Thus, notice should be given to the class, and hence preliminary approval should be granted, where the Court “will likely be able to” finally approve the settlement under Rule 23(e)(2) and certify the class for settlement purposes. *Id.*

“In evaluating a proposed settlement at the preliminary approval stage, some district courts . . . have stated that the relevant inquiry is whether the settlement ‘falls within the range of possible approval’ or ‘within the range of reasonableness.’” *Bykov v. DC Trans. Services, Inc.*, No. 2:18-cv-1692 DB, 2019 WL 1430984, at \*2 (E.D. Cal. Mar. 29, 2019). That is, “preliminary approval of a settlement has both a procedural and a substantive component.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007).

As to the procedural component, “a presumption of fairness applies when settlements are negotiated at arm’s length, because of the decreased chance of collusion between the negotiating parties.” *Gribble v. Cool Transports Inc.*, No. CV 06-4863 GAF (SHx), 2008 WL 5281665, at \*9 (C.D. Cal. Dec. 15, 2008). With respect to the substantive component, “[a]t this preliminary approval stage, the court

1 need only ‘determine whether the proposed settlement is within the range of possible  
2 approval.’” *Murillo v. Pacific Gas & Elec. Co.*, 266 F.R.D. 468, 479 (E.D. Cal. 2010)  
3 (*quoting Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982)).

4 In sum, “the purpose of the preliminary approval process is to determine  
5 whether there is any reason not to notify the class members of the proposed settlement  
6 and to proceed with a fairness hearing.” *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693  
7 (D. Colo. 2006). While a complete fairness evaluation is unnecessary at this early  
8 juncture, Plaintiffs’ and their counsel strongly believe that the resolution reached here  
9 is in the Class’s best interests.

10 To that end, the Ninth Circuit has identified nine factors to consider in  
11 analyzing the fairness, reasonableness, and adequacy of a class settlement: (1) the  
12 strength of the case; (2) the risk, expense, complexity, and duration of further  
13 litigation; (3) the risk of maintaining class action status throughout trial; (4) the  
14 amount offered in settlement; (5) the extent of discovery completed and the stage of  
15 the proceedings; (6) the views of counsel; (7) the presence of a governmental  
16 participant; (8) the reaction of the class members to the proposed settlement and; (9)  
17 whether the settlement is a product of collusion among the parties. *In re Bluetooth*  
18 *Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011). Rule 23(e) requires a  
19 court to consider several additional factors, including that the class representatives  
20 and class counsel have adequately represented the class, and that the settlement treats  
21 class members equitably relative to one another. Fed. R. Civ. P. 23(e).

22 In applying these factors, this Court should be guided foremost by the general  
23 principle that settlements of class actions are favored by federal courts. *See Franklin*  
24 *v. Kaypro Corp.*, 884 F.2d 1222, 1229 (9th Cir. 1989) (“[T]here is an overriding  
25 public interest in settling and quieting litigation. This is particularly true in class  
26 action suits”). Here, the relevant factors support prove the negotiated settlement is  
27 fair, reasonable, and adequate, and should be preliminarily approved.



1                   **1. The Strength of Plaintiffs’ Case**

2           Plaintiffs believe they have built a strong case for liability. With respect to  
3 Plaintiffs’ negligence claim, Plaintiffs believe they will ultimately be able to offer  
4 evidence that Defendant failed to maintain reasonable and current data security  
5 programs and practices, which led directly to the loss of Plaintiffs’ and the Class  
6 Members’ Private Information. Joint Decl. ¶ 6. Moreover, Plaintiffs believe they have  
7 stated valid claims under both the California Consumer Privacy Act of 2018, Cal. Civ.  
8 Code § 1798.100, *et seq.*, and the Washington State Consumer Protection Act, RCW  
9 19.86.020. Plaintiffs believe their claims are viable and they have a reasonably good  
10 chance of proving that Houser’s data security was inadequate and that, if they  
11 establish that central fact, Defendant is likely to be found liable under at least some  
12 of the liability theories and statutory and common law Plaintiffs pleaded in their  
13 CCAC.

14           While Plaintiffs believe they have strong claims and would be able to prevail,  
15 success is not guaranteed. It is “plainly reasonable for the parties at this stage to agree  
16 that the actual recovery realized and risks avoided here outweigh the opportunity to  
17 pursue potentially more favorable results through full adjudication.” *Dennis v.*  
18 *Kellogg Co.*, No. 09-cv-1786-L(WMC), 2013 WL 6055326, at \*3 (S.D. Cal. Nov. 14,  
19 2013). “Here, as with most class actions, there was risk to both sides in continuing  
20 towards trial. The settlement avoids uncertainty for all parties involved.” *Chester v.*  
21 *TJX Cos.*, No. 5:15-cv-01437-ODW(DTB), 2017 WL 6205788, at \*6 (C.D. Cal. Dec.  
22 5, 2017). Given the obstacles and inherent risks ahead, including class certification,  
23 summary judgment, and trial, the substantial benefits the Settlement provides favors  
24 preliminary approval of the Settlement. Joint Decl. ¶¶ 37-40.

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

3                   While Plaintiffs believe their case is strong, all cases are subject to substantial  
4 risk. This case involves approximately 325,000 Class Members; a complicated and  
5 technical factual overlay; and a motivated Defendant that already has provided some  
6 relief to its potentially affected customers.

7                   Although nearly all class actions involve a high level of risk, expense, and  
8 complexity—undergirding the strong judicial policy favoring amicable resolutions,  
9 *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998)—this is an  
10 especially complex class in an especially risky arena. Historically, data breach cases  
11 face substantial hurdles in surviving even the pleading stage. Even cases of similar  
12 wide-spread notoriety and implicating data far more sensitive than at issue here have  
13 been found wanting at the district court level. *In re U.S. Office of Pers. Mgmt. Data*  
14 *Sec. Breach Litig.*, 266 F. Supp. 3d 1, 19 (D.D.C. 2017) (“The Court is not persuaded  
15 that the factual allegations in the complaints are sufficient to establish . . . standing.”),  
16 *reversed in part*, 928 F.3d 42 (D.C. Cir. June 21, 2019) (holding that plaintiff had  
17 standing to bring a data breach lawsuit).

18                   For now, data breach cases are among the riskiest and uncertain of all class  
19 action litigation, making settlement the more prudent course when a reasonable one  
20 can be reached. The damages methodologies, while theoretically sound in Plaintiffs’  
21 view, remain untested in a disputed class certification setting and unproven in front  
22 of a jury. And as in any data breach case, establishing causation on a class-wide basis  
23 is rife with uncertainty. Each risk, by itself, could impede the successful prosecution  
24 of these claims at trial and in an eventual appeal—which would result in zero recovery  
25 to the class. Therefore, this factor favors approval.

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

2           If the Parties were to proceed to litigate their claims through trial, Plaintiffs  
3 would encounter risks in obtaining and maintaining certification of the class. The  
4 class has not yet been certified, and Defendant will certainly oppose certification if  
5 the case proceeds. Thus, Plaintiffs “necessarily risk losing class action status.” *Grimm*  
6 *v. American Eagle Airlines, Inc.*, No. LA CV 11-00406 JAK(MANx), 2014 WL  
7 1274376, at \*10 (C.D. Cal. Sept. 24, 2014). Class certification in contested data  
8 breach cases is not common—first occurring in *Smith v. Triad of Ala., LLC*, No. 1:14-  
9 CV-324-WKW, 2017 WL 1044692, at \*35 (M.D. Ala. Mar. 17, 2017), and recently  
10 in *In re Marriott Int’l, Inc., Customer Data Sec. Breach Litig.*, 341 F.R.D. 128 (D.  
11 Md. May 3, 2022). While certification of additional data breach classes may well  
12 follow, the dearth of direct precedent adds to the risks posed by continued litigation.

13                   **4. The Amount Offered in Settlement**

14           In light of the risks and uncertainties presented by data breach litigation, the  
15 value here favors approval. Each Class Member is eligible to make a claim for  
16 monetary benefits out of the \$1,300,000 non-reversionary common fund. Each Class  
17 Member is eligible to make a claim for \$5,000 in reimbursement for out-of-pocket  
18 losses, \$100 statutory damages award to California Subclass Members, \$25 statutory  
19 damages award to Washington Subclass Members, and an additional *pro rata* cash  
20 payment to all Class Members. This settlement is a strong result for the Class, and as  
21 discussed below, is in line with other settlements of similar scope. Because the  
22 settlement amount here is similar to other settlements reached and approved in similar  
23 cases, this factor reflects that the Settlement is fair. *See Calderon v. Wolf Firm*, No.  
24 SACV 16-1622-JLS(KESx), 2018 WL 6843723, at \*7-8 (C.D. Cal. Mar. 13, 2018)  
25 (comparing class settlement with other settlements in similar cases).

26           The Settlement value per class member here is consistent with other data breach  
27 settlements. Joint Decl. ¶ 38. *See, e.g., In re Google Plus Profile Litig.*, No.

1 518CV06164EJDVKD, 2021 WL 242887, at \*1 (N.D. Cal. Jan. 25, 2021) (settlement  
2 fund of \$7.5 million for 161 million Google+ users whose personal information was  
3 exposed); *In re: Vizio, Inc., Consumer Privacy Litigation*, No. 8:16-ml-02693-JLS-  
4 KES (C.D. Cal. July 31, 2017) (settlement fund of \$17 million for 16 million potential  
5 claimants for unauthorized collection and disclosure of information from customers’  
6 smart TVs); *Corona v. Sony Pictures Ent’m., Inc.*, No. 14-cv-09600 RGK (C.D. Cal.  
7 2016) (\$4.5 million settlement fund (\$2 million non-reversionary; \$2.5 million  
8 reversionary) for 435,000 class members in data breach case); *In re LinkedIn User*  
9 *Priv. Litig.*, 309 F.R.D. 573, 582 (N.D. Cal. 2015) (settlement fund of \$1.25 million  
10 for approximately 6.4 million LinkedIn users); *Perkins v. LinkedIn Corp.*, 2016 WL  
11 613255, at \*2, 9 (N.D. Cal. Feb. 16, 2016) (granting final approval of \$13 million  
12 Settlement where the class size was approximately 20.8 million).

### 13 **5. The Extent of Discovery Completed and the Stage of** 14 **Proceedings**

15 Before entering into settlement discussions on behalf of class members,  
16 counsel should have “sufficient information to make an informed decision.” *Linney*  
17 *v. Cellular Alaska Partnership*, 151 F.3d 1234, 1239 (9th Cir. 1998). Here, Plaintiffs  
18 vigorously and aggressively gathered all of the information that was publicly  
19 available regarding the Data Incident. Joint Decl. ¶ 9. The Parties also informally  
20 exchanged non-public information concerning the Data Incident, Defendant’s  
21 remediation efforts, the data elements at issue, and the size of the Class in preparation  
22 for settlement discussions. *Id.*

23 Although the Parties have not engaged in formal discovery, Class Counsel’s  
24 experience in similar types of privacy and data protection cases provided substantive  
25 knowledge to enable Class Counsel to represent Plaintiffs’ and Class Members’  
26 interests without expending hundreds of hours and enormous financial resources to  
27 come up to speed on the subject area. Joint Decl. ¶¶ 44-46. “[T]he efficiency with  
28

1 which the Parties were able to reach an agreement need not prevent this Court from  
2 granting . . . approval.” *Hillman v. Lexicon Consulting, Inc.*, No. 16-01186-  
3 VAP(SPx), 2017 WL 10433869, at \*8 (C.D. Cal. April 27, 2017). Thus, Plaintiffs are  
4 well informed on the strengths and weaknesses of this case.

## 5 **6. The Experience and Views of Counsel**

6 Class Counsel initiated this lawsuit when Houser announced the Data Incident  
7 impacted approximately 325,000 individuals who entrusted Houser with their Private  
8 Information. Class Counsel have substantial experience litigating complex class  
9 cases, including data breach cases such as this one. *See* Joint Decl. ¶¶ 44-47. Having  
10 worked on behalf of the putative Class since the Data Incident was first announced,  
11 evaluated the legal and factual disputes, and dedicated significant time and monetary  
12 resources to this litigation, proposed Class Counsel endorse the Settlement. *Id.* ¶ 48.  
13 A great deal of weight is accorded to the recommendation of counsel, who are most  
14 closely acquainted with the facts of the underlying litigation. *See, e.g., Norton v.*  
15 *Maximus, Inc.*, No. 1:14-cv-0030, 2017 WL 1424636, at \*6 (D. Idaho Apr. 17, 2017);  
16 *Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

## 17 **7. Governmental Participants.**

18 There is no governmental participant in this matter.

## 19 **8. The Reaction of the Class Members to the Proposed** 20 **Settlement**

21 Because notice has not yet been given, this factor is not yet implicated;  
22 however, Class Representatives support the Settlement. Joint Decl. ¶ 48.

## 23 **9. Lack of Collusion Among the Parties**

24 The Parties’ arm’s-length negotiations resulted in a settlement that provides  
25 broad and substantial value to the Class with substantial monetary compensation and  
26 equitable relief. Furthermore, Class Counsel and Houser’s counsel are well-versed in  
27 handling data breach class actions such as this one and fully understand the values

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

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

4 Finally, Rule 23(e)(2)(D) requires that this Court confirm that the settlement  
5 treats all class members equitably. The Advisory Committee’s Note to Rule  
6 23(e)(2)(D) advises that courts should consider “whether the apportionment of relief  
7 among class members takes appropriate account of differences among their claims,  
8 and whether the scope of the release may affect class members in different ways that  
9 bear on the apportionment of relief.” Fed. R. Civ. P. 23(e), advisory comm.’s note  
10 (2018).

11 Here, the Settlement does not improperly discriminate between any segments  
12 of the class, as all class members are entitled to the same relief. Each Class Member  
13 has the opportunity to make a claim for up to \$5,000 in reimbursements for out-of-  
14 pocket expenses, a \$100 statutory amount for California residents, a \$25 statutory  
15 amount for Washington residents, and all Class Members are entitled to receive a *pro*  
16 *rata* cash payment of an estimated \$50. The requested \$2,000 Service Award per  
17 Class Representative is consistent with awards granted in similar cases. *See, e.g. In*  
18 *re Yahoo Mail Litig.*, No. 13-CV-4980, 2016 WL 4474612, at \*11 (N.D. Cal. Aug.  
19 25, 2016) (“The Ninth Circuit has established \$5,000.00 as a reasonable benchmark  
20 [for service awards].”). This factor also weighs in favor of approval.

### 21 **D. The Court Should Approve the Proposed Notice Program**

22 Rule 23 requires that prior to final approval, the “court must direct notice in a  
23 reasonable manner to all class members who would be bound by the proposal.” Fed.  
24 R. Civ. P. 23(e)(1)(B). For classes certified under Rule 23(b)(3), “the court must  
25 direct to class members the best notice that is practicable under the circumstances,  
26 including individual notice to all members who can be identified through reasonable  
27 effort.” Fed. R. Civ. P. 23(c)(2)(B). “The notice may be by one or more of the  
28



1 following: United States mail, electronic means, or other appropriate means.” *Id.*

2 Such notice must be the “best notice practicable,” *see* Fed. R. Civ. P.  
3 23(c)(2)(B), which means “individual notice to all members who can be identified  
4 through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974).  
5 Class settlement notices must present information about a proposed settlement  
6 simply, neutrally, and understandably. *In re Hyundai & Kia Fuel Econ. Litig.*, 926  
7 F.3d 539, 567 (9th Cir. 2019). Notice is adequate if it generally describes the terms  
8 of the class action settlement in sufficient detail to alert those with adverse viewpoints  
9 to investigate, object, and to come forward and be heard. *Id.*

10 Here, the Parties have agreed to a robust notice program to be administered by  
11 a well-respected third-party class administrator — Kroll Settlement Administration,  
12 LLC — which will use all reasonable efforts to provide direct and individual notice  
13 to Class Members. The Notice and Claim Forms negotiated by the Parties are clear  
14 and concise and inform Class Members of their rights and options under the  
15 Settlement, including detailed instructions on how to make a claim, object to the  
16 Settlement, or opt-out of the Settlement. S.A. ¶ 21-29, Exs. A-C.

17 In addition to the direct notice, the Administrator will also establish a dedicated  
18 Settlement Website and will maintain and update the website throughout the Claims  
19 period, with the forms of Short Notice, Long Notice, and Claim Form approved by  
20 the Court, as well as the Settlement Agreement, and staff a toll-free help line. *Id.* ¶  
21 3.3.

22 Plaintiffs have therefore negotiated a notice program that reasonably apprises  
23 Class Members of the pendency of the action and affords them an opportunity to  
24 present their objections. Because the Notice Program ensures that Class Members’  
25 due process rights are amply protected, this Court should approve it. *See e.g. In re*  
26 *Online DVD-Rental Antitrust Litig.*, 779 F. 3d 934, 946 (9th Cir. 2015) (finding notice  
27 provided initially by email, and then by mail to individuals whose emails bounced  
28

1 back was sufficient).

2 **E. Appointment of the Settlement Administrator**

3 In connection with implementation of the Notice Program and administration  
4 of the settlement benefits, the Parties request the Court appoint Kroll Settlement  
5 Administration, LLC to serve as the Claims Administrator. Kroll has a trusted and  
6 proven track record of administering thousands of class actions. S.A. ¶ 5; Joint Decl.  
7 ¶ 20. Notice and administration is expected to cost approximately \$235,252.41 and  
8 will be paid from the Settlement Fund. *Id.*

9 **F. Appointment of Class Counsel**

10 Under Rule 23, “a court that certifies a class must appoint class counsel [who  
11 must] fairly and adequately represent the interests of the class.” Fed. R. Civ. P.  
12 23(g)(1)(B). Courts generally consider the following attributes: the proposed class  
13 counsel’s (1) work in identifying or investigating potential claims, (2) experience in  
14 handling class actions or other complex litigation, and the types of claims asserted in  
15 the case, (3) knowledge of the applicable law, and (4) resources committed to  
16 representing the class. Fed. R. Civ. P. 23(g)(1)(A)(i–iv).

17 Here, proposed Class Counsel have extensive experience prosecuting data  
18 breach class action cases. *See* Joint Decl. ¶¶ 44-47. Accordingly, the Court should  
19 appoint John Nelson of Milberg Coleman Bryson Phillips Grossman, PLLC and  
20 Joseph M. Lyon of The Lyon Firm as Class Counsel.

21 **VII. CONCLUSION**

22 For all the above reasons, Plaintiffs respectfully request this Court to grant  
23 Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement.  
24  
25  
26  
27  
28



1 Date: February 12, 2025

Respectfully Submitted,

2 /s/ John J. Nelson

3 John J. Nelson (SBN 317598)

4 **MILBERG COLEMAN BRYSON**

5 **PHILLIPS GROSSMAN, PLLC**

6 280 S. Beverly Drive

7 Beverly Hills, CA 90212

8 Telephone: (858) 209-6941

9 Joseph M. Lyon (SBN 351117)

10 **THE LYON FIRM**

11 9210 Irvine Center Drive, Suite 200

12 Irvine, CA 92618

13 Telephone: (513) 381-2333

14 Facsimile: (513) 766-9011

15 *Interim Co-Lead Class Counsel*

16 M. Anderson Berry (SBN 262879)

17 Gregory Haroutunian (SBN 330263)

18 Brandon P. Jack (SBN 325584)

19 **CLAYEO C. ARNOLD**

20 **A PROFESSIONAL CORPORATION**

21 12100 Wilshire Boulevard, Suite 800

22 Los Angeles, CA 90025

23 Telephone: (747) 777-7748

24 Paul M. DeMarco (SBN 112834)

25 **MARKOVITS, STOCK &**

26 **DEMARCO, LLC**

27 119 East Court Street, Suite 530

28 Cincinnati, OH 45202

Telephone: (513) 651-3700

Facsimile: (513) 665-0219

1  
2 Zachary O. Chambers\*  
3 **MIGLIACCIO & RATHOD LLP**  
4 412 H Street NE, no. 302,  
5 Washington, DC, 20002  
6 Office: (202) 470-3520

7 Robert Mackey (SBN 125961)  
8 **LAW OFFICES OF ROBERT MACKEY**  
9 660 Baker Street  
10 Building A, Ste. 201  
11 Costa Mesa, CA 92626

12 *Attorneys for Plaintiffs and the Settlement*  
13 *Class*

14 \* *Admitted Pro Hac Vice*

15 **RULE 7-3 CERTIFICATION**

16 The undersigned counsel certifies that they have conferred with Defendant's  
17 counsel regarding this Motion for Preliminary Approval on February 5, 2025, and  
18 Defendant is unopposed to the relief requested herein.

19 /s/ John J. Nelson  
20 John J. Nelson (SBN 317598)

21 **CERTIFICATE OF SERVICE**

22 The undersigned hereby certifies that on February 12, 2025 the foregoing  
23 document was filed via the Court's ECF system, which will cause a true and correct  
24 copy of the same to be served electronically on all ECF-registered counsel of record.

25 /s/ John J. Nelson  
26 John J. Nelson (SBN 317598)