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

**KEVIN GREGERSON**, on behalf of  
himself and all others similarly situated,

Plaintiff,

v.

**TOSHIBA AMERICA BUSINESS  
SOLUTIONS, INC.,**

Defendant.

Case No. 8:24-cv-01201-FWS-ADS

**PLAINTIFF'S NOTICE OF  
MOTION AND UNOPPOSED  
MOTION FOR  
FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT AND  
MEMORANDUM IN SUPPORT**

Judge Fred W. Slaughter

Date: August 28, 2025

Time: 10:00 a.m.

Courtroom: 10D (Santa Ana)

**PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT AND MEMORANDUM IN SUPPORT**

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE THAT** on Thursday, August 28, 2025, at 10:00 a.m. or as soon thereafter as the matter may be heard by the Honorable Fred W. Slaughter of the United States District Court for the Central District of California, Southern Division, located in Courtroom 10-D at 411 West 4th Street, Room 1053, Santa Ana, California 92701-4516. Plaintiff, through his undersigned counsel of record, will and hereby does move pursuant to Federal Rule of Civil Procedure 23 for entry of an order, *inter alia*:

- (1) granting final approval of the Settlement;
- (2) finally certifying the Settlement Class for purposes of settlement only;
- (3) finally appointing Plaintiff Kevin Gregerson as Class Representative;
- (4) finally appointing Raina C. Borrelli and Andrew G. Gunem of Strauss Borrelli PLLC and Kennedy M. Brian and William B. Federman of Federman & Sherwood as Settlement Class Counsel;
- (5) finally appointing RG/2 Claims Administration, LLC as Settlement Administrator;
- (6) awarding the requested Attorney Fees, Costs, and Service Award; and
- (7) finding that Notice complied with the Court's Preliminary Approval Order, due process, and the Federal Rules of Civil Procedure.

This Unopposed Motion is based on this Notice of Motion, the supporting Memorandum of Points and Authorities, the Declaration of Raina C. Borrelli (Exhibit 1), the Declaration of Dana Boub (Exhibit 2), all pleadings and exhibits

1 herein, and any other matter of which this Court may take judicial notice. Pursuant  
2 to Local Rule 7-3, proposed Settlement Class Counsel conferred with Defendant,  
3 and Defendant does not oppose the relief sought by Plaintiff.

4  
5 Dated: August 14, 2025

By: /s/ Andrew G. Gunem

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1 **I. INTRODUCTION<sup>1</sup>**

2 On April 17, 2025, the Court granted Preliminary Approval of the Class  
3 Action Settlement, as set forth in a Settlement Agreement (“S.A.”) between Plaintiff  
4 Kevin Gregerson (“Plaintiff”) and Defendant Toshiba American Business Solutions,  
5 Inc. (“TABS” or “Defendant”) (together the “Parties”). Pursuant to the Court’s  
6 Order, the Settlement Administrator RG/2 Claims Administration LLC (“RG/2” or  
7 “Settlement Administrator”) issued notice to the Settlement Class on May 31, 2025.

8 Since then, direct notice has reached 98% of the Settlement Class. Settlement  
9 Class Members have filed 940 claims—which equates to a claims rate of 13.7%. The  
10 estimated average value of the *Pro Rata* Cash Payment claims is \$192.81 (though  
11 that number may change as claims continue to be submitted and evaluated).  
12 Additionally, only three (3) Settlement Class Members have opted-out of the  
13 Settlement and no Settlement Class Members have objected to the Settlement. As  
14 explained below, the Settlement satisfies Rule 23(a), Rule 23(b)(3), Rule 23(e), the  
15

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16  
17 <sup>1</sup> Counsel sincerely apologizes for the delay in filing for final approval. (*See* Dkt.  
18 46.) Counsel incorrectly believed that the Motion for Final Approval was originally  
19 due on August 14, 2025. (*See* Dkt. 40-1, at 59) (“Final Approval Brief and Response  
20 to Objections Due . . . No later than 14 days prior to the Final Approval Hearing.”)  
21 This mistake does not excuse the delay—rather, Counsel only wants to assure the  
22 Court that the delay was accidental (and not the result of a knowing disregard for the  
23 applicable rules). Again, Counsel sincerely apologizes for the delay—and thanks the  
Court for the generous *sua sponte* extension. Class Counsel also sincerely apologize  
for not including the Court’s preferred excel spreadsheets with their Motion for  
Attorneys’ Fees, Costs, and Expenses, these charts—with updated hours, lodestars,  
and expenses—are included with this filing (Exhibits 3 and 4) and will be emailed  
to the Court’s designated email address.



1 *Briseño* analysis, and the *Hanlon/Staton* factors—and the Court should grant final  
2 approval of the Settlement.<sup>2</sup>

## 3 **II. BACKGROUND**

### 4 **A. Litigation History.**

5 Defendant provides copiers, printers, managed document services, and digital  
6 signage for businesses. (*See* Dkt. 40 (“First Amended Complaint” or “FAC”)). On  
7 or around December 4, 2023, cybercriminals gained unauthorized access to  
8 Defendant’s computer network (the “Data Incident”). (*See* Dkt. 40-1 (“Settlement  
9 Agreement” or “S.A.”), ¶ 1.26.) The Data Incident allegedly impacted the personal  
10 identifiable information (“PII”) of the current and former employees of Defendant  
11 (the “Settlement Class” or “Settlement Class Members”). (FAC ¶¶ 4, 30.) In total,  
12 there are 6,883 individuals in the Settlement Class. (S.A. at 1.)

13 On July 22, 2024, Plaintiff filed the operative Amended Class Action  
14 Complaint—and brought claims for (1) negligence, (2) negligence *per se*, (3) breach  
15 of implied contract, (4) invasion of privacy, (5) breach of fiduciary duty, (6)  
16 violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200,  
17 (7) violation of California Consumer Privacy Act, Cal. Civ. Code § 1798.150, and  
18 (8) declaratory relief. (FAC ¶¶ 89–191.)

19 Over the course of several months, the Parties engaged in arms’ length  
20 negotiations and exchanged informal discovery—which enabled the Parties to better

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21 <sup>2</sup> Plaintiff filed a [Proposed] Final Approval Order as “Exhibit E” to the Settlement  
22 Agreement. (*See* Dkt. 40-1). Counsel prepared an updated [Proposed] Final  
23 Approval Order (Exhibit 5) which Counsel will also submit to the Court’s designated  
email address.

1 evaluate the strengths and weaknesses of the underlying claims and defenses. (S.A.  
2 at 2.) Eventually, the Parties agreed to the terms of the Settlement. (*Id.*) And on  
3 March 11, 2025, Plaintiff filed his Unopposed Motion for Preliminary Approval of  
4 Class Action Settlement. (*See* Dkt. 40.) Then, on April 17, 2025, the Court granted  
5 preliminary approval—and directed the Settlement Administrator to disseminate  
6 Notice to the Class. (Dkt. 43.)

7 **B. The Settlement Class & California Settlement Subclass.**

8 The Settlement Class is defined as “[A]ll United States residents who were  
9 mailed notice by TABS that their personal information was impacted in a data  
10 incident beginning on approximately December 4, 2023. However, the Settlement  
11 Class specifically excludes: (i) TABS, the Related Entities, and their officers and  
12 directors; (ii) all Settlement Class Members who timely and validly request  
13 exclusion from the Settlement Class; (iv) any judges assigned to this case and their  
14 staff and family; and (v) any other Person found by a court of competent jurisdiction  
15 to be guilty under criminal law of initiating, causing, aiding or abetting the criminal  
16 activity occurrence of the Data Incident or who pleads nolo contendere to any such  
17 charge.” (S.A. ¶ 1.28).

18 The Settlement also provides for a California Settlement Subclass defined as  
19 “[A]ll persons residing in California who were mailed notification of the Data  
20 Incident from TABS at a California address.” (*Id.* ¶ 1.2.) In total, there are 6,883  
21 Settlement Class Members. (*See* Declaration of Dana Boub Regarding  
22 Dissemination of Notice to the Class (“Boub Decl.”), ¶ 6).

1           **C. Settlement Benefits.**

2           The Settlement provides substantial and timely relief to the Settlement  
3 Class—most notably, Defendant has agreed to establish a non-reversionary common  
4 fund of \$435,000.00 (the “Settlement Fund”). (*Id.* ¶ 1.30.) The Settlement provides  
5 for the following benefits:

6           **First**, all Settlement Class Members can claim “Out-of-Pocket Expense  
7 Reimbursement” of up to \$7,500.00 for monetary losses that were likely caused by  
8 the Data Incident. (*Id.* ¶ 2.2.) Such claims will be paid from the Settlement Fund.  
9 (*Id.* ¶ 2.1)

10          **Second**, all California Settlement Subclass Members can claim a \$150.00 cash  
11 payment. (*Id.* ¶ 2.4.) Such claims will be paid from the Settlement Fund. (*Id.* ¶ 2.1)

12          **Third**, all Settlement Class Members can claim a *pro rata* share of all  
13 remaining cash (the “Net Settlement Fund”) after the payment of valid claims for  
14 Out-of-Pocket Expense Reimbursement and California Settlement Subclass  
15 Payments. (*Id.* ¶ 2.5.) Such claims will be paid from the Settlement Fund. (*Id.* ¶ 2.1)

16          **Fourth**, the Settlement Fund will pay for the Costs of Claims Administration,  
17 Attorney Fees and Costs, and the Service Award. (*Id.* ¶ 3.2).

18          **Fifth**, the Settlement mandates that Defendant invest in “Business Practices  
19 Changes” whereby Defendant “has implemented or will implement certain  
20 reasonable steps to adequately secure its systems and environments.” (*Id.* ¶ 2.7.)  
21 Notably, Defendant will pay for this benefit *separate and apart* from the Settlement  
22 Fund. (*See id.*)  
23

1           **D.     The Notice Program.**

2           Pursuant to the Court’s Order, the Settlement Administrator RG/2 issued  
3 notice to the Settlement Class—which was successful and reached 98% of the  
4 Settlement Class. (Boub Decl. ¶ 10.) Initially, RG/2 received a data file containing  
5 6,883 Settlement Class Member names and mailing addresses. (*Id.* ¶ 5.) Then, RG/2  
6 updated the mailing addresses using the United States Postal Service’s (“USPS”)   
7 National Change of Address database (“NCOA”). (*Id.*)

8           On May 31, 2025, RG/2 issued direct notice via First Class U.S. Mail to the  
9 6,883 Settlement Class Members. (*Id.* ¶ 6.) The notice included a link to the  
10 Settlement Website and a Class Member ID and PIN (which enabled Settlement  
11 Class Members to submit claims electronically). (*Id.*) As of August 13, 2025, 545  
12 notices were returned as undeliverable. (*Id.* ¶ 10.) Of those, seven (7) included a  
13 forwarding address, and RG/2 immediately mailed the notice to the forwarding  
14 address. (*Id.*) Thereafter, RG/2 performed an extensive skip-trace procedures and  
15 was able to locate updated addresses for 443 Settlement Class Members. (*Id.*) Then,  
16 RG/2 promptly issued notice to the updated addresses. (*Id.*) In sum, RG/2 succeeded  
17 in providing direct mail notice to 98% of the Settlement Class. (*Id.*)

18           On May 31, 2025, RG/2 also established the Settlement Website at  
19 “www.TABSDataSettlement.com” to provide supplementary notice and easy access  
20 to all relevant information. (*Id.* ¶ 7.) And RG/2 established a toll-free number (866-  
21 742-4955) and email (info@rg2claims.com) so that Settlement Class Members  
22 could receive additional information, ask questions about the Settlement, and request  
23

1 a Long-Form Notice or Claim Form by mail. (*Id.* ¶ 8.) To date, RG/2 has received  
2 twelve (12) phone calls from Settlement Class Members. (*Id.*)

3 **E. Opt-Outs & Objections.**

4 In total, three (3) Settlement Class Members opted out (i.e., excluded  
5 themselves) from the Settlement. (*Id.* ¶ 11.) Additionally, zero (0) Settlement Class  
6 Members objected to the Settlement. (*Id.* ¶ 12.)

7 **F. Claims Administration.**

8 As of August 13, 2025, RG/2 has received 940 claim submissions. (*Id.* ¶ 13.)  
9 In other words, 13.7% of the Settlement Class has filed a claim. (*Id.*) Therein, 728  
10 selected the *pro rata* cash payment, 433 selected the California statutory payment,  
11 and 17 selected out-of-pocket reimbursement. (*Id.*) However, RG/2 expects to  
12 receive additional claims over the next several weeks (as the claims period is open  
13 for claims postmarked by August 14, 2025). (*Id.*) Additionally, RG/2 will continue  
14 to review the validity of the claims submitted. (*Id.*) At present, RG/2 estimates that  
15 the value of the *pro rata* cash payment will be \$192.81 per valid claimant. (*Id.*)

16 **III. LEGAL STANDARD**

17 “Although there is a ‘strong judicial policy that favors settlements,  
18 particularly where complex class action litigation is concerned,’ a settlement of class  
19 claims requires court approval.” *Mary Nguyen v. Westlake Servs. Holding Co.*, No.  
20 8:23-cv-00854, 2025 U.S. Dist. LEXIS 147801, at \*10 (C.D. Cal. Jan. 27, 2025)  
21 (quoting *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998)).  
22 And when “deciding whether to grant the Final Approval Motion and Fee Motion,  
23

1 the court analyzes (1) whether to certify a class for settlement purposes and (2) the  
2 fairness of the Settlement.” *Id.*

#### 3 **IV. ARGUMENT**

4 Final approval is proper under Rule 23(a), Rule 23(b)(3), Rule 23(e), the  
5 *Briseño* analysis, and the *Hanlon/Staton* factors. (Borrelli Decl. ¶ 2.) As explained  
6 below, the Settlement is procedurally and substantively fair, reasonable, and  
7 adequate. (*Id.* ¶ 3.) Notably, California courts readily grant final approval of  
8 analogous data breach class action settlements. *See, e.g., Tanner v. Plavan Commer.*  
9 *Fueling, Inc.*, No. 3:24-cv-1341, 2025 U.S. Dist. LEXIS 150643, at \*3 (S.D. Cal.  
10 Aug. 4, 2025) (granting final approval of a data breach class action settlement);  
11 *Harbour v. Cal. Health & Wellness Plan*, No. 5:21-cv-03322, 2024 U.S. Dist.  
12 LEXIS 7783, at \*27 (N.D. Cal. Jan. 16, 2024) (same); *Carter v. Vivendi Ticketing*  
13 *United States LLC*, No. SACV 22-01981, 2023 U.S. Dist. LEXIS 210744, at \*36  
14 (C.D. Cal. Oct. 30, 2023) (same); *Gupta v. Aeries Software, Inc.*, No. SA CV 20-  
15 0995, 2023 U.S. Dist. LEXIS 36141, at \*21 (C.D. Cal. Mar. 3, 2023) (same);  
16 *Hashemi v. Bosley, Inc.*, No. CV 21-946, 2022 U.S. Dist. LEXIS 210946, at \*1 (C.D.  
17 Cal. Nov. 21, 2022). Here too, the Court should grant final approval.

#### 18 **A. The Settlement Class satisfies Rule 23(a) and Rule 23(b)(3).**

19 Previously, the Court found that the Settlement Class satisfied Rule 23(a) and  
20 Rule 23(b)(3). (Dkt. 43, at 5–10.) Since then, there has been no intervening change  
21 in law or fact to disturb the Court’s initial finding. *See Atzin v. Anthem, Inc.*, No.  
22 2:17-cv-06816, 2022 U.S. Dist. LEXIS 166417, at \*8–9 (C.D. Cal. Sep. 14, 2022)

1 (“Nothing has changed to disturb that conclusion, and class certification remains  
2 appropriate.”). And as explained below, the Settlement Class still satisfies  
3 numerosity, commonality, typicality, adequacy, predominance, and superiority.  
4 (Borrelli Decl. ¶ 4.) Thus, the Court should grant final approval.

5 **Numerosity** is satisfied when “the class is so numerous that joinder of all  
6 members is impracticable[.]” Fed. R. Civ. P. 23(a)(1). “As a general matter, courts  
7 have found that numerosity is satisfied when class size exceeds 40 members.” *Moore*  
8 *v. Ulta Salon, Cosmetics & Fragrance, Inc.*, 311 F.R.D. 590, 602–03 (C.D. Cal.  
9 2015). Here, there are 6,883 Class Members. (S.A. at 1.). Thus, numerosity is readily  
10 satisfied. *See Tanner*, 2025 U.S. Dist. LEXIS 150643, at \*5 (granting final approval  
11 and finding numerosity satisfied with 2,948 class members).

12 **Commonality** is satisfied when “there are questions of law or fact common to  
13 the class[.]” Fed. R. Civ. P. 23(a)(2). Here, there are numerous common questions  
14 including “if Defendant had a duty to use reasonable care in safeguarding Plaintiff’s  
15 and the Class’s PII” and “if Defendant failed to implement and maintain reasonable  
16 security procedures and practices appropriate to the nature and scope of the  
17 information compromised in the Data Breach” and “if the Data Breach caused  
18 Plaintiff and the Class injuries[.]” (FAC ¶ 87.) These questions establish  
19 commonality. *See, e.g., Tanner*, 2025 U.S. Dist. LEXIS 150643, at \*5–6 (granting  
20 final approval of a data breach settlement and finding commonality satisfied);  
21 *Harbour*, 2024 U.S. Dist. LEXIS 7783, at \*9–10 (same); *Carter*, 2023 U.S. Dist.  
22 LEXIS 210744, at \*9–10 (same).



1       **Typicality** is satisfied when “the claims or defenses of the representative  
2 parties are typical of the claims or defenses of the class[.]” Fed. R. Civ. P. 23(a)(3).  
3 Here, the claims and relevant defenses of Plaintiff mirror those of Class Members—  
4 after all, the claims and defenses all arise from the same Data Incident. (Borrelli  
5 Decl. ¶ 5.) These similarities establish typicality. *See, e.g., Tanner*, 2025 U.S. Dist.  
6 LEXIS 150643, at \*5–6 (granting final approval of a data breach settlement and  
7 finding typicality satisfied); *Harbour*, 2024 U.S. Dist. LEXIS 7783, at \*9–10 (same);  
8 *Carter*, 2023 U.S. Dist. LEXIS 210744, at \*9–10 (same).

9       **Adequacy** is satisfied when “the representative parties will fairly and  
10 adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). Here, Class  
11 Counsel “has significant experience in complex class action litigation and is  
12 currently litigating hundreds of data breach cases in courts across the country.”  
13 (Borrelli Decl. ¶ 6.) Moreover, Plaintiff Kevin Gregerson “dedicated approximately  
14 forty (40) hours to [his] responsibilities as a Class Representative” including by,  
15 *inter alia*, “reviewing the documents filed in this action (e.g., the complaint and  
16 settlement agreement)” and “speaking with and communicating with my attorneys  
17 (and answering their many questions)” and “communicating with my fellow Class  
18 Members about the impacts of the Data Breach and the litigation[.]” (*See Declaration*  
19 *of Kevin Gregerson* (“Gregerson Decl.”), ¶ 4.) These facts establish adequacy. *See*  
20 *also Tanner*, 2025 U.S. Dist. LEXIS 150643, at \*5–6 (granting final approval of a  
21 data breach settlement and finding adequacy satisfied); *Harbour*, 2024 U.S. Dist.



1 LEXIS 7783, at \*9–10 (same); *Carter*, 2023 U.S. Dist. LEXIS 210744, at \*9–10  
2 (same).

3 ***Predominance*** is satisfied when “questions of law or fact common to class  
4 members predominate over any questions affecting only individual members[.]”  
5 Fed. R. Civ. P. 23(b)(3). For example, in *Tanner*, the court granted final approval  
6 after finding that “[t]he main common question in this case which would be subject  
7 to common proof is whether [defendant] failed to properly secure and safeguard the  
8 Settlement Class’s personal identifiable information” and “[t]hat question  
9 predominates in the case.” 2025 U.S. Dist. LEXIS 150643, at \*5–6. Here too, “the  
10 main question of this case is whether Defendant failed to properly secure the PII of  
11 its current and former employees.” (Borrelli Decl. ¶ 7.) Thus, predominance is  
12 satisfied. *See also Harbour*, 2024 U.S. Dist. LEXIS 7783, at \*9–10 (granting final  
13 approval of a data breach settlement and finding predominance satisfied); *Carter*,  
14 2023 U.S. Dist. LEXIS 210744, at \*9–10 (same).

15 ***Superiority*** is satisfied when “a class action is superior to other available  
16 methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P.  
17 23(b)(3). For example, in *Tanner*, the court granted final approval after finding that  
18 “given . . . the number of potential class members, the Court concludes that a class  
19 action is a superior mechanism[.]” 2025 U.S. Dist. LEXIS 150643, at \*5–6. Here  
20 too, individual adjudication of the 6,883 claims of Class Members would strain  
21 judicial resources. (Borrelli Decl. ¶ 8.) Thus, superiority is satisfied. *See also*  
22 *Harbour*, 2024 U.S. Dist. LEXIS 7783, at \*9–10 (granting final approval of a data  
23

1 breach settlement and finding superiority satisfied); *Carter*, 2023 U.S. Dist. LEXIS  
2 210744, at \*9–10 (same).

3 **B. Final Approval Is Appropriate Under Rule 23(e).**

4 Under Rule 23(e), courts must consider four factors when determining if a  
5 settlement is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). These factors  
6 include two “procedural factors” and two “substantive factors.” WILLIAM B.  
7 RUBENSTEIN, NEWBERG AND RUBENSTEIN ON CLASS ACTIONS § 13:48 (6th ed. 2022).  
8 The “procedural factors” are whether “(A) the class representatives and class counsel  
9 have adequately represented the class” and “(B) the proposal was negotiated at arm’s  
10 length[.]” Fed. R. Civ. P. 23(e)(2). The “substantive factors” are whether “(C) the  
11 relief provided for the class is adequate, taking into account: (i) the costs, risks, and  
12 delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing  
13 relief to the class, including the method of processing class-member claims; (iii) the  
14 terms of any proposed award of attorney’s fees, including timing of payment; and  
15 (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the  
16 proposal treats class members equitably relative to each other.” *Id.* Here, all four  
17 factors support final approval.

18 **1. Class Counsel and Plaintiff Provided Adequate**  
19 **Representation.**

20 The procedural factor Rule 23(e)(2)(A) supports final approval because Class  
21 Counsel and the Plaintiff provided adequate representation. (Borrelli Decl. ¶ 9.) As  
22 explained above, Class Counsel has significant experience in data breach class action  
23

1 litigation. (*Id.* ¶ 6.) And Plaintiff Kevin Gregerson vigorously pursued his claims—  
2 which are coextensive with the claims of the Class—and “dedicated approximately  
3 forty (40) hours to [his] responsibilities as a Class Representative[.]” (“Gregerson  
4 Decl.”), ¶ 4.) Thus, this factor supports final approval. *See Tanner*, 2025 U.S. Dist.  
5 LEXIS 150643, at \*7–8 (finding that this factor supported final approval).

6 **2. The Settlement was Negotiated at Arm’s Length.**

7 The procedural factor Rule 23(e)(2)(B) supports final approval because the  
8 Settlement was negotiated at arm’s length. (Borrelli Decl. ¶ 10.) Here, the Parties  
9 exchanged informal discovery which enabled the Parties to better evaluate the  
10 strengths and weaknesses of the underlying claims and defenses. (S.A. at 2.) Then,  
11 the Parties engaged in arm’s length negotiations “over the course of several  
12 months[.]” (*Id.*) Moreover, “to avoid any conflict of interest, the Parties agreed to  
13 not negotiate attorney fees or the service award until after the core terms of the  
14 Settlement were agreed upon.” (Borrelli Decl. ¶ 11.) Thus, this factor supports final  
15 approval. *See Tanner*, 2025 U.S. Dist. LEXIS 150643, at \*7–8 (finding that this  
16 factor supported final approval).

17 **3. The Settlement Provides Adequate Relief.**

18 The substantive factor Rule 23(e)(2)(C) supports final approval because the  
19 relief provided by the Settlement is adequate. (Borrelli Decl. ¶ 12.) Here, the  
20 Settlement Fund of \$435,000.00 equates to a value of \$63.20 per Settlement Class  
21 Member—which compares favorably to analogous data breach class action  
22 settlements. *See, e.g., Harbour*, 2024 U.S. Dist. LEXIS 7783, at \*27 (providing  
23

1 approximately \$6.62 per person for a class of 1.51 million); *Tanner*, 2025 U.S. Dist.  
2 LEXIS 150643, at \*3–5 (providing approximately \$101.76 per person for a class of  
3 2,948); *Carter*, 2023 U.S. Dist. LEXIS 210744, at \*3–5 (providing approximately  
4 \$6.86 per person for a class of 437,310); *Gupta*, 2023 U.S. Dist. LEXIS 36141, at  
5 \*5–6 (providing approximately \$17.82 per person for a class of 98,199); *Hashemi*,  
6 2022 U.S. Dist. LEXIS 210946, at \*1 (providing approximately \$4.62 per person for  
7 a class of 108,101).

8 Moreover, the substantive factors in Rule 23(e)(2)(C) includes four (4)  
9 separate subfactors for the court to “tak[e] into account.” *See* Rule 23(e)(2)(C). Here,  
10 three of these subfactors support final approval, and one subfactor is neutral.

11 **First**, Rule 23(e)(2)(C)(i) supports final approval because trial and/or appeal  
12 would be costly, risky, and would delay relief to Class Members. (Borrelli Decl. ¶  
13 13.) Indeed, “Plaintiff faced serious risks prevailing on the merits, including proving  
14 causation, as well as risks at class certification and at trial, and surviving appeal.”  
15 (*Id.* ¶ 14.) Thus, “a settlement today not only avoids the risks of continued litigation,  
16 but it also provides benefits to the Settlement Class Members now as opposed to  
17 after years of risky litigation.” (*Id.* ¶ 15.) Thus, Rule 23(e)(2)(C)(i) supports final  
18 approval. *See Tanner*, 2025 U.S. Dist. LEXIS 150643, at \*9 (finding that this factor  
19 supported final approval).

20 **Second**, Rule 23(e)(2)(C)(ii) supports final approval because the proposed  
21 methods for distributing relief and processing claims are effective. (Borrelli Decl. ¶  
22 16.) Here, the relief is tailored to the specific injuries that Settlement Class Members  
23

1 incurred (i.e., compensation for out-of-pocket losses versus cash payments). (S.A.  
2 ¶¶ 2.2–2.5.) Moreover, Settlement Class Members were able to file claims via mail  
3 or online—which resulted in a strong claims rate of 13.7%. (Boub Decl. ¶ 13.)  
4 Simply put, the Settlement—and the methods for distributing relief and processing  
5 claims—compare favorably with analogous data breach settlements. *See Tanner*,  
6 2025 U.S. Dist. LEXIS 150643, at \*9–10 (finding that this factor supported final  
7 approval because “the relief distribution is straightforward” and “[c]lass members  
8 were able to easily complete and submit either by mail or online a claim form”).

9 **Third**, Rule 23(e)(2)(C)(iii) supports final approval because the proposed  
10 award of attorney fees is reasonable. (Borrelli Decl. ¶ 17.) The Settlement  
11 Agreement contemplated a fee award of “up to one-third of the Settlement Fund[.]”  
12 (S.A. ¶ 7.2.) Previously, the Court noted that such a request would be “above the  
13 common benchmark of 25% of the fund.” (Dkt. 43, at 17.) As such, Class Counsel  
14 reduced their fee request to 25% of the fund. (Dkt. 44, at 10.) This voluntary  
15 reduction further supports the reasonableness of the Settlement and the proposed fee  
16 award. (Borrelli Decl. ¶ 18.)

17 Additionally, the Court noted the “timing of payment” whereby the  
18 “Settlement provides that any fees awarded to class counsel must be paid . . . well in  
19 advance of when class members can expect to be compensated.” (Dkt. 43, at 17.) To  
20 address these concerns, Class Counsel has requested that RG/2 delay disbursing any  
21 Court approved attorney fees until the Settlement Class Members are issued  
22 settlement payments. (Borrelli Decl. ¶ 19.) As such, Class Counsel will not receive  
23

1 payment before Class Members—which further supports the reasonableness of the  
2 Settlement and the proposed fee award. (*Id.* ¶ 20.) Thus, Rule 23(e)(2)(C)(iii)  
3 supports final approval.

4 ***Fourth***, Rule 23(e)(2)(C)(iv) is neutral toward final approval because there is  
5 no agreement that requires identification. (*Id.* ¶ 21.)

6 **4. The Settlement Treats Class Members Equitably.**

7 The substantive factor Rule 23(e)(2)(D) supports final approval because the  
8 Settlement treats Class Members equitably. (Borrelli Decl. ¶ 22.) For example, in  
9 *Tanner*, the court held that “this factor is satisfied because although class members  
10 may receive differing payouts under the Settlement, those differing amounts are  
11 based on class members’ differing costs resulting from the data breach.” 2025 U.S.  
12 Dist. LEXIS 150643, at \*10–11. Likewise, the Settlement provides relief tailored to  
13 the specific injuries that Settlement Class Members incurred (i.e., compensation for  
14 out-of-pocket losses versus cash payments). (S.A. ¶¶ 2.2–2.5.)

15 Finally, the requested Service Award of \$5,000 is “presumptively  
16 reasonable.” *Tanner*, 2025 U.S. Dist. LEXIS 150643, at \*18–19 (collecting cases);  
17 *see also Tobias v. Nvidia Corp.*, No. 20-cv-06081, 2025 U.S. Dist. LEXIS 11615, at  
18 \*3 n.1 (N.D. Cal. Jan. 16, 2025) (“At some point, the common law will have to  
19 reckon with inflation. \$5,000 in February 2012, when the *Harris* decision was  
20 issued, had the same buying power as \$6,931.41.”). Moreover, Plaintiff Kevin  
21 Gregerson vigorously pursued his claims and “dedicated approximately forty (40)  
22 hours to [his] responsibilities as a Class Representative[.]” (Gregerson Decl. ¶ 4.)  
23

1 In sum, the procedural and substantive factors of Rule 23(e)(2) all support  
2 final approval (with the caveat that Rule 23(e)(2)(C)(iv) is neutral).

3 **C. The Settlement is Proper Under *Briseño* and the *Bluetooth* Factors.**

4 In the Ninth Circuit, class action settlements are often reviewed for the “three  
5 red flags” delineated by *Briseño v. Henderson*, 998 F.3d 1014, 1026 (9th Cir. 2021).  
6 These “three red flags” are also called the “*Bluetooth*” factors. *Id.* The three (3)  
7 factors are: “(i) if class counsel receives a disproportionate distribution of the gross  
8 settlement amount; (ii) if any of the gross settlement amount reverts to the defendant;  
9 and (iii) if there is a ‘clear sailing arrangement.’” *Hashemi*, 2022 U.S. Dist. LEXIS  
10 210946, at \*17.

11 The first factor is satisfied because Class Counsel has requested the  
12 “benchmark” fee of 25% of the fund. (Borrelli Decl. ¶ 23.) The second factor is  
13 satisfied because the Settlement Agreement lacks a “reverter” or “kicker” clause.”  
14 (*Id.* ¶ 24.) And while the Settlement Agreement provides that Defendant “has agreed  
15 not to oppose” the fee motion, such a clause is not a “death knell” when the  
16 settlement is otherwise fair, reasonable, and adequate. (S.A. ¶ 7.2.) And “the  
17 mere presence of a clear sailing arrangement is not ‘an independent basis for  
18 withholding settlement approval.’” *Hashemi*, 2022 U.S. Dist. LEXIS 210946, at  
19 \*20–21 (quoting *Briseño*, 998 F.3d at 1027). Rather, “such arrangements are  
20 material only if there is evidence of at least one of the other two *Briseño* factors[.]”  
21 *Id.* Thus, the Settlement is proper under *Briseño*, and the Court should grant final  
22 approval.



1           **D.     The *Hanlon/Staton* Factors Support Final Approval.**

2           In the Ninth Circuit, courts often apply the eight (8) *Hanlon/Staton* factors  
3 when evaluating the fairness, reasonableness, and adequacy of a class settlement.  
4 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).<sup>3</sup> While these factors  
5 largely overlap with the Rule 23(e)(2) analysis, Class Counsel provides the  
6 following brief analysis of the *Hanlon/Staton* factors (for the sake of thoroughness).

7           As explained below, seven of the eight factors support approval (and one  
8 factor is neutral). Thus, on balance, the *Hanlon/Staton* factors support final approval.

9           **1.     The Strength of Plaintiff’s Case.**

10          The first *Hanlon/Staton* factor supports final approval because the strength of  
11 Plaintiff’s case is uncertain. (Borrelli Decl. ¶ 25.) To be sure, Plaintiff believes in  
12 the merits of his case, but Defendant unequivocally “denies each and every claim  
13 and contention alleged against it in the Litigation.” (S.A. at 2.); *see Tanner*, 2025  
14 U.S. Dist. LEXIS 150643, at \*9 (“While Plaintiff believes in the merits of the case,  
15 ‘[defendant] denies the allegations and the claims made in the Complaint’ . . . and  
16 there is no guarantee that Plaintiff would prevail. The Court finds these risks weigh  
17 in favor of approval.”); *see also In re Onix Grp., LLC Data Breach Litig.*, No. 23-  
18 2288, 2024 U.S. Dist. LEXIS 225686, \*27 (E.D. Pa. Dec. 13, 2024) (“[T]here is a  
19 risk of establishing liability, and in turn, damages, because this case involves a  
20 number of open questions, including whether Defendant owed a duty to the class to

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21          <sup>3</sup> The *Hanlon* factors are also called the “*Staton* factors” or the “*Churchill* factors.”  
22 *See Briseño*, 998 F.3d at 1023 (9th Cir. 2021) (discussing the “*Hanlon/Staton*  
23 *factors*”); *Harbour*, 2024 U.S. Dist. LEXIS 7783, at \*12 (N.D. Cal.) (discussing the  
“*Churchill factors*”).



1 safeguard sensitive information, whether Defendant breached that duty[.]”). Thus,  
2 this factor supports final approval.

3 **2. The Risk, Expense, Complexity, and Duration of Litigation.**

4 The second *Hanlon/Staton* factor supports final approval because further  
5 litigation would be complex, expensive, and protracted. (Borrelli Decl. ¶ 26.) Indeed,  
6 “data breach litigation raises complex issues of damages and causation which can  
7 impede, or even prevent, plaintiffs from achieving success on the merits.” (*Id.* ¶ 27.);  
8 *see also Hashemi v. Bosley, Inc.*, No. CV 21-946, 2022 U.S. Dist. LEXIS 119454,  
9 at \*18 (C.D. Cal. Feb. 22, 2022) (explaining that “data breach class actions are a  
10 relatively new type of litigation and that damages methodologies in data breach cases  
11 are largely untested and have yet to be presented to a jury”). Thus, this factor  
12 supports final approval.

13 **3. The Risk of Maintaining Class Action Status.**

14 The third *Hanlon/Staton* factor supports final approval because achieving—  
15 and then maintaining—class certification is acutely difficult for data breach cases.  
16 (Borrelli Decl. ¶ 28.) Indeed, “no data breach class action has reached the trial  
17 stage . . . the trial risk is difficult to quantify and raises the uncertainty involved in  
18 the case[.]” *In re Canon United States Data Breach Litig.*, No. 20-CV-6239, 2024  
19 U.S. Dist. LEXIS 138499, at \*30 (E.D.N.Y. Aug. 5, 2024); *see also Maldini v.*  
20 *Marriott Int’l, Inc.*, 140 F.4th 123 (4th Cir. 2025) (decertifying class in data breach  
21 class action). Thus, this factor supports final approval.  
22  
23

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

2           The fourth *Hanlon/Staton* factor supports final approval because the  
3 Settlement provides substantial value—i.e., the Settlement Fund of \$435,000.00  
4 equates to a value of \$63.20 per Settlement Class Member. (Borrelli Decl. ¶ 29.)  
5 Such relief compares favorably to analogous data breach class action settlements.  
6 *See, e.g., Harbour*, 2024 U.S. Dist. LEXIS 7783, at \*27 (providing approximately  
7 \$6.62 per person for a class of 1.51 million); *Tanner*, 2025 U.S. Dist. LEXIS 150643,  
8 at \*3–5 (providing approximately \$101.76 per person for a class of 2,948); *Carter*,  
9 2023 U.S. Dist. LEXIS 210744, at \*3–5 (providing approximately \$6.86 per person  
10 for a class of 437,310); *Gupta*, 2023 U.S. Dist. LEXIS 36141, at \*5–6 (providing  
11 approximately \$17.82 per person for a class of 98,199); *Hashemi*, 2022 U.S. Dist.  
12 LEXIS 210946, at \*1 (providing approximately \$4.62 per person for a class of  
13 108,101). Thus, this factor supports final approval.

14                   **5. The Extent of Discovery and Stage of Proceedings.**

15           The fifth *Hanlon/Staton* factor supports final approval because “Class  
16 Counsel engaged in substantial pre-suit discovery and the Parties exchanged  
17 informal discovery—including, *inter alia*, information about the scope of the Data  
18 Breach, the size of the Settlement Class, and Defendant’s response to the Data  
19 Breach.” (Borrelli Decl. ¶ 30.) Thus, the Parties were able to objectively evaluate  
20 the strengths and weaknesses of the underlying claims and defenses. (*Id.* ¶ 31.); *see*  
21 *also Tanner*, 2025 U.S. Dist. LEXIS 150643, at \*8 (“Counsel possessed sufficient  
22  
23

1 information to make an informed decision about the settlement[.]”). Thus, this factor  
2 supports final approval.

3 **6. The Experience and Views of Counsel.**

4 The sixth *Hanlon/Staton* factor supports final approval because Class Counsel  
5 “has significant experience in complex class action litigation and is currently  
6 litigating hundreds of data breach cases in courts across the country.” (Borrelli Decl.  
7 ¶ 32.) And based off this experience, Class Counsel believes that the Settlement is  
8 fair, reasonable, and adequate. (*Id.* ¶ 33.); *see also Tanner*, 2025 U.S. Dist. LEXIS  
9 150643, at \*11 (“That such experienced counsel advocate in favor of the settlement  
10 weighs in favor of approval.”). Thus, this factor supports final approval.

11 **7. The Presence of a Governmental Participant.**

12 The seventh *Hanlon/Staton* factor is neutral because there is no governmental  
13 participant. (Borrelli Decl. ¶ 34.)

14 **8. The Reaction of the Class Members.**

15 The eighth *Hanlon/Staton* factor supports final approval because the  
16 Settlement Class has reacted favorably to the Settlement. For one, Settlement Class  
17 Members submitted 940 valid claims—which equates to a claims rate of 13.7%. (*Id.*  
18 ¶ 13.) Moreover, only three (3) Settlement Class Members submitted opt-out  
19 requests and no Settlement Class Members objected to the Settlement. (*Id.* ¶¶ 11-  
20 12.); *see also Tanner*, 2025 U.S. Dist. LEXIS 150643, at \*12 (“The absence of a  
21 large number of objections to a proposed class action settlement raises a strong  
22  
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1 presumption that the terms of a proposed class settlement action are favorable to the  
2 class members.”). Thus, this factor strongly supports final approval.

3 **E. The Notice Program Satisfied Due Process.**

4 The Court should approve the notice program—which was successful and  
5 provided direct notice to 98% of the Settlement Class. (Boub Decl. ¶ 10.) Moreover,  
6 the notice program provided Settlement Class Members with all the information  
7 required by due process, Rule 23(c)(2)(B), and the Court’s Preliminary Approval  
8 Order. (*See* Dkt. 40-1, at 29–50.) And the success of the notice program is  
9 underscored by the high claims rate of 13.7%. (Boub Decl. ¶ 13.) Thus, the success  
10 of the notice program further supports final approval. *See Tanner*, 2025 U.S. Dist.  
11 LEXIS 150643, at \*7 (finding notice sufficient and granting final approval).

12 **V. CONCLUSION**

13 For the foregoing reasons, Plaintiff respectfully requests that this Court grant  
14 final approval, finally certify the Settlement Class for purposes of settlement, and  
15 enter the proposed final approval order.

16 Dated: August 14, 2025

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1                                   **CERTIFICATE OF COMPLIANCE**

2           The undersigned, counsel of record for Plaintiff, certifies that this brief  
3 contains 5,259 words, which complies with the word limit of L.R. 11-6.1.

4  
5 Dated: August 14, 2025

By: /s/ Andrew G. Gunem

Andrew G. Gunem

6  
7                                   **CERTIFICATE OF SERVICE**

8           I hereby certify that on August 14, 2025, I electronically filed the foregoing  
9 with the Clerk of the Court using the CM/ECF system, which will send notification  
10 of such filing to all counsel of record.

11  
12 Dated: August 14, 2025

By: /s/ Andrew G. Gunem

Andrew G. Gunem