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13 *Attorneys for Plaintiffs and the Proposed Class*

14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO DIVISION**

17 *IN RE: ETHOS TECHNOLOGIES INC. DATA*
18 *BREACH LITIGATION*

Case No. 3:22-cv-09203-SK

19 This Document Relates To: All Actions

20 **DECLARATION OF M. ANDERSON BERRY**
21 **IN SUPPORT OF PLAINTIFFS’**
22 **UNOPPOSED MOTION FOR**
23 **PRELIMINARILY APPROVAL OF CLASS**
24 **ACTION SETTLEMENT**

25 Date: July 31, 2023
26 Time: 9:30a.m.
27 Courtroom: C – 15th Floor
28 Judge: Hon. Sallie Kim

1 I, M. Anderson Berry, pursuant to section 1746 of title 28 of the United States Code, declare as
2 follows:

3 1. I am the head of the complex litigation group at Clayco C. Arnold, A Professional
4 Corporation (the “Arnold Law Firm”), one of the firms representing Plaintiffs. I submit this declaration
5 in support of Plaintiffs’ Motion to Preliminarily Approve Class Action Settlement. I make this
6 declaration based on my own personal knowledge, and if called to do so, could and would testify to the
7 matters contained herein.

8 2. The Settlement Agreement (“S.A.” or “Settlement”) executed by the Parties on June
9 23rd, 2023, is filed concurrently herewith, as Exhibit 1 to Plaintiffs’ Motion to Preliminarily Approve
10 Class Action Settlement (the “Motion”).

11 3. Attached to the Settlement Agreement are the following sub-exhibits, the form and
12 substance of which have been agreed to by the Parties and are submitted with the Motion for the Court’s
13 approval:

- 14 Exhibit A: Claim Form
- 15 Exhibit B: Long Form Notice
- 16 Exhibit C: Short Form Notice
- 17 Exhibit D: Proposed Preliminary Approval Order
- 18 Exhibit E: Proposed Final Approval Order
- 19 Exhibit F: Proposed Judgment

20
21 **I. THE LITIGATION AND SETTLEMENT NEGOTIATIONS**

22 4. This matter concerns a putative class action arising out of a Data Incident (as defined
23 below) suffered by Ethos Technologies, Inc. (“Ethos” or “Defendant”) in or about December 2022.
24 Plaintiffs allege that between August 2022 and December 2022, Ethos’ website allowed unencrypted
25 Social Security numbers (“SSNs”) to be returned to third-parties accessing its website. On or about
26 December 6, 2022, Ethos discovered an abnormal pattern of insurance applications being abandoned at
27 the stage where applicants were asked to validate the last four digits of their SSNs and from this
28

1 discovery determined that unknown third parties had been able to reveal Plaintiffs’ and Class Members’
2 unencrypted SSNs. (the “Data Incident”).

3 5. This impacted the approximately 34,000 individuals to whom Ethos sent notification
4 letters, including Plaintiffs, and approximately 1,302 residents of California.

5 6. Individuals, including Plaintiffs, received their notices in or around December 2022. On
6 December 30, 2022, Plaintiff Stein filed a complaint asserting claims against Ethos relating to the Data
7 Incident. On January 6, 2023, Plaintiffs Blumenstock, Rossello, and Branch also filed a complaint
8 asserting claims against Ethos relating to the Data Incident.

9 7. On January 31, 2023, the Court ordered that these matters be consolidated into one action
10 under the lead case, No. 3:22-cv-09203. On March 2, 2023, Plaintiffs filed a Consolidated Class Action
11 Complaint (“CCAC”). In addition to Plaintiffs Stein, Blumenstock, Rossello, and Branch, the CCAC
12 added Plaintiffs Dibisceglia, Carter, Pearch, Schneier, and Young. The Consolidated Complaint alleges
13 six claims: (1) negligence (2) invasion of privacy, (3) unjust enrichment, (4) violations of the California
14 Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, (5) declaratory judgment,
15 and (6) violations of the California Consumer Privacy Act (“CCPA”), Cal. Civ. Code §§ 1798.100, *et*
16 *seq.*

17 8. Plaintiffs brought this action on behalf of all persons whose PII was compromised as a
18 result of Ethos’s failure to: (i) adequately protect PII; (ii) warn of its inadequate information security
19 practices; and (iii) effectively monitor its network for security vulnerabilities and incidents. Plaintiffs
20 allege that Ethos’ conduct amounts to negligence and violates federal and state statutes. Plaintiffs and
21 Class Members have suffered injury as a result of Ethos’ conduct. These injuries include: (i) lost or
22 diminished value of PII; (ii) out-of-pocket expenses associated with the prevention, detection, and
23 recovery from identity theft, tax fraud, and/or unauthorized use of their PII; (iii) lost opportunity costs
24 associated with attempting to mitigate the actual consequences of the Data Incident, including but not
25 limited to lost time, and (iv) the continued and certainly increased risk to their PII, which: (a) remains
26 unencrypted and available for unauthorized third parties to access and abuse; and (b) may remain backed
27 up in Ethos’ possession and is subject to further unauthorized disclosures so long as Ethos fails to
28 undertake appropriate and adequate measures to protect the PII.

1 9. Over the course of several months, the Parties engaged in informal, and always
2 contentious, settlement negotiations. The Parties then agreed to participate in early mediation. On March
3 23, 2023 the Court stayed the case pending mediation. The Parties then exchanged Fed. Rule of Evidence
4 408 informal discovery and engaged Hon. Wayne R. Anderson (Ret.) of JAMS, a well-regarded private
5 mediator and retired Federal judge with considerable experience mediating data breach class actions, to
6 preside over the mediation. After spending considerable time and effort negotiating, the Parties were not
7 able to reach a settlement. Judge Andersen later sent a mediator’s proposal to the parties, which they
8 subsequently accepted.

9 10. The Parties then took several weeks to finalize the full scope of the Settlement. The
10 Parties executed the Settlement on June 23rd, 2023.

11 11. Though cordial and professional, the settlement negotiations were adversarial, arm’s-
12 length, and non-collusive in nature.

13 12. The Settlement was reached after extensive investigation, including vigorously and
14 aggressively gathering all of the information that was available regarding Ethos and the Data Incident
15 (including publicly-available documents concerning announcements of the Data Incident and notice of
16 the Data Incident to its customers), and other research, and a thorough evaluation of Plaintiffs’ claims
17 in light of such information.

18 **II. THE SETTLEMENT**

19 *The Settlement Class*

20 13. The Settlement will provide relief for the following Settlement Class: “all persons
21 identified by Defendant (or its agents or affiliates) as being among those individuals impacted by the
22 Data Incident, including all who were sent a notice of the Data Incident.” S.A. ¶ 1.30. The following
23 persons are excluded from the class definition: “(i) Defendant and its respective officers and directors;
24 (ii) the Judge assigned to evaluate the fairness of this settlement; and (iii) any other Person found by a
25 court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting
26 the criminal activity occurrence of the Data Incident or who pleads nolo contendere to any such charge.”
27 *Id.*

1 14. The Settlement Class contains approximately 34,000 individuals. In addition, the
2 Settlement creates a California Settlement Subclass, consisting of “[a]ll persons identified by Defendant
3 (or its agents or affiliates) as being among those individuals residing in California impacted by the Data
4 Incident, including all who were sent a notice of the Data Incident.” S.A. ¶ 1.33. The proposed
5 Settlement Class and California Settlement Subclass definitions are the same definitions proposed in the
6 CCAC. *See* ECF No. 25, ¶ 213.

7 *The Settlement Consideration*

8 15. Defendant has agreed to establish a one million dollar (\$1,000,000) non-reversionary
9 cash settlement fund (the “Settlement Fund”), which will be used first to pay all approved attorneys’
10 fees and expenses, the approved costs of settlement administration and notice, and any approved service
11 awards. The remaining funds will then be applied until exhausted in the following order: (1) to claims
12 for out-of-pocket loss reimbursement up to \$5,000 per valid claim, (2) cash payments to California
13 Subclass members up to \$100 per valid claim, and (3) *pro rata* cash payments of money remaining in
14 the Settlement Fund to all individuals submitted a Valid Claim. S.A. ¶¶ 1.32, 2.3¹

15 16. The first category of payments is designed to provide reimbursement for any out-of-
16 pocket losses fairly traceable to the Data Incident and to compensate Class Members for time spent
17 dealing with the effects of the Data Incident. Ordinary expense reimbursements can be claimed at up to
18 \$5,000 per Class Member.

19 17. California Settlement Subclass Members are eligible for a separate damages award. The
20 amount awarded to California Settlement Subclass Members who submit a Valid Claim shall be \$100.
21 This amount may be *pro rata* decreased if insufficient funds remain in the Settlement Fund following
22 the payment of Attorneys’ Fees and Expenses, any Service Award, the Cost of Claims Administration,
23 and claims for Out-of-Pocket Losses. S.A. ¶ 2.3.2.

24 18. All Settlement Class Member may file a claim for \$100.00. S.A. ¶ 2.3.3. The amount
25 of this benefit shall be *pro rata* increased or decreased based on the funds remaining in the Settlement
26

27 ¹ The Settlement Fund will not be used to pay for the Credit Monitoring and Identity-Protection Services
28 Benefits or Business Practice Commitments, explained in ¶¶ 2.4 and 2.5 of the Settlement Agreement,
respectively. Nor shall it be used to pay for the required CAFA Notice. S.A. ¶ 1.32.

1 Fund following the payment of Attorneys' Fees and Expenses Award, any Service Award, the Costs of
2 Claims Administration, claims for Out-of-Pocket Losses, and the CCPA Payments. *Id.*

3 19. In addition to the potential cash benefits outlined above, all Settlement Class members
4 will be provided access to credit monitoring and identity-protection services through Experian for a
5 period of 12 months from the date a member of the Settlement Class claims an offer for Experian
6 Monitoring Services as provided on the Short Notice. S.A. ¶ 2.4. These services shall be added
7 consecutively to any credit monitoring services that a class member has already received from Ethos as
8 a result of the Data Incident. These services include: (1) identity theft insurance (with a \$1,000,000
9 policy limit); (2) real-time credit monitoring services; and (3) access to fraud resolution agents. *Id.* The
10 activation codes for Experian Monitoring Services will be provided to every Settlement Class member
11 on their Short Notice. *Id.* Ethos will pay for the costs for such services separate and apart from the
12 Settlement Fund, with the costs to be negotiated between Ethos and Experian. *Id.* Credit Monitoring
13 Services can be obtained by all Settlement Class members without the need to file a claim with the
14 Claims Administrator and regardless of whether they submit a claim for a monetary payment under the
15 settlement. *Id.*

16 20. Experian Monitoring Services, offered retail to consumers on Experian's website, are
17 offered at a price of \$24.99 per month, or \$299.88 per year, per person.

18 21. In addition to the foregoing settlement benefits, Ethos has agreed to implement and/or
19 maintain certain reasonable steps to adequately secure its systems and environments, including taking
20 the steps listed in the Settlement Agreement. S.A. ¶ 2.5. These Business Practice Commitments, which
21 costs are separate and apart from the Settlement Fund, shall remain in place for at least three (3) years
22 following the date the Court finally approves the settlement. Based upon undersigned counsels'
23 independent research and previous experience, these changes will benefit those members of the
24 Settlement Class whose information remains in Ethos' possession, and also other customers who make
25 purchases from Ethos in the future.

26 22. Counsel for Ethos has represented to me that Ethos expects to expend \$470,000 per
27 year, or \$1,410,000 on these Business Practice Commitments through the end of the three-year
28 commitment period.

1 **III. NOTICE AND CLAIMS ADMINISTRATION**

2 23. The Parties have agreed to the appointment of Kroll Settlement Administration, LLC
3 (“Kroll”) as the Claims Administrator and a robust notice program to be administered by Kroll. Kroll is
4 a nationally recognized and well-respected third-party class administrator that will use all reasonable
5 efforts to provide direct and individual notice to each potential Settlement Class Member via email or
6 mail.

7 24. Kroll was selected as the lowest bidder after the Parties solicited blind, competitive bids
8 from three experienced and reputable claims administrators. Kroll has a trusted and proven track record
9 of supporting thousands of class action administrations, with over 50 years of legal administration
10 experience.

11 25. The cost of class notice and settlement administration will be paid from the Settlement
12 Fund (subject to Court approval).

13 26. Proposed Class Counsel have proposed notice forms and a notice program that comports
14 with due process and provides the best notice practicable to Class Members.

15 27. The Claims Administrator has estimated that notice and administration costs will total
16 approximately \$97,987.

17 28. In an attempt to obtain a higher claims rate, the Parties have negotiated a robust notice
18 program. No later than fourteen (14) days after entry of the Preliminary Approval Order, Defendant shall
19 provide the Claims Administrator with the names, and any last known physical address of each member
20 of the Settlement Class (collectively, “Class Member Information”) that Defendant possesses. The Class
21 Member Information and its contents shall be used by the Claims Administrator solely for the purpose
22 of performing its obligations pursuant to this Agreement and shall not be used for any other purpose at
23 any time. Except to administer the settlement as provided in this Settlement Agreement or provide all
24 data and information in its possession to the Parties upon request, the Claims Administrator shall not
25 reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information.
26 The Claims Administrator shall delete all information associated with this Litigation when it no longer
27 has a legal requirement to retain such data.

1 29. Notice will be given to the Settlement Class via individual notice, which will be given
2 primarily by mailing (via first-class U.S. Mail) the Short Form Notice (S.A., Ex. C) to the postal
3 addresses associated with Class Members for whom Ethos has mailing addresses. In the event that a
4 Short Notice is returned to the Claims Administrator by the USPS because the address of the recipient
5 is no longer valid, and the envelope contains a forwarding address, the Claims Administrator shall re-
6 send the Short Notice to the forwarding address within seven (7) days of receiving the returned Short
7 Notice. In the event a notice is “returned to sender” without a forwarding address, the Settlement
8 Administrator will perform a skip trace on the Class Member and attempt to locate a valid address so
9 that the notice can be resent. The Settlement Administrator will also send the Short Form Notice via
10 email to every Settlement Class Member for whom Ethos has a valid email address.

11 30. Before the dissemination of the Short Notice, the Claims Administrator shall establish a
12 settlement website (www.Ethos Settlement.com) that will inform members of the Settlement Class of
13 the terms of the Settlement Agreement, their rights, dates, and deadlines and related information. The
14 Settlement Website shall include, in .pdf format and available for download, relevant case filings. The
15 Long Form Notice (S.A., Ex. B) will also be posted on the settlement website along with other important
16 documents such as the Claim Form (S.A., Ex. A); the Preliminary Approval Order (S.A., Ex. D); the
17 Settlement Agreement; the operative Amended Class Action Complaint filed in the Litigation; and any
18 other materials agreed upon by the Parties and/or required by the Court.

19 31. The notice documents are clear and concise and directly apprise Class Members of all
20 the information they need to know to make a claim or to opt-out or object to the Settlement. Fed. R. Civ.
21 P. 23(c)(2)(B).

22 32. Furthermore, a toll-free number with interactive voice response, FAQs, and an option to
23 speak to a live operator will be made available to address Class Members’ inquiries. S.A. ¶ 3.3.

24 33. The proposed Notices advise Settlement Class Members of the pendency of the action,
25 including: the nature of the action and a summary of the claims; the essential terms of the Settlement;
26 the rights of Settlement Class Members to share in the recovery or to request exclusion from the Class;
27 the rights of Settlement Class Members to object to the Settlement and to appear before the Court at the
28 Final Approval Hearing; and will provide the date, time, and place of the Final Approval Hearing. If the

1 Final Approval Hearing is continued, Proposed Class Counsel will ensure that the settlement website is
2 updated with the new Final Approval Hearing information. The Notices also contain information
3 regarding Plaintiffs' anticipated application for an award of attorneys' fees, reimbursement of expenses
4 and Representative Plaintiffs' Service Awards as well as the claims process.

5 34. In my and my co-counsel's experience with data breach cases and in consultation with
6 Kroll about the claims process in this case, we anticipate that there will be a claims rate in this case of
7 between 1-10 percent of the Class.

8 35. The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or
9 service awards to Class Representative Plaintiffs until after the substantive terms of the Settlement had
10 been agreed upon; other than that Defendant would pay reasonable attorneys' fees, costs, expenses, and
11 a service awards to Plaintiffs as ordered by the Court.

12 36. Proposed Class Counsel have agreed not to request more than one-third of the Settlement
13 Fund as reimbursement for attorneys' fees, nor more than \$20,000 for reimbursement of Class Counsel's
14 costs and expenses.

15 37. Taken together with the value of the Business Practice Commitments, the amount of
16 attorneys' fees that will be requested will be less than 13.83 percent of the total value of the Settlement
17 to the Settlement Class, not even accounting for the value of the additional credit monitoring and
18 identity-protection services being offered to the Class.

19 38. Class Counsel have accrued a lodestar that will fully support the requested fees, and that
20 includes the time spent investigating the Data Incident pre-suit, pre-mediation informal discovery and
21 investigation, extensive settlement negotiations, communicating with Plaintiffs, finalizing the terms of
22 the Settlement Agreement, drafting and filing preliminary approval filings, and continuing to
23 communicate with Plaintiffs. Class Counsel anticipate accruing additional lodestar totals to get this case
24 through settlement administration, final approval, appeal and any other hearings the Court may request.
25 Class Counsel will submit all the necessary supporting documentation for the accrued lodestar
26 (including detailed billing records coded with the ABA task codes) in connection with the motion for
27 attorneys' fees.
28

1 39. Class Counsel's lodestar to date is roughly 426.8 hours, which at their usual and
2 customary billing rates equates to a total of \$281,536.40.

3 40. Proposed Class Counsel's fee request is well within the range of reasonableness for
4 Settlements of this nature and size.

5 41. Defendant, in conjunction with Kroll, will pay the cost of serving notices under the Class
6 Action Fairness Act of 2005, 28 U.S.C. § 1715, within the timelines specified by 28 U.S.C. § 1715(b).

7 42. Proposed Class Counsel also anticipate applying for Representative Plaintiff Service
8 Awards in the amount of \$2,000 for each of the Representative Plaintiffs in recognition of the time and
9 effort they expended pursuing claims that benefited the Settlement Class. *See* S.A. ¶ 7.3.

10 43. Representative Plaintiffs in this case have been vital in litigating this matter, including
11 providing their personal information to Proposed Class Counsel. Furthermore, the Representative
12 Plaintiffs have no conflicts with the Settlement Class; have participated actively in the case; and are
13 represented by attorneys experienced in class action litigation, including data breach cases. The
14 Representative Plaintiffs have been personally involved in the case and support the Settlement. The class
15 representatives diligently represented the class by taking the initiative to commence this litigation,
16 reviewing and approving the pleadings, and staying abreast of developments in the case.

17 44. If the Court approves the Settlement, the Parties will request that the Court enter the Final
18 Approval Order and Judgment, releasing all claims that were or could have been asserted against
19 Defendant in this litigation. The Proposed Order Granting Plaintiffs' Motion for Preliminary Approval
20 of Class Action Settlement and providing for notice is attached to the Settlement Agreement as Exhibit
21 D.

22 **IV. RECOMMENDATION OF PROPOSED CLASS COUNSEL**

23 45. Plaintiff's Counsel at Clayco C. Arnold, APC; Markovitz, Stock & Demarco, LLC;
24 Milberg Coleman Bryson, Phillips, Grossman; Morgan & Morgan and Turke & Strauss LLP each have
25 considerable experience in class action litigation, including the prosecution and resolution of consumer
26 class actions and substantial experience with data breach litigation, including over 100 data breach class
27 action litigations in state and federal courts across the United States. Our respective law firm resumes,
28 as well as those of our colleagues, are attached hereto as Exhibits A, B, C, D, and E.

1 46. Proposed Class Counsel’s collective experience in similar types of privacy and data
2 protection practices provided substantive knowledge on the subject to enable Proposed Class Counsel
3 to represent Plaintiffs’ and Class Members’ interests without expending hundreds of hours and
4 enormous financial resources to come up to speed on the subject area.

5 47. Proposed Class Counsel believe Plaintiffs have a strong case for liability. With respect
6 to Plaintiffs’ negligence claim, Proposed Class Counsel believe they will ultimately be able to offer
7 evidence that Defendant was negligent in failing to maintain reasonable and current data security
8 programs and practices, which led directly to the loss of Plaintiffs’ and the Class’s PII.

9 48. Proposed Class Counsel believe Plaintiffs’ claims are viable and that Plaintiffs have a
10 reasonably good chance of proving that Ethos’ data security was inadequate and that, if they establish
11 that central fact, Ethos is likely to be found liable under at least some of the liability theories and statutory
12 and common law claims Plaintiffs pled in their CCAC. While Plaintiffs believe they have strong claims
13 and would be able to prevail, their success is not guaranteed. It is “plainly reasonable for the parties at
14 this stage to agree that the actual recovery realized and risks avoided here outweigh the opportunity to
15 pursue potentially more favorable results through full adjudication.” *Dennis v. Kellogg Co.*, No. 09-cv-
16 1786-L(WMc), 2013 WL 6055326, at *3 (S.D. Cal. Nov. 14, 2013). “Here, as with most class actions,
17 there was risk to both sides in continuing towards trial. The settlement avoids uncertainty for all parties
18 involved.” *Chester v. TJX Cos.*, No. 5:15-cv-01437-ODW(DTB), 2017 WL 6205788, at *6 (C.D. Cal.
19 Dec. 5, 2017). Given the heavy obstacles and inherent risks Plaintiffs face with respect to the novel
20 claims in data breach class actions, including class certification, summary judgment, and trial, the
21 substantial benefits the Settlement provides favors preliminary approval of the Settlement.

22 49. This Settlement more likely than not provides relief that will equal 100 percent of the
23 compensable losses sustained by a Class Member who submits a valid claim. Based on Proposed Class
24 Counsel’s experience in prior similar cases, and with the claims rates in those cases, the relief obtained
25 should be sufficient to recompense the valid individual claims filed by Class Members. Moreover, every
26 Class Member is eligible to receive both an additional *pro rata* cash payment and the identity theft
27 protection benefit offered by this Settlement regardless of whether they suffered any other identifiable
28 harm fairly traceable to this Data Incident. This ensures that every Settlement Class member is receiving

1 consideration for the release he or she is giving. Therefore, given the risks and uncertainties inherent
2 with continued litigation, Proposed Class Counsel believes this is a strong result and provides a
3 substantial benefit to the Settlement Class.

4 50. Proposed Class Counsel, on behalf of Plaintiffs, vigorously and aggressively gathered all
5 of the information that was available regarding Ethos and the Data Incident—including publicly-
6 available documents concerning announcements of the Data Incident and notice of the Data Incident to
7 its customers. The Parties also informally exchanged non-public information concerning the Data
8 Incident and the size of the Class in preparation for a successful mediation.

9 51. In negotiating this Settlement, Proposed Class Counsel have considered the relative
10 benefits of settlement in relation to the risks of litigation. If Plaintiffs had prevailed at trial, they would
11 have sought recovery for their out-of-pocket losses and the cost of obtaining credit monitoring. Plaintiffs
12 believe that the \$5,000 cap for out-of-pocket expenses will likely make each class member whole.
13 According to the Federal Trade Commission's Identity Theft Survey Report, 85% of identity theft
14 victims report the misuse of existing accounts and 17 percent of victims report new accounts being
15 opened in their name. For those identity theft victims who had misuse of existing accounts, the average
16 out-of-pocket loss was \$500, while the average loss for improperly opened accounts was \$1,200. *Id.*
17 Moreover, only a maximum of 6 percent of those who had improper use of existing accounts had out-
18 of-pocket losses of \$1,000 or above, and 16 percent of those that had accounts opened in their name had
19 losses of \$1,000 or above. This recovery for out of pocket losses is then combined with the *pro rata*
20 cash payment to make Class Members whole. Thus, while Plaintiffs acknowledge that there could be
21 individuals who would be able to achieve greater recovery if this matter went to trial, the overwhelming
22 number of eligible Class Members will have the opportunity to be made whole by this Settlement.

23 52. With respect to statutory damages under the CCPA, if successful at trial, the
24 approximately 1,302 California Subclass Members would each be entitled to between \$100 and \$750
25 per individual. Cal. Civ. Code Ann. § 1798.150(a)(1)(A)). This is between approximately \$130,200 and
26 \$976,500 total. However, ordinarily under the CCPA, a plaintiff is entitled to the greater of actual or
27 statutory damages, but not both. *See id.* Here, California Subclass Members are eligible to receive \$100,
28 plus credit monitoring, the reimbursement of actual losses, and a *pro rata* share of any remaining funds.

1 53. Proposed Class Counsel have also negotiated this Settlement to comply in all respects
2 with the relevant case law and the Federal Rules of Civil Procedure. Having worked on behalf of the
3 putative class since the Data Incident was first announced, evaluated the legal and factual disputes, and
4 dedicated significant time and monetary resources to this litigation, Proposed Class Counsel endorse the
5 Settlement without reservation. Proposed Class Counsel believe that, considering the relative benefits
6 of settlement at this time on the terms offered in comparison to the risk of a less favorable outcome,
7 taking into account the considerable risk, expense and delay involved in obtaining an order certifying a
8 consumer class action such as this one, and the prospects of prevailing on a motion to compel arbitration
9 and dismiss, at trial and on appeal, the proposed Settlement meets the standards for preliminary approval
10 in that the Court will likely be able to approve the Settlement as fair, reasonable adequate and certify
11 the class for purposes of settlement. Proposed Class Counsel respectfully request that the Court grant
12 preliminary approval so that notice can be issued to the Settlement Class.

13
14 I declare under penalty of perjury under the laws of the United States of America that the foregoing is
15 true and correct. Executed this 23rd day of June 2023, at Sacramento, California.

16
17
18 

19 _____
20 M. ANDERSON BERRY (SBN 262879)