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and the Putative Class*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

KYLE RODRIGUEZ, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

RIVER CITY BANK, a California
Corporation; and DOES 1-10,

Defendants.

Case No. 34-2021-00296612

**[PROPOSED] JUDGMENT AND ORDER
GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
MOTION FOR APPROVAL OF
ATTORNEYS' FEES AND COSTS AND
SERVICE AWARD FOR CLASS
REPRESENTATIVE**

Date: October 26, 2022
Time: 9:00 a.m.
Judge: Christopher Krueger
Dept.: 54
Reservation # 2641097

Complaint filed: March 16, 2021
Trial date: none set

1 This matter is before the Court on Plaintiff Kyle Rodriguez's Motion for Order Granting
2 Final Approval of Class Action Settlement and Motion for Approval of Attorneys' Fees, Costs and
3 Class Representative's Service Award. The Motions, having been fully considered by the Court,
4 are ruled upon as follows:

5 **IT IS ORDERED THAT:**

6 1. The Class Action Settlement Agreement, attached hereto as **Exhibit 1**, is fully and
7 finally approved and is hereby incorporated by reference and all defined terms therein shall have
8 the same meaning in this Order as set forth in the Settlement Agreement.

9 2. Pursuant to California Rules of Court, Rule 3.769(d), this Court makes final the
10 conditional class certification contained in the Order Granting Preliminary Approval of Class
11 Action Settlement, and thus certifies the following class for the purposes of this settlement:

12 All of the Bank's customers who are natural persons (i.e., excluding entities such as
13 corporations, partnerships, limited liability companies, limited liability partnerships and
14 trusts) with California mailing addresses, whose Personal Information was, on or about
15 September 27-29, 2020, transferred, copied or stored on a storage drive or storage service
16 not authorized by the Bank and/or was accessed by a person not authorized by the Bank;
provided, however, that the following are excluded from the Class: (i) the Bank; (ii) any
entity in which the Bank has a controlling interest; (iii) the Bank's officers, directors, and
attorneys; (iv) any judge or judicial officer presiding over this matter and the members of
their immediate families; and (v) any individual or entity that timely and validly opts-out
from the Class.

17 3. Plaintiff is appointed and designated, for all purposes, as Class Representative, and
18 HammondLaw, P.C., is appointed and designated as counsel for the Class. The Court finds that
19 attorneys for the Class are experienced class action litigators and have expressed the view that the
20 Settlement is fair, reasonable, and adequate, which further supports approval of the Settlement.

21 4. The Court hereby finds that Class Notice has been sent to Class Members as
22 previously ordered by the Court, and that such Notice fairly and adequately described the terms of
23 the proposed Settlement Agreement, the manner in which Class Members could object to or opt-
24 out of the settlement; was the best notice practicable under the circumstances; and complied fully
with California Rule of Court 3.769, and all other applicable laws.

25 5. In response to the Notice, 77 Class Members requested exclusion from the Class.
26 The Court further finds that a full and fair opportunity has been afforded to Class Members to
27 participate in the proceedings convened to determine whether the proposed Settlement Agreement
28 should be given final approval. Accordingly, the Court hereby determines that all Class Members

1 who did not file a timely and proper request to be excluded from the settlement shall be deemed to
2 have released the Released Parties from all Released Claims.

3 6. In response to the Notice, one Class Member submitted an Objection. The lone
4 objection is meritless and is hereby overruled.

5 7. The Court hereby finally and unconditionally approves the Settlement Agreement,
and enters judgment, and specifically:

- 6 a. Approves the Gross Settlement of \$140,000.
7 b. Approves the application for Class Representative's service award of \$2,500;
8 c. Approves Class Counsels' request for an award of \$49,000, representing
9 35% of the Gross Settlement, as reasonable attorneys' fees;
10 d. Approves Class Counsel's hourly rates as reasonable, and within the range
11 of market rates that attorneys with similar levels of skill, experience and reputation for handling
12 matters of similar complexity; and finds that the fees' request is justified under the
lodestar/multiplier analysis.
13 e. Approves Class Counsel's request for reimbursement of litigation costs of
14 \$4,619.84;
15 f. Approves payment to the Settlement Administrator, of \$25,000 as costs of
16 settlement administration;
17 g. Approves the payment from the Net Settlement of amounts determined by
the Settlement Administrator to be due to the Class Members; and
18 h. Approves the Release contained in the Settlement Agreement.

19 8. Pursuant to California Code of Civil Procedure § 384, on or before _____
20 _____, Plaintiff shall submit a report to the court including total amount paid to the Class, as well
21 as a report about the status of any unresolved issues and any other matters appropriate to bring to
22 the Court's attention. Plaintiff shall also submit an amended judgment directing payment of the sum
23 of the uncashed checks or unused funds to the designated *cy pres* beneficiary, Bet Tzedek.

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1 9. Pursuant to California Rule of Court 3.769(h), the Court retains exclusive and
2 continuing jurisdiction over the litigation to enforcing the terms of the judgment, and supervising,
3 implementing, interpreting, and enforcing this Final Approval Order and the Settlement Agreement.

4 **IT IS SO ORDERED AND ADJUDGED.**

5 Dated: _____

6 _____
7 HON. CHRISTOPHER KRUEGER
8 Superior Court Judge
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EXHIBIT 1

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

1. This Class Action Settlement Agreement and Release (“Settlement Agreement” or “Agreement”) is made as of December 16, 2021 by and Kyle Rodriguez (“Rodriguez”) on behalf of himself and the Class and River City Bank (the “Bank”).

I. RECITALS

A. THE COMPLAINT

2. On March 16, 2021, Rodriguez filed a complaint against the Bank in an action entitled *KYLE RODRIGUEZ, on behalf of himself and all others similarly situated, Plaintiff, vs. RIVER CITY BANK, a California Corporation; and DOES 1-10, Defendant*, case number 34-2021-00296612 filed in the Superior Court of the State of California in and for the County of Sacramento (the “Lawsuit”). On May 28, 2021, Rodriguez filed a First Amended Complaint (the “Complaint”) which, in summary, alleges the following:

- a. The Bank collects personal, private, non-public information from customers seeking to obtain financial services and products. (Complaint, ¶¶9-10.)
- b. On September 29, 2020, the Bank discovered that a Bank employee engaged in unauthorized activity by downloading customer data to a personal storage drive and sending the information to a third party. (*Id.*, ¶¶1, 14.)
- c. Upon learning of the employee’s unauthorized activity, the Bank restricted the employee’s access to the Bank’s systems and conducted a forensic investigation. (*Id.*, ¶¶1-2, 14.) The Bank also implemented additional security measures and practices to prevent similar occurrences in the future. (*Id.*, ¶¶15-16.) On November 19, 2020, the Bank sent a Notice of Data Breach to the affected customers. (*Id.*, ¶¶1-2.) The Bank offered affected customers two years of free identity protection services provided by a third-party protection service. (*Id.*, ¶27.)
- d. The Bank “failed to provide Plaintiff ... with timely notice of the data breach,” and “failed to inform Plaintiff ... that [his] PFI [personal financial

information] had been subject to unauthorized access and thus [he] did not know [he was] at an increased risk of theft and fraud and should take action to monitor [his] accounts and credit reports for suspicious activity or identity theft.” (*Id.*, ¶¶24-25.)

- e. The Bank’s “security procedures and practices at the time of the breach were deficient, inappropriate, and unreasonable” because they “did not properly restrict access to River City’s online storage sites, such as Google Drive, by River City employees including IT personnel, thus enabling such employees to gain unauthorized access to the PFI of River City’s customers.” (*Id.*, ¶13.)
 - f. The Bank’s offer of two years of free identity protection services is inadequate. (*Id.*, ¶27.)
 - g. Rodriguez had several accounts with the Bank since approximately 2010. (*Id.*, ¶22.)
 - h. Rodriguez brings the Lawsuit pursuant to section 382 of the California Code of Civil Procedure on behalf of himself and a proposed class tentatively defined in the Complaint as follows: “All residents of California whose PFI was provided to or obtained by River City Bank whose PFI was accessed, compromised, or stolen by an unauthorized individual or individuals in the data breach announced by River City Bank on November 19, 2020.” (*Id.*, ¶34.)
3. The Complaint alleges seven causes of action against the Bank: (1) negligence (*id.*, ¶¶42-47); (2) negligence per se (*id.*, ¶¶48-60); (3) bailment (*id.*, ¶¶61-70); (4) breach of implied contract (*id.*, ¶¶71-80); (5) violation of the Unfair Competition Law (“UCL”) set forth in Business & Professions Code § 17200 (*id.*, ¶¶81-88); (6) violation of the California Customer Records Act (“CRA”) set forth in Civil Code § 1798.80 et seq.,

(*id.*, ¶¶89-97); and (7) violation of the California Consumer Protection Act (“CCPA”) set forth in Civil Code § 1798.100 et seq., specifically § 1798.150 (*id.*, ¶¶98-106).

4. The Complaint seeks the following relief: (1) for the UCL claim, “restitution to Plaintiff and Class members of money or property that Defendants may have acquired by means of its [sic] unlawful, and unfair business practices” and (2) “restitutionary disgorgement of all profits accruing to Defendants’ use of its unlawful and unfair business practices” (*id.*, ¶87); and (3) for the CRA, CCPA and/or UCL claim, “statutory damages.” (*Id.*, Prayer for Relief, ¶2.)

B. BANK OFFERED CREDIT MONITORING SERVICES

5. On or about November 20, 2020, the Bank notified its customers affected by the data breach that those customers could obtain, at the Bank’s expense, credit monitoring services furnished by Kroll (a division of Duff & Phelps). Those services included the following:

- Credit monitoring to provide alerts of any changes to credit data, such as an application for a new line of credit.
- Fraud consultation to provide the customer with unlimited access to consultation with a Kroll fraud specialist on topics such as ways to protect identity and investigations of suspicious activity.
- Identity theft restoration to provide services by an experienced Kroll licensed investigator to help resolve issues related to identity theft.

C. THE BANK’S DEMURRER AND MOTION TO STRIKE

6. On or about July 9, 2021, the Bank filed two motions: a demurrer to the first, second, third, fifth, sixth and seventh causes of action of the Complaint; and a motion to strike certain allegations and requests for relief from the Complaint. On September 2, 2021, the parties, through their attorneys or record, participated in a hearing on these motions

before the Hon. Christopher Krueger in Department 54 of the Superior Court in and for the County of Sacramento. After the hearing, the Court issued an order ruling as follows:

- Overruling the Bank's demurrer to the first cause of action for negligence.
- Sustaining, without leave to amend, the Bank's demurrer to the second cause of action for negligence per se;
- Sustaining, without leave to amend, the Bank's demurrer to the third cause of action for bailment;
- Sustaining the Bank's demurrer to the fifth cause of action for violation of the UCL;
- Sustaining the Bank's demurrer to the sixth cause of action for violation of the CRA; and
- Sustaining the Bank's demurrer to the seventh cause of action for violation of the CCPA.

The Court granted Rodriguez leave to amend the fifth, sixth and seventh causes of action and serve a second amended complaint no later than October 1, 2021.

D. SETTLEMENT NEGOTIATIONS

7. Rodriguez recognized that the Court's ruling described above was a major setback. Unless Rodriguez could successfully amend the Complaint to overcome the legal deficiencies decided by the Court, Rodriguez could only pursue the two remaining causes of action for negligence and breach of implied contract. Although the cause of action based on the CCPA would have authorized the recovery of statutory damages, the remaining causes of action would require, *inter alia*, proof of actual damages by Rodriguez and each Class Member. Moreover, the Bank had already offered and provided, at its sole expense, two years of credit monitoring and related services to any affected customer who desired such services. The Bank recognized that the costs of defending the Lawsuit could be substantial, and that the Lawsuit still presented some risks.

8. Accordingly, shortly after issuance of the Court's order, attorneys for the Bank and Rodriguez began discussing settlement of the Lawsuit. On September 13, 2021, the parties agreed upon the major settlement terms and subsequently reached agreement on all other settlement terms.

9. The Parties to this Agreement desire to fully and finally resolve all disputes between them and to avoid the time, attorneys' fees, costs, and risks associated with additional litigation and/or appeals. NOW, THEREFORE, the Parties hereby agree to the terms and conditions set forth below.

II. DEFINITIONS

10. In addition to the definitions for capitalized terms set forth elsewhere in this Agreement, the following capitalized terms used in this Agreement shall have the meanings specified below:

- a. "Administrative Expenses" means all of the expenses incurred in the administration of this Settlement Agreement, including, without limitation:
 - (i) all expenses or costs associated with providing Notice to the Class, and administering, calculating and distributing the Settlement Fund to Class Members;
 - (ii) all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Settlement Agreement, including amounts paid to tax attorneys or accountants; and
 - (iii) any and all applicable taxes, duties and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, with respect to the income or gains earned by or in respect of the Settlement Fund.
- b. "Agreement" or "Settlement Agreement" means this Class Action Settlement Agreement and Release, including all exhibits attached hereto.
- c. "Bank" means River City Bank.

- d. “Challenge” means any legal procedure to change, modify, overturn, or reverse, in whole or in part, any order, judgment or ruling by any court, including but not limited to a notice of appeal or a motion or request for reconsideration, re-hearing or other review.
- e. “Class Counsel” means HammondLaw, P.C., located at 11780 W. Sample Road, Suite 103, Coral Springs, FL 33065.
- f. “Class” means all of the Bank’s customers who are natural persons (i.e., excluding entities such as corporations, partnerships, limited liability companies, limited liability partnerships and trusts) with California mailing addresses whose Personal Information was, on or about September 27-29, 2020, transferred, copied or stored on a storage drive or storage service not authorized by the Bank and/or was accessed by a person not authorized by the Bank; provided, however, that the following are excluded from the Class: (i) the Bank; (ii) any entity in which the Bank has a controlling interest; (iii) the Bank’s officers, directors, and attorneys; (iv) any judge or judicial officer presiding over this matter and the members of their immediate families; and (v) any individual or entity that timely and validly opts-out from the Class.
- g. “Class Member” means any member of the Class.
- h. “Class Member Payment” shall be calculated by the Settlement Administrator as follows: the amount of the Estimated Net Settlement Fund divided by the total number of Class Members remaining after opt outs. For example, if the Estimated Net Settlement Fund is \$53,000 and there are 16,000 Class Members (after opt outs), the Class Member Payment would be \$3.31.

- i. “Complaint” means the first amended complaint filed by Rodriguez in the Lawsuit.
- j. “Court” means the Superior Court of the State of California in and for the County of Sacramento.
- k. “Cy Pres Distribution” shall mean a distribution to a non-profit organization of any remaining balance of the Settlement Fund after the Bank and the Settlement Administrator have made all other distributions from the Settlement Fund in accordance with the terms of this Agreement.
- l. “Data Breach” means the disclosure, transfer, copying and/or breach of data related to the Bank’s customers which occurred on or about September 27-29, 2020 and which is the subject of the Complaint.
- m. “Direct Deposit Settlement Fund” means that portion of the Settlement Fund provided by the Settlement Administrator to the Bank for the Bank to distribute via direct deposit to those Class Members who have an account with the Bank at that time. The amount of the Direct Deposit Settlement Fund should equal the Class Member Payment multiplied by the number, as provided by the Bank, of Class Members who still have an account with the Bank.
- n. “Effective Date” means the date 65 days after Class Counsel serves on the Parties notice of entry of the Final Approval Order and Judgment, unless any Class Member files with any court any Challenge to the Final Approval Order or Judgment. In the event of a Challenge, the Effective Date shall mean the date: (i) after the Bank receives notice that the Challenge has been denied, thereby affirming, sustaining or leaving intact, without material change, the Final Approval Order and Judgment, and (ii) upon which the

time for any further Challenge of the Final Approval Order and Judgment has expired.

- o. “Escrow Account” means the interest-bearing account at an FDIC-insured bank selected by the Settlement Administrator in which the Settlement Fund shall be deposited.
- p. “Estimated Net Settlement Fund” means the Settlement Fund less the expected total Administrative Expenses, Fee Award, and Service Award, as estimated by the Settlement Administrator.
- q. “Fee Award” means the total amount ordered by the Court to be paid to Class Counsel as attorneys’ fees and to reimburse Class Counsel for any costs they incurred to pursue the Lawsuit and this Settlement.
- r. “Final Approval Order and Judgment” means an order and judgment that the Court enters after the Final Fairness Hearing, which: (i) finally approves the Settlement Agreement without material change, (ii) is consistent with the Preliminary Approval Order attached hereto as Exhibit A; (iii) orders that the Class Members are bound by the release of the Bank set forth in paragraph 37 below and the covenant not to sue set forth in paragraph 46 below; and (iv) enjoins or otherwise prohibits the Class Members from filing a lawsuit against the Bank or otherwise pursuing a claim against the Bank for any of the Released Claims.
- s. “Final Fairness Hearing” means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of the Settlement and whether to issue the Final Approval Order and Judgment.
- t. “Lawsuit” means the legal action entitled *KYLE RODRIGUEZ, on behalf of himself and all others similarly situated, Plaintiff, vs. RIVER CITY BANK, a California Corporation; and DOES 1-10, Defendant*, case

number 34-2021-00296612 filed in the Superior Court of the State of California in and for the County of Sacramento.

- u. “Notice (Long Form)” means the long-form notice of the proposed class action settlement substantially in the form attached hereto as Exhibit B.
- v. “Notice (Short Form)” means the short-form notice of the proposed class action substantially in the form attached hereto as Exhibit C
- w. “Parties” means all of the parties to this Agreement, i.e. Rodriguez and the Bank. “Party” shall mean one of the Parties to this Agreement.
- x. “Personal Information” means information pertaining to Class Members stored on the Bank’s computers and related systems, including but not limited to the Class Members’ names, social security numbers, dates of birth, drivers’ license numbers, passport numbers, bank account numbers, and bank account balances.
- y. “Preliminary Approval Order” means an order by the Court substantially in the form attached hereto as Exhibit A.
- z. “Related Parties” means a Party’s agents, employees, shareholders, officers, directors, attorneys, insurers, successors, assigns, parent corporations or entities, and subsidiary corporations or entities.
- aa. “Released Claims” shall mean all the following: all the claims described in the Complaint, including all claims for actual damages, statutory damages, restitution, attorneys’ fees and costs; and all other potential claims related to or arising from the claims, facts or events set forth in the Complaint.
- bb. “Rodriguez” or “Plaintiff” means Kyle Rodriguez, the plaintiff in the Lawsuit.
- cc. “Settlement” shall mean the terms and conditions of this Settlement Agreement.

- dd. “Settlement Payment” shall mean \$140,000 paid by the Bank to the Escrow Account. The Bank estimates the Class Members, before any opt outs, consist of 16,223 individuals. If the total number of Class Members exceeds 16,223 by 5% or more (i.e. more than 17,034), then the Settlement Payment shall increase by the same percentage by which the number of Class Members exceeds 16,223.
- ee. “Settlement Administrator” means Atticus Administration LLC. Class Counsel and Defendants may, by agreement, substitute a different Settlement Administrator, subject to Court approval.
- ff. “Settlement Fund” means the balance of funds in the Escrow Account, i.e., the Settlement Payment, plus any interest thereon, less payments from the Escrow Account as authorized by this Agreement or an order by the Court.
- gg. “Settlement Website” means a website established by the Settlement Administrator to provide information about the Settlement. At a minimum, the following information shall be posted on the Settlement Website: The Complaint; the Court’s order on the Bank’s demurrer to the Complaint; this Settlement Agreement; Plaintiff’s Motion for Preliminary Approval of Class Action Settlement; an email address and toll-free telephone number for the Settlement Administrator to be used by Class Members with questions; the Notice (Long Form); and, after filing, Plaintiff’s Motion for Attorneys’ Fees and Expenses and Plaintiff’s Motion for Final Approval of Class Action Settlement.

III. DUTIES OF THE BANK

- 11. No later than 21 days after the Bank receives notice of the Preliminary Approval Order, the Bank shall:

- a) Wire transfer \$140,000 (the “Settlement Payment”) to the Escrow Account pursuant to escrow instructions to be provided by the Settlement Administrator.
- b) Provide to the Settlement Administrator: i) an Excel file with the names and last known email addresses and mailing addresses for all the Class Members; and ii) the number of Class Members who still have an account at the Bank.

12. No later than 10 days after the Effective Date, the Settlement Administrator shall, in accordance with paragraph 17 below: i) provide to the Bank an Excel file with the names of the Class Members remaining after opt outs; ii) inform the Bank in writing of the amount of the Class Member Payment calculated by the Settlement Administrator; (iii) wire transfer to the Bank the Direct Deposit Settlement Fund.

13. No later than 20 days after the Effective Date, the Bank shall make a good faith effort to electronically transfer the Class Member Payment to a checking or savings accounts for each of the Class Members who has such an account with the Bank at that time. The Bank shall describe the direct deposit on its regular statements issued to Class Members as “River City Bank Class Action Settlement.”

14. No later than 30 days after the Effective Date, the Bank shall provide to the Settlement Administrator the following:

- a) An Excel file with the names of Class Members to whom the Bank could not make the direct deposit pursuant to the preceding paragraph, e.g., because the Class Member was no longer a customer of the Bank or the Bank could not accomplish the electronic payment for any other reason;
- b) Wire transfer to the Escrow Account the undistributed portion of the Direct Deposit Settlement Fund, i.e. that portion of the Direct Deposit Settlement Fund which the Bank was unable to distribute to Class Members; and
- c) A certification under penalty of perjury by an officer of the Bank that the officer is informed and believes that: i) the Bank made a good faith and

diligent effort to comply with the obligations set forth in paragraph 13 above; ii) the Bank is returning to the Escrow Account the undistributed portion of the Direct Deposit Settlement Fund; and iii) the Excel file provided to the Settlement Administrator identifies the names of Class Members to whom the Bank could not make the direct deposit described above.

15. Except as set forth in the paragraphs 11 and 13 above, the Bank shall have no obligation under this Agreement to make any payments, to provide any information, or to facilitate or administer the Settlement.

16. The Bank and its attorneys shall not have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of Class Counsel, the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement, the Settlement Fund or the Escrow Account or the calculation of the amount of the Direct Deposit Settlement Fund; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any taxes and tax-related expenses incurred in connection with the taxation of the Settlement Fund; (vii) or the filing of any tax returns.

IV. DUTIES OF THE SETTLEMENT ADMINISTRATOR

17. The Settlement Administrator shall perform all tasks necessary to administer the Settlement, including the following:

- a) Establish the Escrow Account as an interest-bearing account at a financial institution insured by the FDIC which shall be maintained as a court-approved qualified settlement fund pursuant to Treasury Regulation § 1.468B-1, et seq.

- b) No later than 30 days after the Preliminary Approval Order, provide the Notice (Short Form) to the Class Members via email using the email addresses provided in the Excel spreadsheet furnished by the Bank pursuant to paragraph 11(b) above.
- c) Perform a skip-trace to locate a more current e-mail address for Class Members for whom the Settlement Administrator receives an electronic notification that the email address used for transmittal of the Notice (Short Form) is no longer active; and promptly resend the E-mail notice to the Class Member's updated e-mail address.
- d) Perform a skip-trace to locate a current mailing address for Class Members for whom the Settlement Administrator receives an electronic notification that the updated e-mail address is no longer active; and promptly mail the Notice (Long Form) via United States Postal Service to the Class Member's mailing address.
- e) No later than 15 days after the Preliminary Approval Order, establish and operate the Settlement Website.
- f) Respond to any inquiries by Class Members.
- g) Receive and process elections by Class Members to opt out of the Class.
- h) Communicate with Class Members as necessary and appropriate regarding the Notice, opt outs, and distribution of the Settlement Fund.
- i) No later than 10 days after the Effective Date: i) provide to the Bank an Excel file (in the same form as the Excel file provided by the Bank to the Settlement Administrator) with the names of all the remaining Class Members after eliminating those who properly opted out of the Class; ii) provide the Bank with the Settlement Administrator's calculation of the Class Member Payment; and iii) wire transfer to the Bank the Direct Deposit Settlement Fund pursuant to wire transfer instructions provided by the Bank.

- j) Receive from the Bank the undistributed portion of the Direct Deposit Settlement Fund and the Excel spreadsheet with the names of Class Members to whom the Bank could not make the direct deposit.
- k) No later than 30 days after the Effective Date, send a Class Member Payment to every Class Member except those to whom the Bank already provided the Class Member Payment. The Settlement Administrator may send such payments by providing Class Members with a link to PayPal, Venmo and/or Zelle (electronic commerce services that facilitate payments between parties) and related instructions for the Class Members to obtain payment. All such electronic payments that are not accepted by Class Members within six months after such links are sent, shall be voided by the Settlement Administrator, who shall add the voided payments to the Cy Pres Distribution.
- l) Pay all Administrative Expenses, the Fee Award and Service Award within 10 days of the Effective Date;
- m) Make the Cy Pres Distribution to Bet Tzedek (i.e. distribute the remaining balance of the Settlement Fund to this non-profit organization after the preceding distributions to the Class Members and payment of all the Administrative Expenses, the Service Award and the Fee Award).
- n) In the event this Agreement is terminated by the Bank pursuant to paragraph 40, the Settlement Administrator shall promptly wire transfer to the Bank the remaining Settlement Fund at that time.
- o) In advance of the Final Fairness Hearing, prepare a declaration for the Court that: (i) attests to implementation of all the procedures set forth in subparagraphs (a) through (g) above; and (ii) identifies each Settlement Class Member who timely and properly provided written notification of exclusion from the Settlement Class.

- p) Provide monthly reports and a final report to Class Counsel and the Bank's counsel summarizing the number of opt outs, the balance of the Settlement Fund, the amount of the Direct Deposit Settlement Fund (if known), the amount of money distributed by the Bank to the Class Members (if known); the amount of money distributed by the Settlement Administrator to the Class Members; the amount of the Cy Pres Distribution (if known); the amount of money paid for Administrative Expenses; and the amount of money paid for the Fee Award and Service Award.
- q) Perform any functions related to settlement administration that are consistent with this Agreement and agreed-upon by both Class Counsel and the Bank's counsel.

18. By agreeing to administer the Settlement, the Settlement Administrator consents and agrees: i) that Administrative Expenses shall not exceed \$25,000 plus a reasonable increase in Administrative Expenses resulting from an increase in class size if the total number of Class Members exceeds 16,223 by 5% or more (i.e. more than 17,034); and ii) the Settlement Administrator consents to the jurisdiction of this Court and to be bound by any order of this Court related to administration of the Settlement.

19. No amounts may be withdrawn or paid from the Escrow Account unless expressly authorized by this Agreement or approved by the Court.

20. All funds held in the Escrow Account relating to the Settlement shall be deemed to be in the custody of the Court until such time as the funds shall be distributed to Class Members or otherwise disbursed pursuant to this Agreement and/or further order of the Court.

21. The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468B-

2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any Taxes and Tax-Related Expenses owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as an Escrow Account from the earliest date possible. and agree to any relation-back election required to treat the Settlement Fund as an Escrow Account from the earliest date possible.

22. All taxes and tax-related expenses relating to the Settlement Fund shall be paid out of the Settlement Fund and shall be timely paid by the Settlement Administrator without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for taxes and tax-related expenses.

23. Except for termination of the Settlement Agreement pursuant to paragraph 40 below, no portion of the Settlement Fund shall revert or be repaid to the Bank. Any amount of the requested Administrative Expenses, the Fee Award and Service Award which are not approved by the Court shall be added to the Settlement Fund and distributed to the Class or be added to the Cy Pres Distribution.

V. DUTIES OF CLASS COUNSEL

24. Class Counsel shall prepare and file all the motions and take all other action reasonably necessary to: a) obtain the Preliminary Approval Order, the Final Approval Order, and the Judgment; b) respond to any objections by Class Members or others to the Settlement; c) handle any appeals, motions for reconsideration or similar challenges to the Preliminary Approval Order, the Final Approval Order and/or the Judgment; d) select and retain the Settlement Administrator; and e) assure that prior to selecting and engaging the Settlement Administrator, the Settlement Administrator has agreed to the terms of this Agreement, including maximum Administrative Expenses set forth in paragraph 18 above.

25. Class Counsel shall also promptly communicate to the Settlement Administrator all orders by the Court affecting the Settlement Administrator's obligations

under this Agreement, promptly respond to any questions or requests the Settlement Administrator has regarding the Settlement; and promptly respond to any questions or requests by any of the Class Members.

VI. PRELIMINARY APPROVAL

26. No later than March 1, 2022, Rodriguez and Class Counsel shall file with the Court a motion for preliminary approval of the Settlement requesting the Preliminary Approval Order attached hereto as Exhibit A. Contemporaneously with or as part of that motion, Rodriguez and Class Counsel shall move for certification of the Class for settlement purposes only.

VII. OPT-OUTS AND OBJECTIONS

27. The procedures for Class Members to opt-out and exclude themselves from the Settlement and to object to the Settlement are as follows:

28. Opt-Outs: Any Class Member may elect to opt out of the Settlement by submitting a Request for Exclusion to the Settlement Administrator, e-mailed no later than 45 days after issuance of the Notice. The Request for Exclusion must contain the following: the name of this case (*Kyle Rodriguez v. River City Bank*); (2) the Class Member's name; and (3) a statement that he or she want to be excluded from the Settlement Class. A Class Member who fails to comply with the opt-out procedure including by failing to timely submit a Request for Exclusion will not be excluded from the Settlement and will instead be bound by the Settlement Agreement.

29. Any Class Member who elects to opt out of the Class in the manner and within the time limit specified above will not have any rights under the Settlement Agreement; will not receive any compensation under the Settlement Agreement; will not have standing to submit any objection to the Settlement Agreement; and will not be bound by the Settlement Agreement.

30. Objections: Any Class Member who does not request exclusion from the Settlement may object to the Settlement Agreement by e-mailing the Settlement Administrator, not later than 45 days after issuance of the Notice, a written statement objecting to the Settlement. The written objection must contain: the Class Member's full name; e-mail address; case name; and a statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable. The Settlement Administrator shall immediately send all objections to counsel for Defendant and Class Counsel.

31. Counsel for the Parties shall file with the Court any responses to any objections at the time the Motion for Final Approval is filed. Class Members may, prior to the Final Approval Hearing, withdraw their objections or opt out requests in a writing to the Settlement Administrator.

32. All Parties and their counsel will not seek to solicit or otherwise encourage any Class Member to submit an opt out request or objection, nor encourage any Class Member to appeal from the final judgment.

VIII. ATTORNEYS' FEES, COSTS, AND EXPENSES

33. The Parties agree that Class Counsel may file a motion for an award of attorneys' fees, costs, and expenses to be paid from the Settlement Fund. The request for an award of attorneys' fees shall not exceed 35% of the Settlement Payment (i.e., \$49,000) and the request for an award of costs and expenses shall not exceed \$10,000. The request for fees, costs, and expenses shall encompass all work performed and costs and expenses incurred by Class Counsel in connection with the Lawsuit and the Settlement.

34. Class Counsel may also request a Service Award to Plaintiff of up to \$2,500.

35. The Settlement Administrator shall pay the Fee Award from the Settlement Fund no later than 10 days after the Effective Date.

36. The finality or effectiveness of the Settlement will not be dependent on the Court awarding Class Counsel any particular amount of attorneys' fees and expenses or Service Award. In the event the Court declines to approve, in whole or in part, the payment of the attorneys' fees and expenses and the Service Award in the amounts requested, this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of attorneys' fees, costs, and expenses, or the Service Award, shall constitute grounds for cancellation or termination of this Agreement.

IX. MUTUAL RELEASES

37. Upon entry by the Court of the Final Approval Order and Judgment, the Class Members hereby release and forever discharge the Bank and its Related Parties of and from all claims, demands, actions, and causes of action arising out of or in any way connected with the Released Claims.

38. Upon entry by the Court of the Final Approval Order and Judgment, the Bank hereby releases and forever discharges the Class Members of and from all claims, demands, actions, and causes of action arising out of or in any way connected with the Released Claims.

39. Each Party expressly assumes the risk that the facts which he/she/it now believes to be true may subsequently be found to be untrue, different, or incomplete. This Agreement shall remain effective and binding notwithstanding such new information. The Parties agree that in entering this Agreement, they relied upon their own judgment, belief, and knowledge and did not rely upon any inducements, promises or representations made by another Party, except for those set forth in this Agreement.

X. TERMINATION OF AGREEMENT

40. Bank may, in its sole discretion, terminate this Agreement if: a) the Court declines to enter, without material change, the Preliminary Approval Order, the Final

Approval Order or the Judgment; or b) a Challenge results in overruling, reversing or materially changing the Preliminary Approval Order, the Final Approval Order or the Judgment. The Bank may not terminate this Agreement while an appeal from an order granting the Preliminary Approval Order, the Final Approval Order or the Judgment is pending. The Bank may exercise its right to terminate by providing written notice to Class Counsel.

41. In the event this Agreement is terminated pursuant to the preceding paragraph, the Settlement Administrator, within 10 days of receiving written notification of termination from counsel for the Bank, shall wire transfer to the Bank an amount equal to the balance of the Settlement Fund, less any Administrative Expenses owed (and ultimately paid) by the Settlement Fund. Except as otherwise provided herein, in the event the Settlement is terminated, the Parties to this Agreement, including Class Members, shall be deemed to have reverted to their respective status in the Lawsuit immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered. In addition, the Parties agree that in the event the Settlement is terminated: any Court orders preliminarily or finally approving certification of the Settlement Class and any other orders entered pursuant to the Agreement shall be deemed null and void and vacated and shall not be used in or cited by any person or entity in support of claims or defenses or in support or in opposition to a class certification motion; this Agreement shall become null and void; and the fact of this Settlement and that the Bank did not oppose certification of any class under this Settlement, shall not be used or cited by any person or entity, including in any contested proceeding relating to certification of any proposed class.

XI. OTHER

42. *Further Steps and Best Efforts.* The Parties agree to cooperate in good faith and use their best efforts to effectuate all their respective obligations under the Agreement

and to undertake all reasonable steps to effectuate the purposes and intent of this Agreement, including obtaining preliminary and final settlement approval, and all steps that may be necessary to reach the Effective Date, and to do so as quickly and efficiently as practicable.

43. *Taxes.* The Parties and their respective counsel have made no representation or warranty with respect to the tax obligations or liabilities of any Class Member of any payment or transfer made pursuant to this Agreement or from the Settlement Fund. Each Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

44. *Representation by Counsel.* Rodriguez and the Bank represent and warrant that they have been represented by, and have consulted with, the counsel of their choice regarding the provisions, obligations, rights, risks, and legal effects of this Agreement and have been given the opportunity to review independently this Agreement with such legal counsel and agree to the particular language of the provisions herein.

45. *Notices.* All notices to Class Counsel pursuant to this Agreement shall be sent via first class mail and email addressed as follows:

Julian Hammond
Ari Cherniak
HAMMONDLAW, P.C.
11780 W. Sample Road, Suite 103
Coral Springs, FL 33065

Email: jhammond@hammondlawpc.com
acherniak@hammondlawpc.com

All notices to the Bank pursuant to this Agreement shall be sent via first class mail and email addressed as follows:

Farley J. Neuman
Patricia Bonheyo

Goodman Neuman Hamilton LLP
One Post Street, Suite 2100
San Francisco, CA 94104

Email: fneuman@gnhllp.com
pbonheyo@gnhllp.com

Either party may change the mailing address or email address set forth above by providing written notice to the other party as set forth above.

46. *Covenant Not to Sue.* Neither Rodriguez nor any Class Member shall bring, file, commence or prosecute (and has not already brought, filed, commenced or begun to prosecute) any action, lawsuit, claim or proceeding against any other individual or entity related to, or arising from, the facts, circumstances or claims asserted in the Lawsuit. Any such additional action, lawsuit, claim or proceeding would place the Bank at risk of a new claim by a third party.

47. *No Admission.* It is understood and agreed that this is a compromise settlement of disputed claims and that the consideration for this release shall not be deemed or construed as an admission of any liability by any of the Parties. This Agreement may not be introduced or used by any of the Parties or the Class Members as evidence of the other's liability in any legal or administrative proceeding, except that this Agreement may be introduced in any proceeding to enforce this Agreement.

48. *Binding Effect.* This Agreement shall be binding upon the Parties and their respective legal representatives, heirs, successors, and assigns.

49. *Paragraph Headings.* The headings in this Agreement are for purposes of convenience and ease of reference only and shall not be construed to limit or otherwise affect the meaning of any part of this Agreement.

50. *Entire Agreement.* This Agreement constitutes the entire Agreement among the Parties relating to the subject matter hereof. No amendment, waiver or modification of

this Agreement shall be valid unless in writing, signed by an authorized signatory of the Party or Parties affected thereby.

51. *Construction.* Rodriguez and his counsel have reviewed and approved this Agreement, and accordingly the normal rule of construction to the effect that any ambiguities to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

52. *Governing Law.* This Agreement shall be governed and construed according to the laws of the State of California.

53. *Continuing Jurisdiction.* The Parties request and agree that the court shall retain jurisdiction over the Parties to enforce this Agreement until the Parties have performed its terms in full.

54. *Counterparts.* This Agreement may be executed in one or more counterparts, all of which shall be read together and construed as one and the same Agreement. Signatures transmitted via fax and/or email shall be binding.

55. *All Parties.* This Agreement shall not become effective unless and until all the Parties have signed it.

IN WITNESS WHEREOF, the undersigned have hereby executed this Full Release and Settlement Agreement.

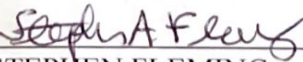
Dated: 12/27/2021



KYLE RODRIGUEZ

RIVER CITY BANK

Dated: 12-16-2021


By: 

STEPHEN FLEMING
President/Chief Executive Officer

APPROVAL BY ATTORNEYS AS TO FORM:

GOODMAN NEUMAN HAMILTON LLP

Dated: December 16, 2021

By: 
FARLEY J. NEUMAN
Attorneys for RIVER CITY BANK

HAMMONDLAW, P.C.

Dated: 12/27/21

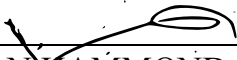
By: 
JULIAN HAMMOND
Attorneys for KYLE RODRIGUEZ

EXHIBIT A

Class Action Settlement Agreement and Release
Exhibit A

FARLEY J. NEUMAN, ESQUIRE - State Bar #100021
PATRICIA L. BONHEYO, ESQUIRE - State Bar #194155
GOODMAN NEUMAN HAMILTON LLP
One Post Street, Suite 2100
San Francisco, California 94104
Telephone: (415) 705-0400
Facsimile: (415) 705-0411
E-Mail: fneuman@gnhllp.com / pbonheyo@gnhllp.com

Attorneys for Defendant
RIVER CITY BANK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF SACRAMENTO

KYLE RODRIGUEZ, on behalf of
himself and all others similarly
situated,

Plaintiff,

vs.

RIVER CITY BANK, a California
Corporation; and DOES 1-10,

Defendants.

Case No. 34-2021-00296612

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Action filed: March 16, 2021
Trial date: none set

1. This matter is before the Court on Plaintiff Kyle Rodriguez's ("Plaintiff" or "Rodriguez") Motion for Preliminary Approval of the Proposed Class Action Settlement. Plaintiff, individually and on behalf of the proposed settlement class, and Defendant River City Bank ("Defendant" or "Bank") have entered into a Class Action Settlement Agreement and Release ("Settlement Agreement") that, if approved, would settle the above-captioned litigation. Having considered the motion, the Settlement Agreement together with all exhibits and attachments thereto, the record in this matter, and the briefs and arguments of counsel, IT IS HEREBY ORDERED as set forth below.

2. The Court has jurisdiction over this litigation, Plaintiff, Defendant, the Class Members, and the Settlement Administrator, who by agreeing to administer the Settlement consents to the jurisdiction of this Court and to be bound by any order of this

1 Court related to administration of the Settlement.

2 3. Unless otherwise defined herein, all terms that are capitalized herein shall
3 have the same meaning ascribed to those terms in the Settlement Agreement.

4 **I. PRELIMINARY APPROVAL OF SETTLEMENT**

5 4. The Court finds that: the Settlement Agreement appears to be the result of
6 serious, informed, non-collusive negotiations; that it does not improperly grant
7 preferential treatment to any individual or segment of the Class; and that its terms appear
8 to be fair, reasonable, and adequate.

9 5. The Court therefore GRANTS preliminary approval of the Settlement
10 Agreement and all of the terms and conditions contained therein.

11 **II. PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS**

12 6. The Court preliminarily certifies the Class for settlement purposes only.

13 7. The Class is defined as follows:

14 All of the Bank's customers who are natural persons (i.e., excluding entities
15 such as corporations, partnerships, limited liability companies, limited
16 liability partnerships and trusts) with California mailing addresses, whose
17 Personal Information was, on or about September 27-29, 2020, transferred,
18 copied or stored on a storage drive or storage service not authorized by the
19 Bank and/or was accessed by a person not authorized by the Bank;
20 provided, however, that the following are excluded from the Class: (i) the
21 Bank; (ii) any entity in which the Bank has a controlling interest; (iii) the
22 Bank's officers, directors, and attorneys; (iv) any judge or judicial officer
23 presiding over this matter and the members of their immediate families; and
24 (v) any individual or entity that timely and validly opts-out from the Class.

25 8. The Court preliminarily finds that: the Class is comprised of approximately
26 16,223 individuals before any opt outs; there are questions of law or fact common to the
27 Class; the claims of Rodriguez, as class representative, are typical of the Class Members'

1 potential claims; and Rodriguez will fairly and adequately protect the interests of the
2 Class.

3 9. The Court preliminarily finds that the Class satisfies the requirements of
4 class certification for purposes of settlement because: the questions of law or fact
5 common to the Class predominate over individual questions; class action litigation is
6 superior to other available methods of adjudication of this controversy; and Defendant
7 has acted on grounds that apply generally to the Class.

8 10. The Court hereby appoints Rodriguez as the Class Representative.

9 11. The Court hereby appoints as Class Counsel Julian Hammond and Ari
10 Cherniak, as well as their firm, HammondLaw, P.C.

11 III. NOTICE AND ADMINISTRATION

12 12. Pursuant to the Settlement Agreement, Rodriguez has requested that Atticus
13 Administration LLC be designated as the Settlement Administrator, and Defendant has
14 not objected. The Court approves the designation. The Settlement Administrator shall
15 perform all the duties of the Settlement Administrator set forth in the Settlement
16 Agreement.

17 13. The Court finds that the proposed Notice (Long Form) and Notice (Short
18 Form) (collectively, the “Notices”), and the procedures set forth in the Settlement
19 Agreement for identification of the Class Members, establishment of a website, and
20 distribution of the Notices, satisfy the requirements of due process and provide fair and
21 reasonable notice under the circumstances. The Notices and distribution procedures are
22 reasonably calculated to apprise Class Members of the nature of this litigation, the scope
23 of the Class, the terms of the Settlement Agreement, the right of Class Members to object
24 to the Settlement Agreement or exclude themselves from the Class and the process for
25 doing so, and of the Final Approval Hearing. The Court therefore approves the Notices
26 and the proposed procedures for distribution of the Notices, and directs the parties and
27 the Settlement Administrator to proceed with providing notice accordingly.
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1 Settlement Agreement, shall be deemed to have waived any objection, shall not be
2 permitted to object to the Settlement, and shall be precluded from seeking any review of
3 the Settlement Agreement and/or the Final Approval Order and Judgment by appeal or
4 other means.

5 **V. FINAL APPROVAL HEARING**

6 20. The Court will hold a Final Approval Hearing on _____ at
7 Department 54 of the Superior Court of California, County of Sacramento, Gordon D.
8 Schaber Courthouse, 720 9th Street Sacramento, CA 95814.

9 21. At the Final Approval Hearing, the Court will consider whether: (a) the
10 Settlement is fair, reasonable, and adequate; (b) the Class should be finally certified for
11 purposes of the Settlement; (c) a final judgment should be entered; and (d) Class
12 Counsel's motion for attorneys' fees and costs and a Service Award should be granted.

13 22. The Court reserves the right to continue the date of the Final Approval
14 hearing without further notice to Settlement Class Members.

15 **VI. STAY AND INJUNCTION**

16 23. All proceedings and deadlines in this matter, except those necessary to
17 implement this Order and the Settlement, are hereby stayed and suspended until further
18 order of the Court.

19 24. All Class Members who do not validly opt out and exclude themselves are
20 hereby enjoined from pursuing or prosecuting any of the Released Claims as set forth in
21 the Settlement Agreement until further order of the Court.

22 25. In the event that the Settlement Agreement is terminated pursuant to the
23 terms of the Settlement Agreement, (a) the Settlement Agreement and this Order shall
24 become void, shall have no further force or effect, and shall not be used the Lawsuit or
25 any other proceedings for any purpose other than as may be necessary to enforce the
26 terms of the Settlement Agreement that survive termination; (b) this matter will revert to
27 the status that existed before execution of the Settlement Agreement; and (c) no term or
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1 draft of the Settlement Agreement or any part of the Parties' settlement discussions,
2 negotiations or documentation (including any briefs filed in support of preliminary or
3 final approval of the Settlement) shall (i) be admissible into evidence for any purpose in
4 any Action or other proceeding other than as may be necessary to enforce the terms of the
5 Settlement Agreement that survive termination, (ii) be deemed an admission or
6 concession by any Party regarding the validity of any of the Subject Claims or the
7 propriety of certifying any class against Defendant, or (iii) be deemed an admission or
8 concession by any Party regarding the truth or falsity of any facts alleged in the Actions
9 or the availability or lack of availability of any defense to the Subject Claims.

10 26. For the reasons discussed above, the Court GRANTS Plaintiff's motion for
11 preliminary approval.

12 IT IS SO ORDERED

13
14 Dated: _____

15 HON. CHRISTOPHER KRUEGER
16 Superior Court Judge
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26 **Goodman
Neuman
Hamilton LLP**

27 One Post Street
Suite 2100
San Francisco, CA
94104
28 Tel.: (415) 705-0400

EXHIBIT B

Class Action Settlement Agreement and Release
Exhibit B

NOTICE (LONG FORM) OF PROPOSED SETTLEMENT OF CLASS ACTION REGARDING RIVER CITY BANK DATA BREACH

Kyle Rodriguez v. River City Bank.

Case No. 34-2021-00296612

Superior Court of the State of California in and for the County of Sacramento

A California court authorized this Notice. This is not a solicitation from a lawyer.

THE COURT IS CONSIDERING A SETTLEMENT OF A CLASS ACTION THAT COULD AFFECT YOUR LEGAL RIGHTS

I. SUMMARY

- The records of River City Bank (the “Bank”) show you were a customer of the Bank and that on or about September 27-29, 2020 there was a Data Breach in which your Personal Information (such as your name, social security number, date of birth, drivers’ license number, passport number, bank account number, and bank account balance) was downloaded by a Bank employee to a storage device and/or storage service not authorized by the Bank, and sent to a third party not authorized by the Bank to receive such information.
- Kyle Rodriguez (“Plaintiff”) filed a complaint seeking to recover damages from the Bank on behalf of himself and the Class, including you, composed of approximately 16,223 individuals.
- The proposed settlement (the “Settlement”) provides for a payment by the Bank of \$140,000 to compensate the Class Members, pay the attorneys’ fees and costs for Class counsel, service award for Plaintiff, and pay all of the costs related to the administration of the settlement.
- Each Class Member will receive approximately \$3.30 which will be directly deposited by the Bank (if the Class Member has an account at the Bank) or provided to the Class Member in an email (with a link to PayPal, Venmo or Zelle, electronic commerce services that facilitate payments between parties) from the Settlement Administrator to the Class Member using the Bank’s last known e-mail address for the Class Member.
- If the proposed settlement is approved by the Court and you do not opt out of the Settlement, you will be bound by the Settlement and will be deemed to have released the Bank from any liability due to the data breach.

- You have the right to opt out of the Settlement or to object to the Settlement.
- Please read this notice carefully. Your legal rights will be affected whether you act or do not act.
- For further details, please see [www._____](#), call _____, or write or email Class Counsel listed below:

Julian Hammond
Ari Cherniak
HAMMONDLAW, P.C.
11780 W. Sample Road, Suite 103
Coral Springs, FL 33065
Tel.: (310) 601-6766
Fax: (310) 295-2385
Email: jhammond@hammondlawpc.com; acherniak@hammondlawpc.com

Do not contact the court to ask questions about this Notice.

II. YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

OPTIONS	RESULT	DEADLINE
Do Nothing	If you do nothing, you will: a) automatically be included in the Settlement; b) should receive your share of the settlement; and c) will be unable to pursue any other claim or lawsuit against the Bank related to the subject Data Breach.	None
Exclude Yourself (“Opt Out”)	You can exclude yourself from the Settlement by informing the Settlement Administrator that you want to “opt out” of the Settlement and get no payment from the Settlement. This is the only option that allows you to keep your rights to bring a lawsuit against the Bank for claims related to the Data Breach.	_____

	For information on how to exclude yourself, see Frequently Asked Question number 15 below.	
Object to the Settlement	You may object to the Settlement, including the amount of the Settlement and/or the attorneys' fees, costs and expenses. For information on how to object, see Frequently Asked Question number 17 below.	_____
Go to the Fairness Hearing	You may attend the Final Fairness Hearing at which the Court may hear arguments for and against the Settlement. You may also speak at the hearing on _____ if you comply with the requirements for doing so. For information about those requirements and the hearing, see Frequently Asked Question numbers 17 and 20-22 below.	_____

These rights and options—and the deadlines to exercise them—are explained in more detail below.

III. FREQUENTLY ASKED QUESTIONS

1. Why did I get this Notice?

The Court authorized this Notice because the Bank's records show you were a customer of the Bank and that your Personal Information (such as your name, social security number, date of birth, driver's license number, passport number, bank account number, and bank account balance) was downloaded by a Bank employee to a storage device and/or storage service not authorized by the Bank, and sent to a third party not authorized by the Bank to receive such information.

You have a right to know about the proposed Settlement of a class action lawsuit against the Bank, your options, and how the Settlement may affect your rights before the Court decides whether to approve the

Settlement. If the Court approves it and any objections and appeals are resolved, the Settlement Administrator approved by the Court will make the payment to the Class Members pursuant to the Settlement.

This Notice explains the lawsuit, the Settlement, your legal rights, and what benefits are available. This Notice also explains the ways you may participate in, object to, or exclude yourself from the Settlement.

2. What is this lawsuit about?

The name of this case is *KYLE RODRIGUEZ, on behalf of himself and all others similarly situated, Plaintiff, vs. RIVER CITY BANK, a California Corporation; and DOES 1-10, Defendant* (the “Lawsuit”). It is case number 34-2021-00296612 in the Superior Court of the State of California in and for the County of Sacramento

This case involves a breach on or about September 27-29, 2020 of Personal Information (such as names, social security numbers, dates of birth, drivers’ license numbers, passport numbers, bank account numbers, and bank account balances) for the Bank’s customers. The breach entailed an employee of the Bank downloading Personal Information to a storage device and/or storage service not authorized by the Bank and sending that information to a third party not authorized by the Bank to receive such information. The Bank notified customers of the breach on or about November 20, 2020.

The Lawsuit was brought against the Bank by Plaintiff on behalf of a Class of individuals whose Personal Information was affected.

The Lawsuit seeks restitution and damages, including statutory damages pursuant to the California Consumer Privacy Act, for Class Members. Copies of documents with more details about the claims and a ruling by the court are available at www.ribercitybank.com.

3. Why is this a class action?

In a class action, one or more people called “class representatives” sue on behalf of themselves and people with similar claims. This group is called the “Class” and the people in the class are called “Class Members.” One court resolves the issues for all class members, except for those who exclude themselves from the Class. In this case, Plaintiff is the Class Representative.

4. Who is the defendant?

The Defendant is River City Bank, also referred to as the “Bank,” which is a bank with its headquarters in Sacramento, California.

5. Why is there a proposed Settlement?

The Court did not decide this case. Instead, both sides agreed to a Settlement. That way, they avoid the costs and risks of trial and appeals, and Class Members get compensation. The Class Representative and his attorneys think the Settlement is best for the Class Members.

6. How do I know if I am part of the Settlement?

The Bank's records show that you are a Class Member, unless you opt out. Thus, if the Settlement is approved and you do not opt out, you will be part of the Settlement and you will receive your portion of the settlement amount.

The "Class" is defined as:

All of the Bank's customers who are natural persons (i.e., excluding entities such as corporations, partnerships, limited liability companies, limited liability partnerships and trusts) with California mailing addresses whose Personal Information was, on or about September 27-29, 2020, transferred, copied or stored on a storage drive or storage service not authorized by the Bank and/or was accessed by a person not authorized by the Bank; provided, however, that the following are excluded from the Class: (i) the Bank; (ii) any entity in which the Bank has a controlling interest; (iii) the Bank's officers, directors, and attorneys; (iv) any judge or judicial officer presiding over this matter and the members of their immediate families; and (v) any individual or entity that timely and validly opts-out from the Class.

A "Class Member" means any member of the Settlement Class.

7. How much will I receive?

Pursuant to the proposed Settlement Agreement, the Bank will pay \$140,000 to compensate the Class Members, pay the attorneys' fees and costs for Class Counsel, pay a service award to Plaintiff, and pay all of the costs related to the administration of the settlement. The Class, before opt outs, consists of approximately 16,223 individuals. The Class Members who do not opt out will equally share in the portion of the settlement amount available for distribution to the Class Members, which is estimated to be \$_____ per Class Member.

8. How can I receive my share of the Settlement?

You do not need to do anything to receive your share of the Settlement, unless a) at the time the funds are distributed to the Class Members you no longer have any account at the Bank; and b) you have changed your e-mail address from that provided to the Bank. In that case, please contact the Settlement Administrator via email with your new e-mail address.

If you have an account with the Bank when the settlement is distributed to Class Members, the Bank will deposit your share of the Settlement into one of your accounts. If you no longer have an account at that time, the Settlement Administrator will provide your share of the Settlement in an email with a link to PayPal, Venmo or Zelle, electronic commerce services that facilitate payments between parties.

9. What is the Bank doing to protect customers?

Subsequent to the data breach, the Bank implemented additional security procedures and practices aimed at preventing any similar data breaches from occurring in the future. The new security procedures and practices include new security software that is designed to block almost all employees from using the Bank's computer

systems to access online storage sites or to move Personal Information for the Bank's customers to an online storage site or another storage device not authorized by the Bank. The Bank also offered affected customers two years of free identity protection services provided by a third-party protection service.

10. What am I giving up?

Unless you exclude yourself from the settlement, you are staying in the Class, which means you will a) release the Bank from any liability related to the Data Breach; and b) not be permitted to sue, continue to sue, or be part of any other lawsuit against the Bank related to the Data Breach.

The Settlement Agreement sets forth the details of the Settlement terms, which will be binding upon you. The Settlement Agreement is available at www.settlement.com. Please read it carefully. If you have any questions, you may contact the law firm listed on under Frequently Asked Question No. 24 for free, or you can talk to your own lawyer.

11. How do I file a claim?

You do not need to file a claim to participate in the Settlement. As noted above, you will automatically participate in the settlement if you do nothing.

12. When will I receive my benefits?

The Court will hold a hearing on _____ (which the court might continue to a new date) to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals. Resolving them can take time, perhaps more than a year. If and when the Settlement becomes final, the Bank and the Settlement Administrator will begin the distribution to the Class Members.

13. What happens if my contact information has changed?

If you have an account with the Bank when the settlement is distributed to Class Members, the Bank will deposit your share of the Settlement into one of your accounts. If you no longer have an account at that time, the Settlement Administrator will e-mail you a link for you to obtain your share of the Settlement.

If you have closed all your accounts at the Bank before the Settlement is distributed and you have changed your e-mail address from that provided to the Bank, you should contact the Settlement Administrator via email or mail with your new e-mailing address.

14. What happens to any settlement money not paid to Class Members?

Any money left in the Settlement Fund (i.e., after the Bank electronically deposits money with Class Members who are still account holders, after the Settlement Administrator attempts to e-mail payments to other Class Members, and after payment of all attorneys' fees, costs, service award, and administrative expenses), the balance will be paid to the following non-profit organization: Bet Tzedek.

15. How do I "Opt Out" and exclude myself from the Settlement?

If you do not want to receive benefits from the Settlement, and you want to keep your right, if any, to sue the Bank on your own about the Data Breach on about September 27-29, 2020, then you must take steps to exclude yourself from the Settlement. This is called “opting out” of the Class. When you opt out, you will not receive any benefits of the Settlement, and you will not be bound by its terms.

To opt out, you must send to the Settlement Administrator an email stating your intent to be excluded from the settlement. The email should include: (1) the name of this case (*Kyle Rodriguez v. River City Bank*); (2) your name; and (3) a statement that you want to be excluded from the Settlement. The email must be sent no later than 45 days after issuance of this Notice to: _____

You cannot exclude yourself by sending a notification to any other email address or location, or after the deadline set forth above. You cannot exclude yourself by telephone or by mail. If you ask to be excluded, you will not get any Settlement payment and you cannot object to the Settlement. However, you may be able to sue (or continue to sue) the Bank in the future.

16. Can I sue the Bank later?

Unless you opt out, you give up the right to sue the Bank on your own about the Data Breach on about September 27-29, 2020. You must opt out pursuant to the section immediately above if you want to sue the Bank on your own.

17. How do I tell the Court that I do not like the proposed Settlement?

You can object to the Settlement if you do not like any part of it, but do not wish to opt out of the Settlement. You can give reasons why you think the Court should not approve it. The Court will consider your views. You cannot ask the Court to order a larger settlement, but you can voice your concerns. The Court can only approve or deny the Settlement. If the Court denies it, no Settlement payments will be made and the lawsuit will continue. If that is what you want to happen, you must object.

To object to the settlement, you must email an objection to the Settlement Administrator no later than _____ (45 days after issuance of this Notice). The emailed objection must include all of the following:

- Your name and e-mail address;
- The name of this case (*Kyle Rodriguez v. River City Bank*); and
- A statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable.

You must e-mail the objection to the Settlement Administrator at the following email address:

If you do not comply with the requirements set forth above, you may lose the right to object to the settlement or to be heard at the Final Fairness Hearing.

18. What's the difference between objecting and excluding?

The difference between objecting and excluding (also known as opting out) is that objecting is informing the Court that you do not like something about the settlement. You can object only if you stay in the Class. Excluding yourself (opting out) is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case and the settlement no longer affect you.

19. How will the funds from the settlement be distributed?

Subject to the Court's approval, the Settlement Fund will be used as follows: (a) to pay all the costs, expenses and taxes to administer the settlement; (b) to pay Class Counsel's attorneys' fees, costs, and Plaintiff's service award, as authorized by the Court; (d) to distribute the remaining amounts equally to each Class Member; and (e) to distribute to a non-profit organization any amounts which could not be distributed to Class Members.

20. When and where will the Court decide whether to approve the Proposed Settlement?

The Court will hold a Final Fairness Hearing at _____ a.m. on _____, 2022 in Department 54 at the Superior Court of California, County of Sacramento located at the Gordon D. Schaber Courthouse, 720 9th Street, Sacramento, CA 95814. The Court may change the time and date of the Fairness Hearing without further notice to the class. Notice of any change will be posted at the courthouse or on the Court's website. If you want to participate in the hearing remotely (such as via a telephone conference or Zoom), please check the court's website or contact the Settlement Administrator for the Court's current policy and procedures).

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them at the Final Fairness Hearing. The Court may listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

21. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. You do not have to attend, but you are welcome to attend at your own expense. If you send an objection, you do not have to come to Court to talk about it. If you emailed your written objection by the deadline, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

22. May I speak at the hearing?

You may speak at the Fairness Hearing if you object to the Settlement pursuant to paragraph 17, above.

23. What happens if I do nothing at all?

If you do nothing, you will be bound by the settlement, you will receive your portion of the settlement distribution, and you will not be able to sue the Bank in a separate lawsuit in connection with the Data Breach that is the subject of this lawsuit.

24. Do I have a lawyer in this case?

If you do not opt out of the Class, you and the other Class Members will be represented by Class Counsel who are Julian Hammond, Ari Cherniak and other lawyers at HammondLaw, P.C., 11780 W. Sample Road, Suite 103, Coral Springs, FL 33065.

You will not be charged for these lawyers who will be paid from the Settlement. If you want to be represented by your own lawyer, you may hire one at your own expense.

25. How will the lawyers be paid?

You do not have to pay Class Counsel. To date, Class Counsel have not requested or been paid any attorneys' fees. As part of the Settlement, Class Counsel will ask the Court for payment of attorneys' fees from the Settlement Fund of up to \$49,000 and reimbursement of costs and expenses associated with litigation up to \$10,000. The Court may award less than these amounts. Class Members shall have no obligation to pay any fees or expenses of Class Counsel. No payment of attorneys' fees or reimbursement of expenses shall be made in favor of Class Counsel, absent an order of the Court. The costs of providing this notice and administering the Settlement are being paid from the Settlement Fund.

26. How do I get more information?

This Notice summarizes the litigation and the Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement and other important documents, and learn more about the litigation and Settlement, by visiting www.hammondlawpc.com, calling (954) 381-1178, or writing or emailing Class Counsel at the following addresses:

Julian Hammond
Ari Cherniak
HAMMONDLAW, P.C.
11780 W. Sample Road, Suite 103
Coral Springs, FL 33065
Email: jhammond@hammondlawpc.com
acherniak@hammondlawpc.com

You may obtain case documents by visiting the office of the Clerk of Superior Court of California, County of Sacramento, 720 9th Street, Room 102, Sacramento, CA 95814 between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. You can also get a copy of these and other documents by contacting Class Counsel.

EXHIBIT C

Class Action Settlement Agreement and Release
Exhibit C

To: <<Class Member Email Address>>
From: Settlement Administrator
Subject: NOTICE OF SETTLEMENT OF CLASS ACTION (Short Form)

**ISSUED BY ORDER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO**

You are receiving this e-mail because you were a customer of River City Bank and on or about September 27-29, 2020 your Personal Information (such as your name, social security number, date of birth, drivers' license number, passport number, bank account number, and bank account balance) was downloaded by a Bank employee to a storage device and/or storage service not authorized by the Bank, and sent to a third party not authorized by the Bank to receive such information.

Why did I get this notice? A settlement ("Settlement") has been proposed in a class action lawsuit pending in the California Superior Court, County of Sacramento ("Court") titled *Kyle Rodriguez v. River City Bank*, Case No. 34-2021-00296612 ("Action"). According to available records, you are a "Class Member." **The purpose of this notice is to inform you of the Action and the Settlement so that you may decide what steps to take in relation to it.**

What is the Action about? Plaintiff Kyle Rodriguez filed a complaint seeking to recover damages from the Bank on behalf of himself and the Class, including you, composed of approximately 16,223 individuals, whose Personal Information was affected by the September 27-29, 2020 Data Breach.

What relief does the Settlement provide? River City Bank will pay \$140,000 to compensate the Class Members, pay the attorneys' fees and costs for Class Counsel, pay a service award to Plaintiff, and pay all of the costs related to the administration of the settlement. The Class currently consists of approximately 16,223 individuals. Class Members who do not exclude themselves from the Settlement will equally share in the portion of the settlement amount available to distribution to the Class Members, which is estimated to be \$_____ per Class Member.

How do I Receive my Settlement Share if the settlement is approved? You do not need to do anything to receive your share of the Settlement, unless a) at the time the funds are distributed to the Class Members you no longer have any account at the Bank; and b) you have changed your e-mail address from that provided to the Bank. In either case, please contact the Settlement Administrator via email with your new e-mail address.

If you have an account with the Bank when the settlement is distributed to Class Members, the Bank will deposit your share of the Settlement into one of your accounts. If you no longer have an account at that time, the Settlement Administrator will e-mail you a link to obtain your share of the Settlement.

Court Approval of the Settlement/When the Payment Will Be Made: The Court will hold a "Final Approval Hearing" on_____, at XXX a.m. to consider whether to approve the Settlement. The payment will be issued only if the Settlement is approved.

Other Options: If you are a Class Member and don't want to be legally bound by the Settlement, you must exclude yourself by emailing the Settlement Administrator _____. If you stay in the Settlement, you may object to it (*i.e.*, state the reasons you do not like it) by emailing the Settlement Administrator.

For instructions on how to exclude yourself from the Settlement or how to object to the Settlement, please see the Notice (Long Form) at www.settlement.com. The Notice (Long Form) also explains in detail which legal claims you will give up if you participate in the settlement. If you object, you may ask to appear at the Final Approval Hearing, but you don't have to.

More information? For complete information about the Settlement, including the Settlement Agreement, court documents, and the detailed notice and to learn more about how to exercise your various options under the Settlement, visit www.settlement.com. You may also write to the Settlement Administrator via email at admin@settlement.com, telephone (800-XXX-XXXX); or mail at

Settlement Administrator
c/o Atticus Administration LLC
Address: