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10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
11
12 **COUNTY OF SACRAMENTO**

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

15 Plaintiff,

16 vs.

17
18 **RIVER CITY BANK**, a California Corporation;
and John Does 1-10,

19 Defendants.
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CASE NO. 34-2021-00296612-CU-BC-GDS

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF’S MOTION FOR ATTORNEYS’
FEES, COSTS AND SERVICE AWARD FOR
CLASS REPRESENTATIVE**

Date: October 26, 2022

Time: 9:00 a.m.

Judge: Christopher Krueger

Dept.: 54

Reservation No.: 2641097

Complaint filed: March 16, 2021

Trial date: none set

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In conjunction with Plaintiff Kyle Rodriguez’s (“Plaintiff” or “Class Representative”) motion for final approval, Plaintiff seeks court approval of (1) an award of attorneys’ fees in the amount of \$49,000, representing 35% of the Settlement Fund; (2) \$4,619.84 in litigation costs incurred, and (3) a service award for the Class Representative in the amount of \$2,500, pursuant to the Settlement Agreement and Release (“Settlement Agreement” or “Settlement”), attached as **Exhibit 1** to the Proposed Order, filed herewith. Plaintiff’s requested attorneys’ fees and costs are eminently reasonable under the common fund approach, and represent *only 17%* of Class Counsel’s lodestar to date. The Class Representative’s requested service award is also reasonable and should be approved in consideration for his contribution to the Class and the risks he assumed on behalf of the Class.

Only one of the 16,417 Class Members has objected to the requested fees, and the settlement administration costs, on the basis that they are out of proportion to the Class Members’ per capita payments. This lone objection has no basis in California law and is meritless. Accordingly, Plaintiff respectfully requests that the Court overrule the objection, and approve the requested attorneys’ fees and costs and service award.

II. ARGUMENT

The requested attorneys’ fees and costs are justified based on (i) the Class’s reaction, (ii) the “percentage-of-the-fund” analysis, and (iii) a lodestar-multiplier cross check.

A. The Overwhelmingly Positive Reaction of The Class Supports Approval of The Requested Attorneys’ Fees and Costs

The Court-approved Notice sent to Class Members informed them of the proposed amounts allocated in the Settlement for attorneys’ fees and costs. Declaration of Bryn Bridley (“Bridley Decl.”), filed herewith, **Exhibit A**. Only 77 out 16,417 Class Members, representing 0.04% of the Class, opted out; and only one Class Member objected. *Id.* ¶¶ 12-13 and **Exhibit B** and **C**.

The lone objection states that the requested attorneys’ fees are unfair because they are out of proportion to the Class Member payments, and seems to argue that Class Counsel should receive a percentage of the *Net* Settlement instead. *Id.* at **Exhibit C** (“I am willing to pay the attorneys 33% of what I receive”). These arguments are wholly unsupported by California law, which provides that the Court look at the fees request in relation to the entire common fund created by Class Counsel, not the average Class Member payments. *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“[W]hen an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such

1 plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Boeing Co. v. Van Gemert*, 444
2 U.S. 472, 478-79 (1980) (“[A] lawyer who recovers a common fund . . . is entitled to a reasonable
3 attorney’s fee from the fund as a whole.”). Indeed, Courts routinely approve fee requests in data breach
4 cases that are far greater than the average Class member recovery. See *In re LinkedIn User Privacy Litig.*,
5 No. 5:12-cv-03088-EJD (N.D. Cal. Sept. 15, 2015) (approving \$312,500 in attorneys’ fees in settlement
6 with average gross class member payment of \$0.20); *In re Anthem, Inc. Data Breach Litigation*, No.
7 5:15-md-02617-LHK (N.D. Cal. Aug. 17, 2018) (approving \$31,050,000 in attorneys’ fees in settlement
8 with average gross class member payment of \$1.45); *In re Experian Data Breach Litigation*, No. 8:15-
9 cv-01592-JLS-DFM (C.D. Cal. May 10, 2019) (approving \$10,500,000 in attorneys’ fees in settlement
10 with average gross class member payment of \$1.47); *Adlouni v. UCLA Health Systems Auxiliary*, et al.,
11 BC589243 (Los Angeles Cty. Sup. Ct. June 28, 2019) (approving \$3,275,000 in attorneys’ fees in
12 settlement with average gross class member payment of \$0.44); *In re Yahoo! Inc. Customer Data Breach*
13 *Litigation*, No. 5:16-md-02752-LHK (N.D. Cal. July 22, 2020) (approving \$22,763,642 in attorneys’ fees
14 in settlement with average gross class member payment of \$0.61); *Atkinson, et al. v. Minted, Inc.*, No.
15 3:20-cv-03869-VC (N.D. Cal. Dec. 17, 2021) (approving \$1,187,537 in attorneys’ fees in settlement with
16 average gross class member payment of \$1.22); and *Cochran et al. v. The Kroger Co.*, 5:21-cv-01887-
17 EJD (N.D. Cal. Mar. 24, 2022) (approving \$1,231,628 in attorneys’ fees in settlement with average gross
18 class member payment of \$1.31). Declaration of Julian Hammond in support of Plaintiffs’ Motion for
19 Order Granting Final Approval of Class Action Settlement and Motion for Attorneys’ Fees, Costs, and
20 Service Award for Class Representative (“Hammond Final Decl.”), filed herewith, ¶ 49.

21 Further, as discussed in detail below, the fees request is presumptively reasonable because it is
22 only 17% of Class Counsel’s lodestar to date. Id. ¶ 45. “[T]he fact that the overwhelming majority of
23 class willingly approved [of an] offer and stayed in the class presents at least some objective positive
24 commentary as to its fairness.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). The
25 positive reaction of the Class here is attributable to the substantial benefit achieved by the Settlement,
26 which eliminates the significant risks faced by continued litigation, and instead achieves a definite
27 recovery now. The average net payment will be approximately \$3.60, which is a far better result than
28 other data breach settlements that have been finally approved by the Courts. Bridley Decl. ¶ 14;
Hammond Final Decl. ¶ 49. The Class’s overwhelmingly favorable reaction supports the requested fee
award.

1 **B. The Requested Attorneys’ Fees Are Reasonable Under Either the Lodestar or**
2 **Percentage of the Fund Analysis**

3 As stated above, Courts in California apply the equitable “common fund” doctrine under which
4 attorneys who create a common fund for a group are awarded their fees and costs out of that fund. *See,*
5 *e.g., Laffitte v. Robert Half Int’l*, 1 Cal.5th 480, 503 (2016). The virtues of this approach include “relative
6 ease of calculation, alignment of incentives between counsel and the class, a better approximation of
7 market conditions in a contingency case, and the encouragement it provides counsel to seek an early
8 settlement and avoid unnecessarily prolonging the litigation.” *Id.* Common fund fee awards in class
9 actions average around one-third of the recovery, with courts increasing or decreasing the percentage
10 when circumstances justify departing from the benchmark. *See, e.g., Chavez v. Netflix, Inc.*, 162
11 Cal.App.4th 43, 66 n.11 (2008) (“Empirical studies show that, regardless whether the percentage method
12 or the lodestar method is used, fee awards in class actions average around one-third of the recovery”);
13 *Laffitte v. Robert Half Int’l*, 231 Cal.App.4th 860, 871 (2015), *aff’d*, 1 Cal.5th at 506 (“33 1/3 percent of
14 the common fund is consistent with, and in the range of, awards in other class action lawsuits.”); *Cicero*
15 *v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 U.S. Dist. LEXIS 86920, at *17 (C.D. Cal. July 27, 2010)
16 (“Other case law surveys suggest that 50% is the upper limit, with 30-50% commonly being awarded in
17 case in which the common fund is relatively small.”).

18 It is also appropriate for the Court to crosscheck an award of attorneys’ fees calculated by one
19 method against an award calculated by the other method in order to confirm whether the award is
20 reasonable. *See Consumer Privacy Cases*, 175 Cal.App.4th 545, 557 (2009); *In re Bluetooth Headset*
21 *Prods. Liability Litig.*, 654 F.3d 935, 944-45 (9th Cir. 2011) (“[W]e have also encouraged courts to guard
22 against an unreasonable result by cross-checking their calculations against a second method”).

23 Here, Class Counsel’s fee request is reasonable under either method.

24 **1. The Fee Award Allocated by the Settlement Is Reasonable Under the Percentage of**
25 **the Fund Method.**

26 As stated above common fund fee awards in class actions average around one-third of the
27 recovery, with courts increasing or decreasing the percentage when circumstances justify departing from
28 the benchmark. In prior class actions handled by Class Counsel, courts have approved awards above the
one-third benchmark including *Burleigh v. National University*, Case No. MSC21-00939 (Contra Costa
Cty. Sup. Ct. Aug. 26, 2022) (approving fees of 40% of \$925,000 class settlement); *Glover v. 20/20*
Companies, Inc., Case No. RG14748879 (Alameda Cty. Sup. Ct. Aug. 3, 2015) (approving fees of 47%
of a \$475,000 PAGA settlement); *Mayton et al v. Konica Minolta Business Solutions USA, Inc.*, Case

1 No. RG12657116 (Alameda Cty. Sup. Ct. June 22, 2015) (approving fees of 40% of \$1,225,000 class
2 wage and hour settlement); *Sands v. Gold's Gym*, Case No. BC660124 (Los Angeles Cty. Sup. Ct. Mar.
3 20, 2019) (approving fees of 36% of \$125,000 PAGA settlement); and *Albanez v. Premium Retail*
4 *Services Inc.*, Case No. RG1577982 (Alameda Cty. Sup. Ct. Jan. 29, 2016) (approving fees of 37% of
5 \$275,000 PAGA settlement). Hammond Final Decl. ¶ 7.

6 Factors that may justify an upward or downward departure include (1) the “risks and potential
7 value of the litigation,” (2) the “contingency, novelty and difficulty” of the case, and (3) the skill shown
8 by counsel.” *Laffitte*, 1 Cal.5th at 504 (the “*Laffitte* factors”). Here, each of the three *Laffitte* factors
9 weighs in favor of approving the requested fees.

10 **a. The Risks and Potential Value of the Litigation Support the Requested Fee Award.**

11 Absent the Settlement that Class Counsel obtained, this case would face risk that the litigation
12 would yield no recovery, especially in light of the Court’s sustaining Defendant’s demurrer on most of
13 Plaintiff’s causes of action, the risk of an unfavorable ruling on class certification, or on the merits.
14 Declaration of Julian Hammond ISO Motion for Preliminary Approval (“Hammond Prelim. Decl.”), filed
15 March 17, 2022, ¶ 30-31. This also means that Class Counsel took on a case in which they faced a
16 significant possibility of recovering nothing for their commitment of time and resources, yet they
17 obtained a good result for the Class. This risk justifies the requested fee award.

18 **b. The Contingency, Novelty, and Difficulty of the Case Support the Requested
19 Award.**

20 Although all class actions involving claims of many individuals involve complexity and
21 unpredictability, data breach cases have historically faced substantial hurdles in surviving even past the
22 pleading stage and are among the most risky and uncertain of all class action litigation. *See, e.g.,*
23 *Hammond v. The Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060, 2010 WL 2643307, at *1 (S.D.N.Y. June
24 25, 2010) (collecting cases); Hammond Prelim. Decl. ¶ 33. Awards of common fund fees are important
25 to attract competent counsel to handle complex and risky contingency cases. *Melendres v. City of Los*
26 *Angeles*, 45 Cal.App.3d 267, 273 (1975) (Counsel “will be more willing to undertake and diligently
27 prosecute proper litigation for the protection or recovery of the fund if [they are] assured that [they] will
28 be promptly and directly compensated should [their] efforts be successful.”).

c. The Skill Shown by Counsel

It was only because Class Counsel were able to skillfully and efficiently negotiate a class action
settlement despite the Court’s ruling on Defendant’s demurrer and motion to strike, that the Class is
receiving any payment at all. Class Counsel devoted their time and resources to this case despite further

1 risks that a court would rule that no class action could be maintained or would award no damages.
2 Hammond Prelim Decl. ¶ 30-31. Therefore, the requested fee award reflects the willingness of skilled
3 and experienced attorneys to commit themselves to this risky case on behalf of the Class, rather than
4 devoting those resources to other matters. Hammond Final Decl. ¶ 9-10.

5 **2. The Fee Award Allocated by the Settlement Is Reasonable Under the Lodestar**
6 **Method.**

7 To perform a lodestar cross-check of a common fund fee award, the Court compares the requested
8 fee to Class Counsel’s “lodestar” – *i.e.*, the hours reasonably spent on the case multiplied by counsel’s
9 hourly rates. Courts can then apply a multiplier to reflect the contingent nature and risk associated with
10 the action, as well as other factors such as the degree of skill required and the ultimate success
11 achieved. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001) (explaining that the “purpose of a fee
12 enhancement, or so-called multiplier, for contingent risk is to bring the financial incentives for attorneys
13 enforcing important ... rights”).

14 The lodestar method underscores the principle that Class Counsel should recover fees for all hours
15 reasonably spent working on the case. *See Vo v. Las Virgines Mun. Water Dist.*, 79 Cal.App.4th 440, 446
16 (2000) (“Under the lodestar method, a party who qualifies for a fee should recover for all hours reasonably
17 spent unless special circumstances would render an award unjust.”); *Weeks v. Baker & McKenzie*, 63
18 Cal.App.4th 1128, 1175-76 (1998) (“the attorney who takes on [a complex] case can anticipate receiving
19 full compensation for every hour spent litigating a claim against even the most polemical opponent”).

20 **a. Hours Spent by Class Counsel Were Reasonable**

21 Applying the first step of this analysis, Class Counsel have expended at least 385 hours in this
22 litigation to date for a combined lodestar of at least \$275,753. Hammond Final Decl. ¶ 44. The hours spent
23 by Class Counsel were “reasonably necessary to the conduct of the litigation.” *Robertson v. Fleetwood*
24 *Travel Trailers of Cal., Inc.*, 144 Cal.App.4th 785, 818 (2006). The hours reflect time reasonably spent
25 litigating this case, which Class Counsel staffed and managed efficiently, dividing work, as appropriate,
26 between junior and senior-level attorneys. Hammond Final Decl. ¶ 35-38. Moreover, the lodestar amount
27 does not include the considerable additional time Class Counsel will spend obtaining final approval, and
28 implementing the settlement. *Id.* at ¶ 45. A breakdown of Class Counsel’s time by task is as follows:

i. Initial Investigation, Research, and Drafting the Complaint

Class Counsel extensively investigated and researched the facts and circumstances underlying the
pertinent issues and applicable law. This investigation and research included review and analysis of public
disclosures of the data breach incident at River City Bank (“Defendant” or “River City” or “the Bank”),

1 discussions and interviews between Class Counsel and Plaintiff, the circumstances surrounding it, and
2 Plaintiff's reaction to it. Hammond Final Decl. ¶ 14. Class Counsel also conducted legal research into the
3 applicable law, which was used to draft the complaint. *Id.*

4 **ii. Amendment of the Complaint and Defendant's Demurrer/ Motion to Strike**

5 After the Complaint was filed, River City's counsel contacted Class Counsel to arrange a meet and
6 confer regarding the Bank's intent to file a demurrer and motion to strike Plaintiff's complaint. The parties
7 agreed to extend Defendant's time to answer the Complaint, and Plaintiff thereafter filed the operative
8 First Amended Complaint ("FAC"). Thereafter, the parties engaged in a meet and confer regarding
9 Defendant's intent to file a demurrer and motion to strike FAC, but no agreement was reached. Defendant
10 then filed its demurrer to all but one of Plaintiff's claims in the FAC, along with a motion to strike portions
11 of the FAC. The demurrer and motion were fully briefed, and a hearing was held before this Court.
12 Hammond Final Decl. ¶ 15. Class Counsel spent considerable time researching the issues, preparing
13 Plaintiff's Oppositions to Defendant's demurrer and motion strike, and preparing for and arguing at the
14 hearing on Defendant's motions.

15 **iii. The Court's Rulings, Settlement Negotiations, and Settlement**

16 Following the Court's ruling sustaining Defendant's demurrer, the parties began settlement
17 negotiations, during which they engaged in informal and confirmatory discovery regarding the size of
18 class and the circumstances surrounding the data breach. The information exchanged allowed Class
19 Counsel to analyze the strengths and weaknesses of the case. The parties thereafter engaged in arms-
20 length negotiations regarding the specific terms of the Settlement Agreement. Hammond Final Decl. ¶
21 16. Ultimately, these efforts resulted in a commendable recovery for the Class under the circumstances.

22 **iv. Settlement Approval and Class Notice**

23 After reaching Settlement, Class Counsel drafted a detailed preliminary approval motion, which
24 the Court granted on April 26, 2022. Class Counsel oversaw the notice process including reviewing the
25 notice before it was sent out, and reviewing the weekly reports circulated by the Settlement
26 Administrator. Once the response deadline passed, Class Counsel drafted the final approval motion,
27 including reviewing and drafting a response to the objection. Hammond Final Decl. ¶ 17.

28 **b. Class Counsel's Hourly Rates Are Reasonable**

Class Counsel's requested hourly rates are shown in the tables immediately below:

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Attorney/Timekeeper	Year Admitted	Rate
Julian Hammond, Principal	2000	\$870
Polina Brandler, Associate	2010	\$695
Ari Cherniak, Associate	2011	\$605
Arie Michelson, Attorney	1999	\$750

Class Counsel’s current hourly rates have been approved in *Burleigh v. National University*, Case No. MSC21-00939 (Contra Costa Cty. Sup. Ct. Aug. 26, 2022); *Parsons v. La Sierra University*, Case No. CVRI2000104 (Riverside Cty. Sup. Cot. May 19, 2022); *Chindamo v. Chapman University*, Case No. 30-2020-01147814-CU-OE-CXC (Orange Cty. Sup. Ct. Apr. 15, 2022); *Sweetland-Gil v. University of the Pacific*, Case No. STK-CV-UOE-2019-0014682 (San Joaquin Cty. Sup. Ct. Mar. 4, 2022); and *Senese v. University of San Diego*, Case No. 37-2019-00047124-CU-OE-CTL (San Diego Cty. Sup. Ct. Feb. 8, 2022). Hammond Final Decl. ¶ 40.

The rates claimed are reasonable if they are “within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work.” *Children’s Hosp. & Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 783 (2007). Courts consider the “prevailing market rates in the relevant community,” as well as the “experience, skill, and reputation of the attorney requesting fees.” *Heritage Pac. Fin., LLC v. Monroy*, 215 Cal.App.4th 972, 1009 (2013). In complex litigation like class action employment cases, the appropriate market is that governing rates for attorneys engaged in “equally complex” matters. *Hensley*, 461 U.S. at 430, n.4.

Class Counsel’s requested hourly rates are reasonable under these standards. Class Counsel’s rates are comparable to the prevailing market rates for attorneys of similar experience, qualification, and skill. Hammond Final Decl. ¶ 39. Class Counsel’s attorneys have outstanding reputations in the area of complex litigation, including consumer and wage and hour class actions. Since its founding in 2010, HammondLaw, P.C. has represented employees, as a lead or co-lead counsel, in over 50 employment and consumer class actions in state and federal courts in California, as well as in Washington state. Hammond Final Decl. ¶ 20.

c. Class Counsel Seek Only 17% of their Lodestar to Date

“After making the lodestar calculation, the court may augment or diminish that amount based on a number of factors specific to the case, including the novelty and difficulty of the issues, the attorneys’ skill in presenting the issues, the extent to which the case precluded the attorneys from accepting other work, and the contingent nature of the work.” *Ctr. for Biological Diversity v. County of San Bernardino*,

1 188 Cal.App.4th 603, 616 (2010). Here, Class Counsel seek only 17% of their lodestar. Hammond Final
2 Decl. ¶ 45; *Greene v. Gino Morena Enters., LLC.*, No. 13cv1332 JM(NLS), 2014 WL 5606442, at *2
3 (S.D. Cal. Nov. 4, 2014) (reasonableness of the fees requested is confirmed by the fact that the lodestar
4 is more than double the proposed, percentage-based fee award); *Vizcaino v. Microsoft Corp.*, 290 F.3d
5 1043, 1050 (9th Cir. 2002) (lodestar cross check determines the reasonableness of the fee request).
6 Though not sought, a multiplier to Class Counsel’s lodestar would be justified based on all of the
7 applicable factors.

8 **i. Novelty and Complexity of the Case**

9 As discussed above, this case presented novel and complex issues, as well as issues regarding
10 class certification. Absent the Settlement that Class Counsel obtained, Plaintiff would face the risk that
11 the litigation would yield no recovery, especially in light of the Court’s sustaining Defendant’s demurrer
12 on most of Plaintiff’s claims, the risk of an unfavorable ruling on class certification, and on the merits.
13 Despite these risks, Class Counsel resolved the matter on very favorable terms to the Class.

14 **ii. Result Achieved**

15 The results achieved for the Class are excellent for a data breach case of this type with a per-
16 Class-Member gross recovery of \$8.63 and a net recovery of \$3.45. Hammond Final Decl. ¶ 47. This
17 amount is far higher, on a per-class-member basis, than settlement amounts approved in other data breach
18 cases, and well-within the range of settlement amounts reported by independent damage experts in data
19 breach cases. *Id.* ¶ 47; Hammond Prelim Decl. ¶ 27-28. Moreover, the Bank has already offered to provide
20 2 years of free credit monitoring. Hammond Final Decl. ¶ 47.

21 **iii. Preclusion of Other Employment**

22 Accepting this litigation on a contingency basis resulted in Class Counsel foregoing other
23 employment. Hammond Final Decl. ¶ 48; see *Serrano*, 20 Cal.3d at 49 (finding that one of the factors
24 that weighs in favor of granting a request for attorneys’ fees is the “the extent to which the nature of the
25 litigation precluded other employment by the attorneys”). Because Class Counsel must maintain
26 appropriate attorney- and staff-to-case ratios, taking this case required that Class Counsel turn away other
27 fee-generating work.

28 **iv. Contingency Risk**

As stated above, Class Counsel have expended over 385 hours, all as-yet uncompensated, and
have expended over \$4,600 in out-of-pocket expenses, without any certainty of receiving payment.
Hammond Final Decl. ¶¶ 44, 50. There was a significant risk that Class Counsel would be paid nothing
especially in light of Defendant’s Demurrer and Motion to Strike. However, rather than applying a

multiplier, Class Counsel seek fees that represent only 17% of their lodestar to date. Id. ¶ 45.

III. THE REQUESTED LITIGATION COSTS ARE REASONABLE

Class Counsel has incurred \$4,619.84 in out-of-pocket litigation costs to date. Hammond Final Decl. ¶ 50. These costs include filing fees, service fees, research charges, *pro hac vice* application fees, witness locator fees, and the like. *Id.* These are commonly reimbursed costs and are \$5,380.16 less than the \$10,000 provided in the SA and noticed to the Class, and the difference will be added to the Net Settlement and increase each Class Member’s share. Id. ¶ 51. Thus, the requested costs are reasonable and should be approved.

IV. THE REQUESTED SERVICE AWARD IS JUSTIFIED AND REASONABLE

The requested service award of \$2,500 is reasonable and should be approved. Class representatives in class action litigation are eligible for reasonable participation payments to compensate them for the risks assumed, and efforts made, on behalf of the Class. *Clark v. Am. Residential Servs. LLC*, 175 Cal.App.4th 785, 807 (2009) (citing *In re Cont’l Ill. Sec. Litig.*, 962 F.2d 566, 571 (7th Cir. 1992)); *see Staton*, 327 F.3d at 976. Courts routinely approve service awards to compensate named plaintiffs for the expense or risk they incur during the course of the class action litigation, including in amounts greater than the amount requested here. *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010) (approving \$10,000 payment to each class representative in a consumer class action); *Munoz v. BCI Coca-Cola Bottling Co of Los Angeles*, 186 Cal.App.4th 399, 412 (2010) (approving \$5,000 payment to each class representative in employment class action); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 300 (N.D. Cal. 1995) (named plaintiff received \$50,000 for work in class action). Relevant factors courts use in determining the amount of service awards include (1) the actions the plaintiff has taken to protect the interests of the class; (2) the degree to which the class has benefitted from those actions; (3) the amount of time and effort the plaintiff expended in pursuing the litigation; and (4) the risk assumed. *Clark*, 175 Cal.App.4th at 804; *see also In re Cellphone Fee Termination Cases*, 186 Cal.App.4th at 1394-95.

All of the above factors support the service award requested here. First, the Class Representative has served the Class well. His participation was critical to the success of this litigation. Without his commitment to serve as the sole Class Representative this litigation would not be possible. Hammond Final Decl. ¶ 52. This Settlement furthers the public policy of encouraging data privacy compliance by companies thereby ensuring the preservation of data privacy rights of consumers. *Id.*

Second, this litigation has resulted in pecuniary relief in the form of a one-time cash payment of approximately \$3.60 to each Class Member. Bridley Decl. ¶ 14. The Settlement Class and consumers generally will also benefit from the two years of credit monitoring and related services that the Bank has

1 offered to all affected Class Members. Hammond Final Decl. ¶ 47.

2 Third, in agreeing to serve as Class Representative, Plaintiff formally accepted the responsibilities
3 of representing the interests of all Class Members, and has devoted his time and effort on behalf of the
4 Class. See Declaration of Kyle Rodriguez, filed herewith. Plaintiff assisted Class Counsel throughout
5 the case including reviewing pleadings and making himself available as needed. In total, Plaintiff spent
6 approximately 3 to 4 hours assisting in this case. Id.

7 Fourth, Plaintiff assumed the risk of being branded a “troublemaker” by coming forward in a
8 public forum and agreeing to formally represent the Class. The other Settlement Class Members in this
9 case did not assume this risk. Hammond Final Decl. ¶ 52. Finally, Defendant does not oppose the
10 requested service award to the Class Representative. SA § 34.

11 Accordingly, the \$2,500 class representative award to Plaintiff should be approved.

12 **V. THE ADMINISTRATION COSTS ARE REASONABLE**

13 Plaintiff requests \$25,000 for the costs incurred by Atticus Administration. These costs are
14 \$3,928.52 less than the actual costs incurred by the Settlement Administrator which will not be
15 reimbursed. Bridley Decl. ¶ 15. The lone objector claims that these costs are excessive but offers no
16 cheaper alternative for administering a class action settlement to over 16,400 individuals - because none
17 exists. Id. at Exhibit C. The administration costs are both eminently reasonable and the objection should
18 be overruled in its entirety.

19 **VI. CONCLUSION**

20 Plaintiff respectfully requests that the Court overrule the objection, and approve attorneys’ fees and
21 costs in the amount of \$49,000, \$4,619.84 in costs, \$25,000 for administration costs, and a \$2,500 service
22 award for the Class Representative, pursuant to the terms of the Settlement.

23 Dated: September 30, 2022

Respectfully submitted,

HAMMONDLAW, P.C.

24 By: 
25 Julian Hammond

26 *Attorneys for Plaintiff Kyle Rodriguez and the Putative*
27 *Class*