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

IN RE: CALIFORNIA PIZZA  
KITCHEN DATA BREACH  
LITIGATION

This Document Relates To:  
All Actions

Master File No. 8:21-cv-01928-DOC-KES

**PLAINTIFFS' NOTICE OF MOTION  
AND MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

**DATE:** June 13, 2022  
**TIME:** 8:30 a.m.  
**COURTROOM:** 10 A  
**JUDGE:** Hon. David O. Carter

1           **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF**  
2 **RECORD:**

3           **PLEASE TAKE NOTICE THAT** on June 13, 2022, at 8:30 a.m., or as soon  
4 thereafter as counsel may be heard, before the Honorable David O. Carter, Ronald  
5 Reagan Federal Building and United States Courthouse, 411 West Fourth Street,  
6 Courtroom 10A, Santa Ana, CA, 92701-4516, Plaintiffs will and hereby do move  
7 this Court, pursuant to Federal Rule of Civil Procedure 23, for an order granting  
8 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.


9           Plaintiffs base their Motion for Preliminary Approval of Class Action  
10 Settlement ("Motion") on: this Notice; the Memorandum of Points and Authorities  
11 filed in support thereof; the Settlement Agreement and Release ("Settlement  
12 Agreement") and all exhibits attached thereto; the Declaration of Rachele R. Byrd  
13 in Support of Plaintiffs' Motion for Preliminary Approval of Class Action  
14 Settlement, and the exhibits thereto ("Byrd Decl."); all other records and papers on  
15 file in this action; any oral argument on the Motion; and all other matters properly  
16 before the Court.

17           Plaintiffs seek an order pursuant to Federal Rule of Civil Procedure 23(b)(3)  
18 certifying the Settlement Class more fully described in the Settlement Agreement,  
19 filed concurrently herewith; preliminarily approving the settlement as fair,  
20 reasonable, and adequate; directing notice to be disseminated to the Settlement  
21 Class in the form and manner proposed by the parties as set forth in the Settlement  
22 Agreement and attached as Exhibits B and C thereto; appointing Epiq Class Action  
23 and Claims Solutions, Inc. to serve as the Settlement Administrator; appointing  
24 Plaintiffs as Class Representatives and their attorneys as Class Counsel; and setting  
25 a hearing date and schedule for final approval of the settlement and consideration  
26 of Class Counsel's forthcoming motion for an award of fees, costs, expenses, and  
27 service awards.

1 This Motion is made following the conference of counsel pursuant to L.R. 7-  
2 3 which took place at the mediation on March 10 and March 15, 2022, and at  
3 numerous times and on numerous dates thereafter.

4  
5 DATED: May 2, 2022

Respectfully Submitted,

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7   
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**THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

IN RE: CALIFORNIA PIZZA  
KITCHEN DATA BREACH  
LITIGATION

This Document Relates To:  
All Actions

Master File No. 8:21-cv-01928-DOC-KES

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

**DATE:** June 13, 2022  
**TIME:** 8:30 a.m.  
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1 **I. INTRODUCTION**

2 Plaintiffs submit this Motion for Preliminary Approval of Class Action  
3 Settlement and Memorandum in Support. Defendant California Pizza Kitchen, Inc.  
4 (“CPK,” and “Defendant”) does not oppose certification of the Settlement Class  
5 solely for purposes of settlement.<sup>1</sup> The settlement is fair, reasonable and adequate,  
6 and the Court should preliminarily approve it so notice may be issued to the Class.

7 **II. STATEMENT OF FACTS**

8 This matter concerns a putative class action arising out of an alleged Data  
9 Incident CPK discovered on or about September 15, 2021. Representative Plaintiffs  
10 allege, but CPK denies, that, as a result of the Data Incident, unauthorized users  
11 accessed Representative Plaintiffs’ and CPK’s current and former employees’  
12 personal identifying information (“PII”), including names and Social Security  
13 numbers. *See Gilleo, et al. v. California Pizza Kitchen, Inc., et al.*, No. 8:21-cv-  
14 01928, ECF No. 1 (“Compl.”), ¶¶ 3-6.

15 In November 2021, following a forensic investigation, CPK sent notice of  
16 the Data Incident to approximately 103,767 individuals whose PII may have been  
17 subject to unauthorized access. CPK offered these individuals one year of free  
18 credit and identity monitoring services. Representative Plaintiffs received their  
19 notice letters on or about November 15, 2021. *Id.*, ¶ 5.

20 Plaintiffs brought their class action lawsuits on behalf of all similar current  
21 and former employees whose PII CPK collected and maintained, but safeguarded  
22 inadequately. Plaintiffs in these Consolidated Cases asserted common law claims  
23 against CPK, including negligence, and violations of various state statutes,  
24 including , *inter alia*, California’s Unfair Competition Law, Consumer Records  
25 Act, and Consumer Privacy Act. *Id.*, ¶¶ 62-137.

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26 <sup>1</sup> Capitalized terms have the same definitions as in the Settlement Agreement  
27 and Release, dated May 2, 2022 (“Settlement Agreement” or “SA”), attached to  
28 the Declaration of Rachele R. Byrd in Support of Motion for Preliminary Approval  
of Class Action Settlement (“Byrd Decl.”) as Exhibit 1.

### III. PROCEDURAL HISTORY

There are five lawsuits pending in this Court arising from this Data Incident. Plaintiffs in the first four filed related cases, *Gilleo, et al. v. California Pizza Kitchen, Inc., et al.*, No. 8:2021-cv-01928-DOC-KES; *Morales v. California Pizza Kitchen, Inc.*, No. 8:21-cv-01988-DOC-KES; *Wallace et al. v. California Pizza Kitchen, Inc.*, No. 8:21-cv-01970-DOC-KES; and *Rigas, et al. v. California Pizza Kitchen, Inc.*, Case No. 8:21-cv-02004-DOC-KES, filed putative class actions alleging that CPK failed to adequately safeguard its current and former employees' (and their family members') electronically stored private information, and seeking monetary and equitable relief (the "Lawsuits" or "Consolidated Cases"). Each Consolidated Case names CPK as the sole Defendant, brings similar claims, and purports to represent the same putative nationwide class, or, in the alternative, state classes, of all persons whose PII was accessed during the Data Incident.

Subsequently, a fifth case, *Kirsten, et al. v. California Pizza Kitchen, Inc.*, No. 2:21-cv-09578-DOC-KES, was filed.<sup>2</sup> At the time the *Kirsten* case was filed, counsel for the first-four filed cases had already self-organized, and had agreed to work together cooperatively for the good of the putative class. Byrd Decl., ¶ 3. Plaintiffs' counsel for the first-four filed cases invited counsel for *Kirsten* into the group, but they declined and indicated that they preferred to file a leadership motion. *Id.*, ¶ 4.

Subsequently, plaintiffs' counsel in all five cases sought to consolidate the various cases. Counsel in the first-four filed cases sought consolidation to move the cases forward for the benefit of the class. Ultimately, all plaintiffs' counsel could not agree on a mutually acceptable consolidation stipulation, and counsel for the *Kirsten* plaintiffs simply stopped responding. *Id.*, ¶ 5.

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<sup>2</sup> Thereafter, on December 17, 2021, more than three weeks after the first filed action, a similar class action was filed in Sacramento Superior Court under the caption *Andrews v. California Pizza Kitchen, Inc.*, No. 2021-00312816-CV.

1 Unwilling to let the cases languish, counsel for the first-four filed cases  
2 stipulated to consolidation of their four cases, noting in the stipulation the existence  
3 of the fifth related *Kirsten* case. *Id.*, ¶ 6; ECF No. 20 at 1, n.1. After the Court  
4 entered the stipulated order on February 15, 2022 and designated the Consolidated  
5 Cases as *In re California Pizza Kitchen Data Breach Litigation*, Master File No.  
6 8:21-cv-01928-DOC-KES, the Parties to the Consolidated Cases (which did not  
7 include the *Kirsten* plaintiffs for the reasons noted above) agreed to explore  
8 settlement and scheduled a formal mediation. *Id.* Meanwhile, the *Kirsten* plaintiffs  
9 litigated their case separately, never again raising the issue of consolidation. CPK  
10 filed a motion to dismiss the *Kirsten* complaint, which this Court granted for lack  
11 of Article III standing with leave to amend, and the *Kirsten* plaintiffs then filed an  
12 amended complaint. *See Kirsten*, No. 2:21-cv-09578, ECF Nos. 34-35.

13 Prior to mediating, the Parties to the Consolidated Cases exchanged  
14 confirmatory discovery on a variety of topics, including applicable insurance  
15 coverage (which in this case, without revealing confidential information, was a  
16 wasting policy that was being eroded by litigation costs). The Parties selected  
17 Bruce A. Friedman, Esq. of JAMS, a well-regarded private mediator with  
18 considerable experience mediating data breach class actions, to preside over the  
19 mediation, and exchanged briefs prior to the mediation. Byrd Decl., ¶ 7.

20 At the all-day mediation on March 10, 2022, the parties spent the entire day  
21 negotiating the material terms of a resolution of the class claims prior to reaching  
22 an impasse. *Id.*, ¶ 8. The parties did not discuss attorneys' fees or service awards  
23 at this first mediation session and instead returned for a second mediation session  
24 on March 15, 2022. At the second session, the parties reached agreement on the  
25 material terms of class-wide relief, then spent the remainder of that second session  
26 negotiating the issues of attorneys' fees, costs and service awards. After several  
27 hours, the parties reached agreement on all material terms of this settlement. *Id.*

28 The parties to the Consolidated Cases immediately apprised the Court of the

1 settlement, and the Court stayed all proceedings in the Consolidated Cases pending  
2 the filing of a motion for preliminary approval by May 2, 2022. ECF No. 33. That  
3 same day, plaintiffs' counsel in the *Kirsten* case improperly filed a leadership  
4 motion in the lead *Gilleo* case, despite having no standing to do so as a non-party  
5 to the Consolidated Cases. *See* ECF No. 31. The motion baselessly accused counsel  
6 in the Consolidated Cases of collusion and reverse auction. *Id.* After two hearings,  
7 this Court determined that the proper course of action was to review the settlement  
8 before considering any of the *Kirsten* plaintiffs' accusations. ECF No. 41.

#### 9 **IV. THE SETTLEMENT TERMS**

##### 10 **A. Proposed Settlement Class**

11 The settlement will provide relief for the following Settlement Class: "All  
12 persons who were sent notice of the Data Security Incident announced by defendant  
13 on or about November 15, 2021." SA, ¶ 1. The settlement also provides for a  
14 California Settlement Subclass, defined as follows: "All persons residing in  
15 California who were sent notice of the Data Security Incident announced by  
16 defendant on or about November 15, 2021." *Id.* The Settlement Class and  
17 California Settlement Subclass are estimated to include 103,767 and 30,781  
18 individuals, respectively. *Id.*

##### 19 **B. Settlement Benefits – Monetary Relief**

20 The settlement negotiated on behalf of the Class provides for three separate  
21 forms of monetary relief: (1) reimbursement of ordinary expenses and lost time up  
22 to \$1,000 per Class Member; (2) reimbursement of extraordinary expenses up to  
23 \$5,000 per Class Member, and; (3) California Statutory Claim benefits of \$100 per  
24 California Settlement Subclass member. There is no aggregate cap on these  
25 benefits. SA, ¶ 3.

##### 26 **1. Expense and Lost Time Reimbursement.**

27 The first category of payments is designed to provide reimbursement for  
28 documented, ordinary and unreimbursed out-of-pocket expenses related to the Data



1 Incident and to compensate Settlement Class members for time spent dealing with  
2 the effects of the Data Incident. Ordinary expense reimbursements can be claimed  
3 at up to \$1,000 per Class Member. SA, ¶ 3(a).

4 Notably, this category of reimbursements specifically includes up to  
5 three hours of lost time spent dealing with any effects of the Data Incident,  
6 compensated at \$20 per hour. Reimbursable ordinary expenses also include: (i)  
7 unreimbursed costs to obtain credit reports; (ii) unreimbursed fees relating to a  
8 credit freeze; (iii) unreimbursed card replacement fees; (iv) unreimbursed late fees;  
9 (v) unreimbursed over-limit fees; (vi) unreimbursed interest on payday loans taken  
10 as a result of the Data Incident; (vii) unreimbursed bank or credit card fees; (viii)  
11 unreimbursed postage, mileage, and other incidental expenses resulting from lack  
12 of access to an existing account; (ix) unreimbursed costs associated with credit  
13 monitoring or identity theft insurance purchased prior to the Effective Date, with  
14 certification that it purchased primarily as a result of the Data Incident. *Id.*, ¶ 3(b).

## 15 **2. Extraordinary Expense Reimbursement.**

16 The second category provides reimbursement for documented, unreimbursed  
17 out-of-pocket losses due to identity theft, up to \$5,000 per Settlement Class  
18 Member, incurred between September 15, 2021, through and including the end of  
19 the Claims Deadline. SA, ¶ 3(c).

## 20 **3. California Statutory Claim Benefit.**

21 In addition to the above benefits, California Settlement Subclass members  
22 are eligible for a separate, California statutory damages award of \$100. This benefit  
23 is subject to the \$1,000 cap for ordinary expenses and lost time reimbursement, but  
24 is available to all Subclass members who file a claim. SA, ¶ 3(d).

## 25 **C. Credit Monitoring**

26 In addition to the cash benefits outlined above, all Settlement Class members  
27 will have the opportunity to claim two years (24 months) of three-bureau credit  
28 monitoring, which includes a credit report at sign-up, credit monitoring, identity

1 restoration, and up to \$1 million in identity theft insurance (consistent with the 12  
2 months of single bureau monitoring offered by CPK as part of its incident  
3 response). For Settlement Class members who selected and enrolled in the 12  
4 months of identity monitoring previously offered by CPK, the credit monitoring  
5 offered under this settlement shall be in addition to that period. SA, ¶ 3(e).

6 **D. Remedial Measures**

7 As part of the settlement, CPK has also agreed to maintain certain business  
8 practices and remedial measures it recently implemented (“Business Practice  
9 Commitments”) for a period of three (3) years following the Effective Date. These  
10 Business Practice Commitments are designed to include continuous threat  
11 assessment processes to maintain CPK’s security posture and to provide protection  
12 against threats now and in the future, specifically with respect to the PII of current  
13 and former employees, and include the following:

- 14 (a) Endpoint protection: Ensure implementation of endpoint security measures,  
15 including appropriate implementation of endpoint security applications,  
16 patching mechanisms, logging and alerting.
- 17 (b) Enhanced password protection: Require users to employ more complex  
18 account passwords, and to change those passwords on a regular basis.
- 19 (c) Multi-factor authentication: Require multi-factor authentication in order to  
20 gain external access to email servers or systems located on CPK’s networks.
- 21 (d) Cybersecurity training and awareness program: Enhanced internal training  
22 and education for all employees in order to better enable them to identify  
23 potential security threats.

24 All costs associated with implementing the Business Practice Commitments  
25 will be borne by CPK separate and apart from the relief afforded to Settlement  
26 Class members. SA, ¶ 6.

27 **E. Class Notice and Settlement Administration**

28 CPK also will pay for Notice, separate and apart from any funds available to

1 Settlement Class members. SA, ¶ 7. Notice will be given to the Settlement Class  
2 via individual notice, which will be given primarily by mailing the Postcard Notice,  
3 attached to the Settlement Agreement as Exhibit B, to the postal addresses  
4 associated with the Settlement Class members. Byrd Decl. Ex. 3 (Declaration of  
5 Cameron R. Azari on Notice Plan (“Azari Decl.”)), ¶¶ 15-18. A Long Notice,  
6 attached to the Settlement Agreement as Exhibit C, will also be posted on the  
7 settlement website, along with other important documents such as the Settlement  
8 Agreement and the motions for final approval and for attorneys’ fees and expenses.  
9 *Id.*, ¶ 19. The notice documents are clear and concise and directly apprise  
10 Settlement Class members of all the information they need to know to make a claim  
11 or to opt-out or object to the settlement. Fed. R. Civ. P. 23(c)(2)(B). Furthermore,  
12 a toll-free number with interactive voice response, FAQs, and an option to speak  
13 to a live operator will be made available to address any inquiries. Azari Decl., ¶ 20.

14 Moreover, Defendant has retained Epiq Class Action and Claims Solutions,  
15 Inc. (“Epiq”), a nationally recognized and well-regarded class action settlement  
16 administrator, to serve as Settlement and Claims Administrator, subject to the  
17 Court’s approval. *See* Byrd Decl., ¶ 18 & Ex. 3. The Settlement Administrator has  
18 estimated that notice and administration costs will total approximately \$103,000.  
19 Azari Decl. ¶ 22.

#### 20 **F. Attorneys’ Fees and Expenses**

21 Plaintiffs will also separately seek an award of attorneys’ fees not to exceed  
22 \$800,000, which includes reimbursement of their reasonable costs and litigation  
23 expenses incurred. SA, ¶ 5(a). This amount represents less than 25% of an  
24 extremely conservative estimated value of this settlement. Byrd Decl., ¶ 19. If just  
25 2% of the Settlement Class claims the \$1,000 in ordinary losses, that would amount  
26 to \$2,075,340. *Id.* If just 5% of California Settlement Subclass members claim  
27 their \$100, that is \$153,905. *Id.* And even conservatively valuing credit  
28 monitoring at \$15 per month, two years thereof is worth \$360 per Settlement Class

1 member; if just 4% of the Settlement Class claims this benefit, the total will be  
2 \$1,494,245. *Id.* Adding these numbers together, this settlement has a conservative  
3 value of over \$3.7 million, and the \$800,000 in combined fees and expenses is  
4 approximately 21% of the value of the settlement.<sup>3</sup> *Id.* Defendant has agreed to  
5 take no position with regard to the fees motion. SA, ¶ 5(a).

6 Class Counsel's fee request is well within the range of reasonableness for  
7 settlements of this nature and size. This Court recently stated that "25% [is]  
8 considered the benchmark" in the Ninth Circuit. *Pauley v. CF Ent.*, 2020 WL  
9 5809953, at \*3 (C.D. Cal. July 23, 2020), *citing Powers v. Eichen*, 229 F.3d 1249,  
10 1256 (9th Cir. 2000). In fact, the Ninth Circuit has found attorneys' fees awards of  
11 1/3 of the fund to be reasonable. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d  
12 454, 463 (9th Cir. 2000) (affirming award of one-third of total recovery).

### 13 **G. Service Awards to Named Plaintiffs**

14 Plaintiffs in this case have been vital in litigating this matter, including  
15 providing their personal information to proposed Settlement Class Counsel.  
16 Plaintiffs have been personally involved in the case and support the Settlement.  
17 Byrd Decl., ¶ 20. Plaintiffs will separately petition the Court for awards of \$2,000  
18 each in recognition of the time, effort, and expense they incurred pursuing claims  
19 that benefited the Settlement Class. This amount is presumptively reasonable and  
20 below amounts commonly awarded in settled class action cases. *See, e.g., In re*  
21 *Pauley*, 2020 WL 5809953, at \*4 (this Court granted "class representative  
22 enhancement fees in the amount of \$5,000 each to Plaintiffs," finding that amount  
23 to be "presumptively reasonable"); *Yahoo Mail Litig.*, 2016 WL 4474612, at \*11  
24 (N.D. Cal. Aug. 25, 2016) ("The Ninth Circuit has established \$5,000.00 as a  
25 reasonable benchmark [for service awards].").

### 26 **H. Release**

27  
28 <sup>3</sup> The expected lodestar calculation will further support the reasonableness of  
the fees requested.

1        Upon entry of the Final Approval Order, Plaintiffs and the Settlement Class  
2 will be deemed to have fully and finally released CPK. “Released Claims” are  
3 limited only to claims, “whether known or unknown ... that concern, refer or relate  
4 to the cybersecurity incident announced by CPK on or about November 15, 2021,  
5 and all other claims arising out of th[at] cybersecurity incident ....” SA ¶ 9.  
6 Released Claims shall not apply to any litigation or claim not related to or arising  
7 out of the cybersecurity incident. The Release shall not include the claims of  
8 Settlement Class members who timely exclude themselves.

9        **V.     LEGAL ARGUMENT**

10        Plaintiffs bring this motion pursuant to the Federal Rules of Civil Procedure,  
11 rule 23(e), under which court approval is required to finalize a class action  
12 settlement. Courts, including those in this Circuit, endorse a three-step procedure  
13 for approval of class action settlements: (1) preliminary approval of the proposed  
14 settlement followed by (2) dissemination of court-approved notice to the class and  
15 (3) a final fairness hearing at which class members may be heard regarding the  
16 settlement and at which evidence may be heard regarding the settlement’s fairness,  
17 adequacy, and reasonableness. Manual for Complex Litig. (Fourth) (2004) § 21.63.

18        Here, Plaintiffs request the Court take the first step, and grant preliminary  
19 approval of the proposed Settlement Agreement. Federal courts strongly favor and  
20 encourage settlements, particularly in class actions and other complex matters  
21 where the inherent costs, delays, and risks of continued litigation might otherwise  
22 overwhelm any potential benefit the class could hope to obtain. *See Class Plaintiffs*  
23 *v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (noting the “strong judicial  
24 policy that favors settlements, particularly where complex class action litigation is  
25 concerned”); 4 Newberg on Class Actions § 11.41 (4th ed. 2002) (citing cases).

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

1 Because a court evaluating certification of a class action that has settled is  
2 considering certification only in the context of settlement, the court's evaluation is  
3 somewhat different than in a case that has not yet settled. *Amchem Prods., Inc. v.*  
4 *Windsor*, 521 U.S. 591, 620 (1997). In some ways, the court's review of  
5 certification of a settlement-only class is lessened: as no trial is anticipated in a  
6 settlement-only class case, case management issues need not be addressed. *See id.*  
7 Other certification issues, however, such as "those designed to protect absentees by  
8 blocking unwarranted or overbroad class definitions," require heightened scrutiny  
9 in the settlement context "for a court asked to certify a settlement class will lack  
10 the opportunity, present when a case is litigated, to adjust the class, informed by  
11 the proceedings as they unfold." *Id.*

12 Plaintiffs here seek certification of a Settlement Class of 103,767 individuals  
13 and consisting of: "All persons who were sent notice of the Data Security Incident  
14 announced by defendant on or about November 15, 2021." SA, ¶ 1. In addition,  
15 the settlement creates a California Settlement Subclass of 30,781 individuals and  
16 consisting of: "All persons residing in California who were sent notice of the Data  
17 Security Incident announced by defendant on or about November 15, 2021." *Id.*

18 As outlined below, the Court should certify the proposed classes for  
19 settlement purposes and preliminarily approve the Settlement.

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

21 Before assessing the parties' settlement, the Court should first confirm the  
22 underlying Settlement Class meets the requirements of Rule 23(a). *See Amchem*,  
23 521 U.S. at 620; Manual for Complex Litig. (Fourth), § 21.632. The requirements  
24 are well known: numerosity, commonality, typicality, and adequacy—each of  
25 which is met here. Fed. R. Civ. P. 23(a); *Ellis v. Costco Wholesale Corp.*, 657 F.3d  
26 970, 979–80 (9th Cir. 2011).

27 **1. The Settlement Class is Sufficiently Numerous.**

28 Courts find numerosity where there are so many class members as to make



1 joinder impracticable. *See* Fed. R. Civ. P. 23(a)(1). Generally, Courts will find  
2 numerosity is satisfied where a class includes at least 40 members. *Holly v. Alta*  
3 *Newport Hospital, Inc.*, 2020 WL 1853308, at \*7 (C.D. Cal. April 10, 2020), *citing*  
4 *Rannis v. Recchia*, 380 Fed. App'x 646, 651 (9th Cir. 2010). Numbering  
5 approximately 100,000 individuals, the proposed Settlement Class easily satisfies  
6 Rule 23's numerosity requirement. Joinder of the 103,767 individuals is clearly  
7 impracticable—thus the numerosity prong is satisfied.

8 **2. The Settlement Class Satisfies the Commonality**  
9 **Requirement.**

10 The Settlement Class also satisfies the commonality requirement, which  
11 requires that class members' claims "depend upon a common contention," of such  
12 a nature that "determination of its truth or falsity will resolve an issue that is central  
13 to the validity of each [claim] in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564  
14 U.S. 338, 350 (2011). Here, as in most data breach cases, "[t]hese common issues  
15 all center on [defendant's] conduct, satisfying the commonality requirement." *In re*  
16 *the Home Depot, Inc., Customer Data Sec. Breach Litig.*, 2016 WL 6902351, at \*2  
17 (N.D. Ga. Aug. 23, 2016). Here, common questions include, *inter alia*, whether  
18 CPK engaged in the wrongful conduct alleged; whether Settlement Class members'  
19 PII was compromised in the Data Incident; whether CPK owed a duty to Plaintiffs  
20 and Settlement Class members; whether CPK breached its duties; whether CPK  
21 unreasonably delayed in notifying Plaintiffs and Settlement Class members of the  
22 material facts of the Data Incident; and whether CPK violated the common law and  
23 applicable statutes (such as the CCPA and UCL) as alleged in the Complaint. Thus,  
24 Plaintiffs have met the commonality requirement of Rule 23(a).

25 **3. Plaintiffs' Claims and Defenses are Typical.**

26 Plaintiffs satisfy the typicality requirement of Rule 23 because Plaintiffs'  
27 claims are "reasonably coextensive with those of the absent class members." *See*  
28 Fed. R. Civ. P. 23(a)(3); *Meyer v Portfolio Recovery Assocs.*, 707 F.3d 1036, 1042

(9th Cir. 2012) (upholding typicality finding). Plaintiffs allege their PII was compromised, and that they were therefore impacted by the same allegedly inadequate data security they allege harmed the rest of the Settlement Class. *See Just Film, Inc. v. Buono*, 847 F.3d 1108, 1118 (9th Cir. 2017) (“[I]t is sufficient for typicality if the plaintiff endured a course of conduct directed against the class.”).

**4. Plaintiffs are Adequate Settlement Class Representatives.**

The adequacy requirement is satisfied where (1) there are no antagonistic or conflicting interests between named plaintiffs and their counsel and the absent class members; and (2) the named plaintiffs and their counsel will vigorously prosecute the action on behalf of the class. Fed. R. Civ. P. 23(a)(4); *see also Ellis*, 657 F.3d at 985 (*citing Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)).

Here, Plaintiffs have no conflicts of interest with other class members, are subject to no unique defenses, and they and their counsel have and continue to vigorously prosecute this case on behalf of the class. Plaintiffs are members of the Settlement Class who experienced the same injuries and seek, like other Settlement Class members, compensation for CPK’s data security shortcomings. As such, their interests and those of their counsel are consistent with those of the Settlement Class.

Further, counsel for Plaintiffs have decades of combined experience vigorously litigating class actions, and are well suited to advocate on behalf of the Class. *See Byrd Decl.*, ¶ 33 & Exs. 4-7. Plaintiffs satisfy the adequacy requirement.

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

“In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class certification must also show that the action is maintainable under Fed. R. Civ. P. 23(b)(1), (2) or (3).” *Hanlon*, 150 F.3d at 1022. Here, Plaintiffs allege that the Settlement Class is maintainable for purposes of settlement under Rule 23(b)(3), as common questions predominate over any questions affecting only individual members and class resolution is superior to other available methods for



1 a fair and efficient resolution of the controversy. *Id.* In determining whether the  
2 “superiority” requirement is satisfied, a court may consider: (1) the interest of  
3 members of the class in individually controlling the prosecution or defense of  
4 separate actions; (2) the extent and nature of any litigation concerning the  
5 controversy already commenced by or against members of the class; (3) the  
6 desirability or undesirability of concentrating the litigation of the claims in the  
7 particular forum; and (4) the difficulties likely to be encountered in the  
8 management of a class action. Fed. R. Civ. P. 23(b)(3).

9 Plaintiffs’ claims depend, first and foremost, on whether CPK used  
10 reasonable data security measures to protect consumers’ PII. That question can be  
11 resolved, for purposes of settlement, using the same evidence for all Settlement  
12 Class members, and thus is precisely the type of predominant question that makes  
13 a class-wide settlement worthwhile. *See, e.g., Tyson Foods, Inc. v. Bouaphakeo*,  
14 136 S. Ct. 1036, 1045 (2016) (“When ‘one or more of the central issues in the  
15 action are common to the class and can be said to predominate, the action may be  
16 considered proper under Rule 23(b)(3) ....’”) (citation omitted).

17 Additionally, for purposes of settlement, a class action is the superior method  
18 of adjudicating consumer claims arising from the Data Incident—just as in other  
19 data breach cases where class-wide settlements have been approved. *See, e.g., In*  
20 *re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 5:16-md-02752-LHK (N.D.  
21 Cal. July 20, 2019); *Parsons v. Kimpton Hotel & Rest. Group, LLC*, No. 3:16-cv-  
22 05387-VC (N.D. Cal. Jan. 9, 2019); *In re Anthem, Inc. Data Breach Litig.*, 327  
23 F.R.D. 299, 316-17 (N.D. Cal. 2018); *In re LinkedIn User Privacy Litig.*, 309  
24 F.R.D. 573, 585 (N.D. Cal. 2015). Adjudicating individual actions here is  
25 impracticable: the amount in dispute for individual Settlement Class members is  
26 too small, the technical issues involved are too complex, and the required expert  
27 testimony and document review too costly. *See Just Film*, 847 F.3d at 1123.

1 Also, because Plaintiffs seek to certify a class in the context of a settlement,  
2 this Court “need not inquire whether the case, if tried, would present intractable  
3 management problems ... for the proposal is that there be no trial.” *Amchem Prods.*,  
4 521 U.S. at 620 (citation omitted). The settlement therefore meets the requirements  
5 of Rule 23(b)(3).

6 **C. The Court Should Preliminarily Approve the Settlement.**

7 Rule 23(e) provides that a proposed class action may be “settled, voluntarily  
8 dismissed, or compromised only with the court’s approval.” “[U]nder Rule  
9 23(e)(1), the issue at preliminary approval turns on whether the Court ‘will likely  
10 be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class  
11 for purposes of judgment on the proposal.’” *Reyes v. Experian Info. Sols., Inc.*,  
12 2020 WL 466638, at \*1 (C.D. Cal. Jan. 27, 2020). If the parties make a sufficient  
13 showing that the Court will likely be able to “approve the proposal” and “certify  
14 the class for purposes of judgment on the proposal,” “[t]he court must direct notice  
15 in a reasonable manner to all class members who would be bound by the proposal.”  
16 Fed. R. Civ. P. 23(e).

17 Preliminary approval “has both a procedural and a substantive component.”  
18 *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007). As  
19 to the former, “a presumption of fairness applies when settlements are negotiated  
20 at arm’s length, because of the decreased chance of collusion between the  
21 negotiating parties.” *Gribble v. Cool Transports Inc.*, 2008 WL 5281665, at \*9  
22 (C.D. Cal. Dec. 15, 2008). Likewise, “participation in mediation tends to support  
23 the conclusion that the settlement process was not collusive.” *Ogbuehi v. Comcast*  
24 *of Cal./Colo./Fla./Or., Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014). With respect to  
25 the latter, “[a]t this preliminary approval stage, the court need only ‘determine  
26 whether the proposed settlement is within the range of possible approval.’” *Murillo*  
27 *v. Pacific Gas & Elec. Co.*, 266 F.R.D. 468, 479 (E.D. Cal. 2010) (quoting  
28 *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982)).

1 The Ninth Circuit has identified nine factors to consider in analyzing the  
2 fairness, reasonableness, and adequacy of a class settlement: (1) the strength of the  
3 plaintiff's case; (2) the risk, expense, complexity, and likely duration of further  
4 litigation; (3) the risk of maintaining class action status throughout the trial; (4) the  
5 amount offered in settlement; (5) the extent of discovery completed and the stage  
6 of the proceedings; (6) the views of counsel; (7) the presence of a governmental  
7 participant; (8) the reaction of the class members to the proposed settlement and;  
8 (9) whether the settlement is a product of collusion among the parties. *In re*  
9 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011); *see also*  
10 *Hanlon*, 150 F.3d at 1026. Rule 23(e) requires a court to consider several additional  
11 factors, including that the class representative and class counsel have adequately  
12 represented the class, and that the settlement treats class members equitably relative  
13 to one another. Fed. R. Civ. P. 23(e).

14 In applying these factors, this Court should be guided foremost by the  
15 “overriding public interest in settling and quieting litigation[,]” which “is  
16 particularly true in class action suits ....” *Franklin v. Kaypro Corp.*, 884 F.2d 1222,  
17 1229 (9th Cir. 1989). Here, the relevant factors support the conclusion that the  
18 negotiated settlement is fundamentally fair, reasonable, and adequate, and should  
19 be preliminarily approved.

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

21 Plaintiffs believe they have built a strong case for liability. With respect to  
22 their negligence claim, Plaintiffs believe they will ultimately be able to offer  
23 evidence that Defendant was negligent in failing to maintain reasonable and current  
24 data security programs and practices, which led directly to the loss of Plaintiffs’  
25 and the Class’s PII. Byrd Decl., ¶ 23. They likewise contend CPK is liable for its  
26 negligent, unfair, and unlawful conduct under common law tort theories as well as  
27 state consumer protection statutes, claims which courts have frequently upheld.  
28 *See, e.g., Huynh v. Quora, Inc.*, 508 F. Supp. 3d 633, 650 (N.D. Cal. 2020) (“[T]ime

1 and money [plaintiff] spent on credit monitoring in response to the Data Breach is  
2 cognizable harm to support her negligence claim”); *In re Adobe Sys., Inc. Priv.*  
3 *Litig.*, 66 F. Supp. 3d 1197, 1225–27 (N.D. Cal. 2014) (upholding claims for  
4 violations of UCL unlawful and unfair prongs); *Stasi v. Inmediata Health Grp.*  
5 *Corp.*, 501 F. Supp. 3d 898, 912–19, 921–25 (S.D. Cal. 2020) (upholding claims  
6 for negligence and violation of the California Consumer Privacy Act).

7 Plaintiffs also state claims under both the unlawful and unfair prongs of  
8 California’s Unfair Competition Law. The “unlawful” “prohibits ‘anything that can  
9 properly be called a business practice and that at the same time is forbidden by  
10 law.’” *In re Adobe Sys.*, 66 F. Supp. 3d at 1225 (quoting *Cel-Tech Commc’ns, Inc.*  
11 *v. Los Angeles Cellular Tel. Co.*, 973 P.2d 527, 539 (Cal. 1999)). Plaintiffs allege  
12 CPK violated California law—and therefore violated the UCL—by, *inter alia*,  
13 establishing sub-standard security practices and procedures; soliciting and  
14 collecting PII with knowledge that the information would not be adequately  
15 protected; storing PII in an unsecure environment in violation of California’s data  
16 breach statute, Cal. Civ. Code § 1798.81.5; and failing to timely and accurately  
17 disclose the Data Incident in violation of Cal. Civ. Code § 1798.82. Such violations  
18 likewise constitute violations of the UCL. *In re Adobe Sys.*, 66 F. Supp. 3d at 1226.

19 “The ‘unfair’ prong of the UCL creates a cause of action for a business  
20 practice that is unfair even if not proscribed by some other law.” *Id.* (citing *Korea*  
21 *Supply Co. v. Lockheed Martin Corp.*, 63 P.3d 937, 943 (Cal. 2003)). There are at  
22 least two tests for determining whether conduct is “unfair”: (1) whether “the public  
23 policy which is a predicate to a consumer unfair competition action” is “tethered to  
24 specific constitutional, statutory, or regulatory provisions,” and (2) whether the  
25 challenged business practice is “immoral, unethical, oppressive, unscrupulous or  
26 substantially injurious to consumers and requires the court to weigh the utility of  
27 the defendant’s conduct against the gravity of the harm to the alleged victim.” *Id.*  
28 Plaintiffs allege CPK’s conduct, both before and in response to the Data Incident,

1 was immoral, unethical, oppressive, unscrupulous, unconscionable, and  
2 substantially injurious to Plaintiffs, it was likely to deceive the public into believing  
3 their PII was securely stored, and the harm it caused significantly outweighed its  
4 utility. Such violations constitute violations of the UCL under both the “tethering”  
5 and “balancing” tests. *Id.* at 1226-27.

6 Plaintiffs believe they stand a reasonable chance of proving that CPK’s data  
7 security was inadequate and that, if they establish that central fact, Defendant is  
8 likely to be found liable under at least some of the liability theories claims Plaintiffs  
9 pled in their respective complaints. But Plaintiffs also recognize success is not  
10 guaranteed. It is “plainly reasonable for the parties at this stage to agree that the  
11 actual recovery realized and risks avoided here outweigh the opportunity to pursue  
12 potentially more favorable results through full adjudication.” *Dennis v. Kellogg*  
13 *Co.*, 2013 WL 6055326, at \*3 (S.D. Cal. Nov. 14, 2013). “Here, as with most class  
14 actions, there was risk to both sides in continuing towards trial. The settlement  
15 avoids uncertainty for all parties involved.” *Chester v. TJX Cos.*, 2017 WL  
16 6205788, at \*6 (C.D. Cal. Dec. 5, 2017). Given the heavy obstacles and risks  
17 inherent in data breach class actions, including class certification, summary  
18 judgment, and trial, the substantial benefits the settlement provides favor  
19 preliminary approval of the settlement. Byrd Decl., ¶ 24.

## 20 **2. The Risk, Expense, Complexity, and Likely Duration of** 21 **Further Litigation**

22 While Plaintiffs believe their case is a strong one, all cases, including this  
23 one, are subject to substantial risk. This case involves a proposed class of  
24 approximately 103,767 individuals (each of whom, CPK has argued, would need  
25 to establish cognizable harm and causation); a complicated and technical factual  
26 overlay; and a sympathetic and motivated Defendant that already has provided  
27 some relief to the potentially affected individuals. Byrd Decl., ¶ 25.

28 Although nearly all class actions involve a high level of risk, expense, and

1 complexity—undergirding the strong judicial policy favoring amicable resolutions,  
2 *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998)—this is an  
3 especially complex case in an especially risky arena. Historically, data breach  
4 cases face substantial hurdles in surviving even the pleading stage. *See, e.g.,*  
5 *Kirsten v. CPK*, ECF No. 34 (where this Court dismissed plaintiffs’ complaint for  
6 lack of Article III standing); *Hammond v. The Bank of N.Y. Mellon Corp.*, 2010  
7 WL 2643307, at \*1-2 (S.D.N.Y. June 25, 2010) (collecting cases). Even cases of  
8 similar wide-spread notoriety and implicating data far more sensitive than at issue  
9 here have been found wanting at the district court level. *In re U.S. Office of Pers.*  
10 *Mgmt. Data Sec. Breach Litig.*, 266 F. Supp. 3d 1, 19 (D.D.C. 2017) (“The Court  
11 is not persuaded that the factual allegations in the complaints are sufficient to  
12 establish . . . standing.”), *reversed in part*, 928 F.3d 42 (D.C. Cir. June 21, 2019)  
13 (holding that plaintiff had standing to bring a data breach lawsuit). Indeed, this  
14 Court recently dismissed the *Kirsten* action due to a perceived lack of standing. *See*  
15 *supra*. As one federal district court recently observed in finally approving a data  
16 breach settlement with similar class relief: “Data breach litigation is evolving;  
17 there is no guarantee of the ultimate result.” *Fox v. Iowa Health Sys.*, 2021 WL  
18 826741, at \*5 (W.D. Wis. Mar. 4, 2021) (citing *Gordon v. Chipotle Mexican Grill,*  
19 *Inc.*, 2019 WL 6972701, at \*1 (D. Colo. Dec. 16, 2019) (“Data breach cases ... are  
20 particularly risky, expensive, and complex.”)).

21 To the extent the law has gradually accepted this relatively new type of  
22 litigation, the path to a class-wide monetary judgment remains unforged. For now,  
23 data breach cases are among the riskiest and most uncertain of all class action  
24 litigations, making settlement the more prudent course when, as here, a reasonable  
25 one can be reached. The damages methodologies, while theoretically sound in  
26 Plaintiffs’ view, remain untested in a disputed class certification setting and  
27 unproven in front of a jury. And as in any data breach case, establishing causation  
28 on a class-wide basis is rife with uncertainty. Thus, this factor favors approval.



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

2           While Plaintiffs' case is still in the pleadings stage, the parties have not  
3 briefed and the Court has not yet certified any class treatment of this case. If these  
4 Consolidate Cases were to proceed through trial, Plaintiffs would encounter risks  
5 in obtaining and maintaining certification of the class. Defendant will certainly  
6 oppose certification if the case proceeds. Thus, Plaintiffs "necessarily risk losing  
7 class action status." *Grimm v. Am. Eagle Airlines, Inc.*, 2014 WL 12746376, at \*10  
8 (C.D. Cal. Sept. 24, 2014). Class certification in contested consumer data breach  
9 cases is not common—first occurring in *Smith v. Triad of Ala., LLC*, 2017 WL  
10 1044692, at \*16 (M.D. Ala. Mar. 17, 2017), and most recently in *In re Brinker*  
11 *Data Incident Litig.*, 2021 WL 1405508, at \*1 (M.D. Fla. Apr. 14, 2021), where a  
12 class was certified over objection to plaintiffs' damage calculation. While  
13 certification of additional consumer data breach classes may well follow, the dearth  
14 of direct precedent adds to the risks posed by continued litigation.

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

16           In light of the risks and uncertainties presented by data breach litigation, the  
17 value of the settlement favors approval. The settlement *immediately* makes  
18 significant relief available to Settlement Class members. Each Settlement Class  
19 member is eligible to make a claim for up to \$1,000 in reimbursements for expenses  
20 and lost time, and up to \$5,000 in reimbursements for extraordinary expenses for  
21 identity theft related to the Data Incident, and California Settlement Subclass  
22 members are entitled to \$100 as a statutory damages award. Moreover, all  
23 Settlement Class members will be eligible to enroll in two-years (24 months) of  
24 three-bureau credit monitoring. This settlement is a strong result for the Settlement  
25 Class, and is in line with or exceeds other settlements in cases involving data  
26 breaches of similar scope. *See, e.g. Cochran et al. v. The Kroger Company et al.*,  
27 Case No. 5:21-cv-01887-EJD (N.D. Cal.), ECF No. 31 (settlement providing cash  
28 payments of less than \$100 assuming a 2% claims rate, two years of three bureau

1 credit monitoring, *or* documented loss reimbursement of up to \$5,000). Because  
2 the settlement amount here is similar to other settlements reached and approved in  
3 similar cases, this factor reflects that the settlement is fair. *See Calderon v. Wolf*  
4 *Firm*, 2018 WL 6843723, at \*7-8 (C.D. Cal. Mar. 13, 2018) (comparing class  
5 settlement with other settlements in similar cases). In light of the difficulties and  
6 expenses Settlement Class members would face to pursue individual claims, and  
7 the likelihood that they might be unaware of their claims, this settlement amount is  
8 appropriate. *See id.*

9 Moreover, the Settlement value per class member here is on par with or  
10 exceeds that in other exemplary data breach settlements. Here, there is no aggregate  
11 cap on the amount Settlement Class members can claim, so each Settlement Class  
12 member could claim the full amounts listed above (including the \$100 cash benefit  
13 for the California Subclass members). By way of comparison, the consideration  
14 paid by Home Depot to settle a data breach class action was approximately \$0.51  
15 per class member. *See In re The Home Depot, Inc., Customer Data Sec. Breach*  
16 *Litig.*, No. 1:14-MD-02583-TWT, ECF No. 181-2 (March 7, 2016) (Settlement  
17 Agreement); *id.*, 2017 U.S. Dist. LEXIS 221736, at \*24 (N.D. Ga. Sept. 22, 2017)  
18 (order approving settlement). And the Target data breach resolved with Target  
19 paying the equivalent of \$0.17 per class member. *See In re Target Corp. Customer*  
20 *Data Sec. Breach Litig.*, No. MDL 14-2522-PAM, ECF No. 358-1 (D. Minn. March  
21 18, 2015) (Settlement Agreement); *id.*, 2017 WL 2178306, at \*1 (D. Minn. May  
22 17, 2017) (order certifying settlement class on remand from the 8th Circuit). These  
23 comparisons are not intended to disparage those settlements, but to underscore the  
24 strength of the resolution Plaintiffs have secured here.

## 25 **5. The Extent of Discovery Completed and the Stage of** 26 **Proceedings**

27 Before entering into settlement discussions on behalf of class members,  
28 counsel should have “sufficient information to make an informed decision.”



1 *Linney*, 151 F.3d at 1239. Here, Plaintiffs vigorously and aggressively gathered all  
2 of the information that was available regarding CPK and the Data Security  
3 Incident—including publicly-available documents concerning announcements of  
4 the Data Security Incident and notice of the Data Security Incident CPK sent to its  
5 current and former employees. Byrd Decl., ¶ 31. The parties also informally  
6 exchanged non-public information concerning the Data Security Incident, the  
7 applicable insurance coverage, the size and makeup of the Settlement Class and  
8 California Subclass, and the circumstances that led to the breach in preparation for  
9 a successful mediation. *Id.*

10 Although the parties have not engaged in formal discovery, Class Counsel’s  
11 collective decades of experience in similar types of privacy and data protection  
12 class actions provided substantive knowledge that enabled them to represent  
13 Plaintiffs’ and the Settlement Class’ interests without expending hundreds of hours  
14 and enormous financial resources to come up to speed on the subject area. Byrd  
15 Decl., ¶ 32. Plaintiffs are well informed about the strengths and weaknesses of this  
16 case, thus “the efficiency with which the Parties were able to reach an agreement  
17 need not prevent this Court from granting . . . approval.” *Hillman v. Lexicon*  
18 *Consulting, Inc.*, 2017 WL 10433869, at \*8 (C.D. Cal. April 27, 2017).

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

20 Class Counsel initiated the four lawsuits that now are consolidated before  
21 this Court when CPK announced the Data Security Incident, which impacted over  
22 103,757 CPK’s current and former employees. Class Counsel have substantial  
23 experience litigating complex class cases of various types, including data breach  
24 cases such as this one. *See* Byrd Decl., ¶ 33 & Exs. 4-7. Having worked on behalf  
25 of the putative class since the Data Security Incident was first announced, evaluated  
26 the legal and factual disputes, and dedicated significant time and monetary  
27 resources to this litigation, proposed Class Counsel endorse the Settlement without  
28 reservation. Byrd Decl., ¶ 34. A great deal of weight is accorded to the

1 recommendation of counsel, who are most closely acquainted with the facts of the  
2 underlying litigation. *See, e.g., Norton v. Maximus, Inc.*, 2017 WL 1424636, at \*6  
3 (D. Idaho Apr. 17, 2017); *Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221  
4 F.R.D. 523, 528 (C.D. Cal. 2004). Thus, this factor supports approval.

5 **7. Governmental Participants.**

6 There is no governmental participant in this matter. This factor is neutral.

7 **8. The Reaction of the Settlement Class to the Settlement**

8 Because notice has not yet been given, this factor is not yet implicated;  
9 however, Representative Plaintiffs support the Settlement. Byrd Decl., ¶ 20.

10 **9. Lack of Collusion Among the Parties**

11 The parties negotiated a substantial settlement through mediation, as  
12 outlined above. The parties did not commence discussion of fees until agreement  
13 on all substantive portions of the class resolution had been reached – indeed, the  
14 mediation session regarding attorneys’ fees was conducted on a separate date  
15 (March 15, 2022) following the March 10, 2022 mediation session. Both the class  
16 portion of the resolution and the fees were negotiated at arm’s-length under the  
17 direction of the parties’ mutually agreed-upon mediator, Bruce A. Friedman, Esq.,  
18 who has extensive experience in handling class action cases and data breach class  
19 action cases. Byrd Decl., Ex. 2 (Declaration of Bruce A. Friedman, Esq. in Support  
20 of Preliminary Approval of Class Action Settlement). The Court can rest assured  
21 that the negotiations were not collusive. *See G. F. v. Contra Costa Cnty.*, 2015 WL  
22 4606078, at \*13 (N.D. Cal. July 30, 2015) (“[T]he assistance of an experienced  
23 mediator in the settlement process confirms that the settlement is non-collusive.”)  
24 (internal quotation marks and citation omitted); *see also Cohorst v. BRE Props.*,  
25 2011 WL 7061923, at \*12 (S.D. Cal. Nov. 9, 2011) (“[V]oluntary mediation before  
26 a retired judge in which the parties reached an agreement-in-principle to settle the  
27 claims in the litigation are highly indicative of fairness . . . . We put a good deal of  
28 stock in the product of arms-length, non-collusive, negotiated resolution.”)

1                   **10. The Settlement Treats Settlement Class Members**  
2                   **Equitably**

3                   Finally, Rule 23(e)(2)(D) requires that this Court confirm that the settlement  
4                   treats all class members equitably. In determining whether this factor weighs in  
5                   favor of approval, the Court considers whether the Settlement “improperly grant[s]  
6                   preferential treatment to class representatives or segments of the class.” *Hudson v.*  
7                   *Libre Technology Inc.*, 2020 WL 2467060, \*9 (S.D. Cal. May 13, 2020) (*quoting*  
8                   *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)).

9                   Here, the Settlement does not improperly discriminate between any  
10                  segments of the Settlement Class as all Settlement Class members are entitled to  
11                  the same relief. Each and every Settlement Class member has the opportunity to  
12                  make a claim for up to \$1,000 in reimbursements for expenses and time spent, and  
13                  up to \$5,000 in reimbursements for extraordinary expenses. All Settlement Class  
14                  members may claim the two-years of three-bureau credit monitoring offered. And,  
15                  while the California Settlement Subclass is entitled to a \$100 statutory award, that  
16                  is only because the Settlement “takes appropriate account of differences [in] their  
17                  claims ... that bear on the apportionment of relief.” Fed. R. Civ. P. 23(e), advisory  
18                  comm.’s note (2018). As such, this factor also weighs in favor of approval.

19                  **D. The Court Should Approve the Proposed Notice Program**

20                  Rule 23 requires that prior to final approval, the “court must direct notice in  
21                  a reasonable manner to all class members who would be bound by the proposal.”  
22                  Fed. R. Civ. P. 23(e)(1)(B). For classes certified under Rule 23(b)(3), “the court  
23                  must direct to class members the best notice that is practicable under the  
24                  circumstances, including individual notice to all members who can be identified  
25                  through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). “The notice may be by one  
26                  or more of the following: United States mail, electronic means, or other appropriate  
27                  means.” *Id.* The “best notice practicable” means “individual notice to all members  
28                  who can be identified through reasonable effort.” *Eisen v. Carlisle & Jacquelin*,  
417 U.S. 156, 173 (1974); *see also Phillips Petroleum Co. v. Shutts*, 472 U.S. 797,

1 812 (1985). Class settlement notices must present information about a proposed  
2 settlement simply, neutrally, and understandably and must describe the terms of the  
3 class action settlement in sufficient detail to alert those with adverse viewpoints to  
4 investigate and to come forward and be heard. *In re Hyundai & Kia Fuel Econ.*  
5 *Litig.*, 926 F.3d 539, 567 (9th Cir. 2019)

6 Here, the parties have agreed to a robust notice program to be administered  
7 by a well-respected third-party class administrator, Epiq, which will use all  
8 reasonable efforts to provide direct and individual notice to each potential  
9 Settlement Class member via direct-mail postcard notice. SA, ¶ 7. The costs of  
10 administering the settlement will be paid by CPK and will not negatively impact  
11 the amount available to Settlement Class members who make valid claims. *Id.*  
12 ¶ 7(c). The Notice and Claim Form negotiated by the Parties are clear and concise  
13 and inform Settlement Class members of their rights and options under the  
14 settlement, including detailed instructions on how to make a claim, object to the  
15 settlement, or opt-out of the Settlement. *Id.* Exs. A, B and C.

16 In addition to the direct notice, the Administrator will also establish a  
17 dedicated Settlement Website and will maintain and update the website throughout  
18 the Claims Period, with the forms of Short Notice, Long Notice, and Claim Form  
19 approved by the Court, as well as the Settlement Agreement. *Id.*, ¶ 7 & Exs. A, B  
20 and C. The Claims Administrator will also make a toll-free help line staffed with a  
21 reasonable number of live operators available to provide Settlement Class members  
22 with additional information about the settlement. *Id.* ¶ 7.

23 Plaintiffs have negotiated a notice program that is reasonably calculated  
24 under all the circumstances to apprise Settlement Class members of the pendency  
25 of the action and afford them an opportunity to present their objections. Defendant  
26 has mailing addresses for the Settlement Class members and notice will be sent to  
27 them by U.S. mail. In short, because this notice plan ensures that Settlement Class  
28 members' due process rights are amply protected, this Court should approve it.

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

2           In connection with implementation of the Notice Program and  
3 administration of the settlement benefits, the Parties request the Court appoint Epiq  
4 to serve as the Claims Administrator. Epiq has a trusted and proven track record of  
5 supporting thousands of class action administrations, serviced hundreds of millions  
6 of class members, and distributed billions in settlement funds. Byrd Decl., Ex. 3  
7 (Azari Decl.), ¶¶ 4-7. Notice and administration is expected to cost approximately  
8 \$103,000 and will be paid by Defendant separate and apart from the relief to the  
9 Class. *Id.*, ¶ 23; SA, ¶ 6(c).

10           **F. Appointment of Settlement Class Counsel**

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

18           Here, proposed Class Counsel have extensive experience prosecuting class  
19 actions and other complex cases, and specifically data breach cases. *See* Byrd Decl.,  
20 ¶ 33, Exs. 4-7 (firm resumes). Accordingly, the Court should appoint  
21 Mason Barney of Siri & Glimstad LLP; David Lietz of Milberg Coleman Bryson  
22 Phillips Grossman, PLLC; Daniel O. Herrera of Cafferty Clobes Meriwether &  
23 Sprengel LLP; and Rachele R. Byrd of Wolf Haldenstein Adler Freeman & Herz  
24 LLP as Settlement Class Counsel.

25           **VI. CONCLUSION**

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

1 DATED: May 2, 2022

Respectfully Submitted,

2 

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

IN RE: CALIFORNIA PIZZA  
 KITCHEN DATA BREACH  
 LITIGATION

This Document Relates To:  
 All Actions

Master File No. 8:21-cv-01928-DOC-KES

**DECLARATION OF RACHELE R.**  
**BYRD IN SUPPORT OF PLAINTIFFS'**  
**MOTION FOR PRELIMINARY**  
**APPROVAL OF CLASS ACTION**  
**SETTLEMENT**

**DATE:** June 13, 2022  
**TIME:** 8:30 a.m.  
**COURTROOM:** 10 A  
**JUDGE:** Hon. David O. Carter



1 I, Rachele R. Byrd, hereby declare as follows:

2 1. I am a partner of the law firm Wolf Haldenstein Adler Freeman & Herz  
3 LLP, one of the firms representing plaintiffs in the above-captioned action. I submit  
4 this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class  
5 Action Settlement. Except as otherwise noted, I have personal knowledge of the  
6 facts set forth in this declaration, and could testify competently to them if called  
7 upon to do so.

8 2. Attached hereto as **Exhibit 1** is a true and correct copy of the  
9 Settlement Agreement and Release dated May 2, 2022 (the "Settlement  
10 Agreement" or "SA").

11 **I. PROCEDURAL HISTORY**

12 3. Five lawsuits were filed in this Court arising from the Data Security  
13 Incident at issue in this case. Plaintiffs in the first four filed related cases, *Gilleo*,  
14 *et al. v. California Pizza Kitchen, Inc., et al.*, No. 8:2021-cv-01928-DOC-KES  
15 (filed Nov. 23, 2021); *Morales v. California Pizza Kitchen, Inc.*, No. 8:21-cv-  
16 01988-DOC-KES (filed Dec. 2, 2021); *Wallace et al. v. California Pizza Kitchen,*  
17 *Inc.*, No. 8:21-cv-01970-DOC-KES (filed Dec. 2, 2021); and *Rigas, et al. v.*  
18 *California Pizza Kitchen, Inc.*, Case No. 8:21-cv-02004-DOC-KES (filed Dec. 7,  
19 2021), filed putative class actions alleging that CPK failed to adequately safeguard  
20 its current and former employees' (and their family members') electronically stored  
21 private information (the "Consolidated Cases"). Plaintiffs and the putative classes  
22 sought monetary and equitable relief. All four of the Consolidated Cases name  
23 CPK as the sole Defendant and purport to represent the same putative  
24 nationwide class, or, in the alternative, state classes, consisting of all persons  
25 whose personally identifying information was accessed during a breach of CPK's  
26 information systems, and assert substantially the same nationwide and state-law  
27 claims. By the first week of December, Plaintiffs' counsel for the first-four filed  
28 cases self-organized and agreed to work together cooperatively for the good of the  
putative class.

1           4. Subsequently, the plaintiffs in *Kirsten, et al. v. California Pizza*  
2 *Kitchen, Inc.*, No. 2:21-cv-09578-DOC-KES, filed their complaint on Dec. 10,  
3 2021. We. Plaintiffs' counsel in the first four-filed cases, invited counsel for the  
4 *Kirsten* plaintiffs to work together with us in litigating the actions. The *Kirsten*  
5 plaintiffs' counsel declined our offer and indicated that they preferred to file a  
6 leadership motion.

7           5. Subsequently, plaintiffs' counsel in all five cases sought to consolidate  
8 the various cases. Counsel in the first-four filed cases sought consolidation to move  
9 the cases forward for the benefit of the class. Ultimately, all plaintiffs' counsel could  
10 not agree on a mutually acceptable consolidation stipulation, and counsel for the  
11 *Kirsten* case simply stopped responding.

12           6. Unwilling to let the cases languish, counsel for the first-four filed cases  
13 stipulated to consolidation of their four cases, noting in the stipulation the existence  
14 of the fifth related *Kirsten* case. *See* ECF No. 20 at 1, n.1. After the Court entered  
15 the stipulated order on February 15, 2022 and designated the Consolidated Cases as  
16 *In re California Pizza Kitchen Data Breach Litigation*, Master File No. 8:21-cv-  
17 01928-DOC-KES, the Parties to the Consolidated Cases (which did not include the  
18 *Kirsten* plaintiffs for the reasons noted above) agreed to explore settlement and  
19 scheduled a formal mediation. Meanwhile, the *Kirsten* plaintiffs litigated their case  
20 separately, never again raising the issue of consolidation. CPK filed a motion to  
21 dismiss the *Kirsten* complaint, which this Court granted for lack of Article III  
22 standing with leave to amend, and the *Kirsten* plaintiffs then filed an amended  
23 complaint. *See Kirsten*, No. 2:21-cv-09578, ECF Nos. 34-45.

24           7. Prior to mediating, the Parties to the Consolidated Cases exchanged  
25 confirmatory discovery on a variety of topics, including applicable insurance  
26 coverage (which in this case, without revealing confidential information, was a  
27 wasting policy that was being eroded by litigation costs). The Parties selected  
28 Bruce A. Friedman, Esq. of JAMS, a well-regarded private mediator with  
considerable experience mediating data breach class actions, to preside over the  
mediation, and exchanged briefs prior to the mediation. Attached hereto as **Exhibit**

2 is a true and correct copy of the Declaration of Bruce A. Friedman, Esq. in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

8. At the all-day mediation on March 10, 2022, the parties spent the entire day negotiating the material terms of a resolution of the class claims prior to reaching an impasse. The parties did not discuss attorneys' fees or service awards at this first mediation session and instead returned for a second mediation session on March 15, 2022. At the second session, the parties reached agreement on the material terms of class-wide relief, then spent the remainder of that second session negotiating the issues of attorneys' fees, costs and service awards. After several hours, the parties reached agreement on all material terms of this settlement.

9. The parties to the Consolidated Cases immediately apprised the Court of the settlement, and the Court stayed all proceedings in the Consolidated Cases pending the filing of a motion for preliminary approval by May 2, 2022. ECF No. 33.

## **II. THE SETTLEMENT TERMS**

10. The settlement will provide relief for the following Settlement Class: "All persons who were sent notice of the Data Security Incident announced by defendant on or about November 15, 2021." SA, ¶ 1. The settlement also provides for a California Settlement Subclass, defined as follows: "All persons residing in California who were sent notice of the Data Security Incident announced by defendant on or about November 15, 2021." *Id.* The Settlement Class and California Settlement Subclass are estimated to include 103,767 and 30,781 individuals, respectively. *Id.*

11. **Monetary Benefits:** The settlement negotiated on behalf of the Class provides for three separate forms of monetary relief: (1) reimbursement of ordinary expenses and lost time up to \$1,000 per Class Member; (2) reimbursement of extraordinary expenses up to \$5,000 per Class Member, and; (3) California Statutory Claim benefits of \$100 per California Settlement Subclass member. There is no aggregate cap on these benefits. SA, ¶ 3.

12. The first category of payments, expense and lost time reimbursement, is designed to provide reimbursement for documented, ordinary and unreimbursed out-of-pocket expenses related to the Data Incident and to compensate Settlement Class members for time spent dealing with the effects of the Data Incident. Ordinary expense reimbursements can be claimed at up to \$1,000 per Class Member. SA, ¶ 3(a). Notably, this category of reimbursements specifically includes up to three hours of lost time spent dealing with any effects of the Data Incident, compensated at \$20 per hour. Reimbursable ordinary expenses also include: (i) unreimbursed costs to obtain credit reports; (ii) unreimbursed fees relating to a credit freeze; (iii) unreimbursed card replacement fees; (iv) unreimbursed late fees; (v) unreimbursed over-limit fees; (vi) unreimbursed interest on payday loans taken as a result of the Data Incident; (vii) unreimbursed bank or credit card fees; (viii) unreimbursed postage, mileage, and other incidental expenses resulting from lack of access to an existing account; (ix) unreimbursed costs associated with credit monitoring or identity theft insurance purchased prior to the Effective Date, with certification that it purchased primarily as a result of the Data Incident. *Id.*, ¶ 3(b).

13. The second category, extraordinary expense reimbursement, provides reimbursement for documented, unreimbursed out-of-pocket losses due to identity theft, up to \$5,000 per Settlement Class Member, incurred between September 15, 2021, through and including the end of the Claims Deadline. SA, ¶ 3(c).

14. In addition to the above benefits, California Settlement Subclass members are eligible for a separate, California statutory damages award of \$100. This benefit is subject to the \$1,000 cap for ordinary expenses and lost time reimbursement, but is available to all Subclass members who file a claim. SA, ¶ 3(d).

**15. Credit Monitoring Benefit:** In addition to the cash benefits outlined above, all Settlement Class members will have the opportunity to claim two years (24 months) of three-bureau credit monitoring, which includes a credit report at sign-up, credit monitoring, identity restoration, and up to \$1 million in identity theft insurance (consistent with the 12 months of single bureau monitoring offered by

CPK as part of its incident response). For Settlement Class members who selected and enrolled in the 12 months of identity monitoring previously offered by CPK, the credit monitoring offered under this settlement shall be in addition to that period. SA, ¶ 3(e).

16. **Business Practice Commitments:** As part of the settlement, CPK has also agreed to maintain certain business practices and remedial measures it recently implemented (“Business Practice Commitments”) for a period of three (3) years following the Effective Date. These Business Practice Commitments are designed to include continuous threat assessment processes to maintain CPK’s security posture and to provide protection against threats now and in the future, specifically with respect to the PII of current and former employees, and include the following:

- a. Endpoint protection: Ensure implementation of endpoint security measures, including appropriate implementation of endpoint security applications, patching mechanisms, logging and alerting.
- b. Enhanced password protection: Require users to employ more complex account passwords, and to change those passwords on a regular basis.
- c. Multi-factor authentication: Require multi-factor authentication in order to gain external access to email servers or systems located on CPK’s networks.
- d. Cybersecurity training and awareness program: Enhanced internal training and education for all employees in order to better enable them to identify potential security threats.

All costs associated with implementing the Business Practice Commitments will be borne by CPK separate and apart from the relief afforded to Settlement Class members. SA, ¶ 6.

17. **Notice and Claims Administration:** CPK also will pay for Notice, separate and apart from any funds available to Settlement Class members. SA, ¶ 7. Notice will be given to the Settlement Class via individual notice, which will be given primarily by mailing the Postcard Notice, attached to the Settlement

1 Agreement as Exhibit B, to the postal addresses associated with the Settlement  
 2 Class members. A Long Notice, attached to the Settlement Agreement as Exhibit  
 3 C, will also be posted on the settlement website, along with other important  
 4 documents such as the Settlement Agreement and the motions for final approval  
 5 and for attorneys' fees and expenses. Furthermore, a toll-free number with  
 6 interactive voice response, FAQs, and an option to speak to a live operator will be  
 7 made available to address any inquiries.

8 18. Defendant has retained Epiq Class Action and Claims Solutions, Inc.  
 9 ("Epiq"), a nationally recognized and well-regarded class action settlement  
 10 administrator, to serve as Settlement and Claims Administrator, subject to the  
 11 Court's approval. Attached hereto as **Exhibit 3** is a true and correct copy of the  
 12 Declaration of Cameron R. Azari on Notice Plan.

13 19. **Attorneys' Fees and Expenses:** Plaintiffs will also separately seek an  
 14 award of attorneys' fees not to exceed \$800,000, which includes reimbursement of  
 15 their reasonable costs and litigation expenses incurred. SA, ¶ 5(a). This amount  
 16 represents less than 25% of an extremely conservative estimated value of this  
 17 settlement. If just 2% of the Settlement Class claims the \$1,000 in ordinary losses,  
 18 that would amount to \$2,075,340. If just 5% of California Settlement Subclass  
 19 members claim their \$100, that is \$153,905. The credit monitoring will be either  
 20 Equifax Complete Premier or TransUnion myTrueIdentity 3-Bureau Credit  
 21 Monitoring. The former has a retail value of \$19.95 per month,<sup>1</sup> and we believe the  
 22 latter is of comparable value. Valuing the credit monitoring conservatively at \$15  
 23 per month results in a value of \$360 per Settlement Class member. If just 4% of  
 24 the Settlement Class claims this benefit, the total will be \$1,494,245. Adding these  
 25 numbers together, this settlement has a conservative value of \$3,723,490, and the  
 26 \$800,000 in combined fees and expenses is approximately 21% of the value of the  
 27 settlement. Defendant has agreed to take no position with regard to the fees motion.  
 28 SA, ¶ 5(a).

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<sup>1</sup> See <https://www.equifax.com/personal/products/monitor-credit-protect-identity/>.



1           20.   **Service Awards to Names Plaintiffs:** Plaintiffs in this case have been  
 2 vital in litigating this matter, including providing their personal information to  
 3 proposed Settlement Class Counsel. Plaintiffs have been personally involved in the  
 4 case and support the Settlement. Plaintiffs will separately petition the Court for  
 5 awards of \$2,000 each in recognition of the time, effort, and expense they incurred  
 6 pursuing claims that benefited the Settlement Class.

7           21.   **Release:** Upon entry of the Final Approval Order, Plaintiffs and the  
 8 Settlement Class will be deemed to have fully and finally released CPK. “Released  
 9 Claims” are limited only to claims, “whether known or unknown ... that concern,  
 10 refer or relate to the cybersecurity incident announced by CPK on or about  
 11 November 15, 2021, and all other claims arising out of th[at] cybersecurity incident  
 12 ....” SA ¶ 9. Released Claims shall not apply to any litigation or claim not related  
 13 to or arising out of the cybersecurity incident. The Release shall not include the  
 14 claims of Settlement Class members who timely exclude themselves.

### 15 **III. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

16           22.   Plaintiffs request the Court grant preliminary approval of the proposed  
 17 Settlement Agreement.

18           23.   **The Strength of Plaintiffs’ Case:** Plaintiffs believe they have built a  
 19 strong case for liability. With respect to their negligence claim, Plaintiffs believe  
 20 they will ultimately be able to offer evidence that Defendant was negligent in failing  
 21 to maintain reasonable and current data security programs and practices, which led  
 22 directly to the loss of Plaintiffs’ and the Class’s personal identifying information.  
 23 Plaintiffs likewise contend CPK is liable for its negligent, unfair, and unlawful  
 24 conduct under common law tort theories as well as state consumer protection  
 25 statutes, claims which courts have frequently upheld.

26           24.   Plaintiffs believe they stand a reasonable chance of proving that CPK’s  
 27 data security was inadequate and that, if they establish that central fact, Defendant  
 28 is likely to be found liable under at least some of the liability theories claims  
 Plaintiffs pled in their respective complaints. However, Plaintiffs also recognize  
 success is not guaranteed. Plaintiffs believe it is reasonable for the Parties at this



1 stage to agree that the actual recovery realized and risks avoided here outweigh the  
2 opportunity to pursue potentially more favorable results through full adjudication  
3 Here, as with most class actions, there is risk to both sides in continuing towards  
4 trial. The settlement avoids uncertainty for all parties involved. Given the heavy  
5 obstacles and risks inherent in data breach class actions, including class  
6 certification, summary judgment, and trial, the substantial benefits the settlement  
7 provides favor preliminary approval of the settlement.

8       **25. The Risk, Expense, Complexity, and Likely Duration of Further**  
9 **Litigation:** While Plaintiffs believe their case is a strong one, all cases, including  
10 this one, are subject to substantial risk. This case involves a proposed class of  
11 approximately 103,767 individuals (each of whom, CPK has argued, would need to  
12 establish cognizable harm and causation); a complicated and technical factual  
13 overlay; and a sympathetic and motivated Defendant that already has provided some  
14 relief to its potentially affected current and former employees.

15       26. Although nearly all class actions involve a high level of risk, expense,  
16 and complexity, this is an especially complex case in an especially risky arena.  
17 Historically, data breach cases face substantial hurdles in surviving even the  
18 pleading stage. For example, in the related *Kirsten* case, the Court dismissed  
19 plaintiffs' complaint for lack of Article III standing. *See Kirsten*, No. 2:21-cv-  
20 09578, ECF No. 34.

21       27. To the extent the law has gradually accepted this relatively new type  
22 of litigation, the path to a class-wide monetary judgment remains unforged. For  
23 now, data breach cases are among the riskiest and most uncertain of all class action  
24 litigation, making settlement the more prudent course when, as here, a reasonable  
25 one can be reached. The damages methodologies, while theoretically sound in  
26 Plaintiffs' view, remain untested in a disputed class certification setting and  
27 unproven in front of a jury. And as in any data breach case, establishing causation  
28 on a class-wide basis is rife with uncertainty.

29       **28. The Risk of Maintaining Class Action Status Through Trial:**  
While Plaintiffs' case is still in the pleadings stage, the parties have not briefed and

1 the Court has not yet certified any class treatment of this case. If these Consolidate  
2 Cases were to proceed through trial, Plaintiffs would encounter risks in obtaining  
3 and maintaining certification of the class. Defendant will certainly oppose  
4 certification if the case proceeds. Thus, Plaintiffs necessarily risk losing class action  
5 status. While certification of additional consumer data breach classes may well  
6 follow, the dearth of direct precedent adds to the risks posed by continued litigation.

7       **29. The Amount Offered in Settlement:** The settlement immediately  
8 makes significant relief available to Settlement Class members. Each Settlement  
9 Class member is eligible to make a claim for up to \$1,000 in reimbursements for  
10 expenses and lost time, and up to \$5,000 in reimbursements for extraordinary  
11 expenses for identity theft related to the Data Incident, and California Settlement  
12 Subclass members are entitled to \$100 as a statutory damages award. Moreover, all  
13 Settlement Class members will be eligible to enroll in two-years (24 months) of  
14 three-bureau credit monitoring. This settlement is a strong result for the Settlement  
15 Class, and compares favorably with other data breach settlements. For example, in  
16 *Cochran et al. v. The Kroger Company et al.*, Case No. 5:21-cv-01887-EJD (N.D.  
17 Cal.),<sup>2</sup> ECF 31, the settlement provided for *either*: (1) a cash payment; (2) two  
18 years of Credit Monitoring and Insurance Services; *or* (3) a payment for  
19 reimbursement of Documented Losses of up to \$5,000. *Id.* at 1. The amount of the  
20 cash payment was contingent upon a number of factors. Assuming a claims rate of  
21 2%, non-California class members were likely to receive a cash payment of \$37,  
22 and California Class members were likely to receive a payment of \$74. *See id.*, at  
23 9. Here, Settlement Class members do not need to choose between the three cash  
24 benefit options but may claim all of them, the California Settlement Subclass cash  
25 payment will be \$100, and all Settlement Class members may claim up to \$60 in  
26 lost time. In light of the difficulties and expenses Settlement Class members would  
27 face to pursue individual claims, and the likelihood that they might be unaware of  
28 their claims, this settlement amount is appropriate.

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<sup>2</sup> Plaintiffs' counsel in the *Kroger* case was Ms. Tina Wolfson, who is also counsel for the *Kirsten* plaintiffs.

1           30. Moreover, here there is no aggregate cap on the amount Settlement  
2 Class members can claim, so each Settlement Class member could claim the full  
3 amounts (\$1,000 for ordinary expenses and lost time, \$5,000 for extraordinary  
4 expenses, and \$100 for the California Subclass members).

5           31. **The Extent of Discovery Completed and the Stage of Proceedings:**  
6 Plaintiffs vigorously and aggressively gathered all of the information that was  
7 available regarding CPK and the Data Security Incident—including publicly-  
8 available documents concerning announcements of the Data Security Incident and  
9 notice of the Data Security Incident CPK sent to its current and former employees.  
10 The parties also informally exchanged non-public information concerning the Data  
11 Security Incident, the applicable insurance coverage, the size and makeup of the  
12 Settlement Class and California Subclass, and the circumstances that led to the  
13 breach in preparation for a successful mediation.

14           32. Although the parties have not engaged in formal discovery, Class  
15 Counsel's collective decades of experience in similar types of privacy and data  
16 protection class actions provided substantive knowledge enabled them to represent  
17 Plaintiffs' and the Settlement Class' interests without expending hundreds of hours  
18 and enormous financial resources to come up to speed on the subject area. Byrd  
19 Plaintiffs are well informed about the strengths and weaknesses of this case.

20           33. **Experience and Views of Counsel:** Class Counsel initiated the four  
21 lawsuits that now are consolidated before this Court when CPK announced the Data  
22 Security Incident, which impacted over 103,757 CPK current and former  
23 employees. Class Counsel have substantial experience litigating complex class  
24 cases of various types, including data breach cases such as this one. Attached hereto  
25 as **Exhibits 4-7** are true and correct copies of proposed Class Counsel's firm  
26 resumes.

27           34. Having worked on behalf of the putative class since the Data Security  
28 Incident was first announced, evaluated the legal and factual disputes, and dedicated  
significant time and monetary resources to this litigation, proposed Class Counsel  
endorse the Settlement without reservation.

36. **The Settlement Treats Settlement Class Members Equitably:** Here, the Settlement does not improperly discriminate between any segments of the Settlement Class as all Settlement Class members are entitled to the same relief. Each and every Settlement Class member has the opportunity to make a claim for up to \$1,000 in reimbursements for expenses and time spent, and up to \$5,000 in reimbursements for extraordinary expenses. All Settlement Class members may claim the two-years of three-bureau credit monitoring offered. And, while the California Settlement Subclass is entitled to a \$100 statutory award, that is only because the Settlement takes appropriate account of differences in their claims that bear on the apportionment of relief. Therefore, the settlement treats Settlement Class members equitably.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 2nd day of May 2022, in San Diego, California.

Rachele R. Byrd

RACHELE R. BYRD

# **Exhibit 1**

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “Settlement Agreement”) is entered into by and between Plaintiffs Kansas Gilleo, Sydney Rusen, Esteban Morales, Douglas Wallace, Brett Rigas, and Evencio Diaz (“Plaintiffs”), on behalf of themselves and all others similarly situated, and Defendant California Pizza Kitchen, Inc. (“CPK” or “Defendant”) (all parties collectively referred to as the “Parties”).

### **RECITALS**

**WHEREAS**, Plaintiffs in the first four filed related cases, *Gilleo, et al. v. California Pizza Kitchen, Inc., et al.*, No. 8:2021-cv-01928-DOC-KES; *Morales v. California Pizza Kitchen, Inc.*, No. 8:21-cv-01988-DOC-KES; *Wallace et al. v. California Pizza Kitchen, Inc.*, No. 8:21-cv-01970-DOC-KES; and *Rigas, et al. v. California Pizza Kitchen, Inc.*, Case No. 8:21-cv-02004-DOC-KES filed putative class actions alleging that CPK failed to adequately safeguard its current and former employees’ (and their family members’) electronically stored private information (the “Consolidated Cases”). Plaintiffs and the putative classes sought monetary and equitable relief;

**WHEREAS**, Plaintiffs in the Consolidated Cases asserted claims against CPK, *inter alia*, for (i) negligence, (ii) negligence *per se*, (iii) declaratory judgment, (iv) violation of the New York General Business Law; (v) violation of California’s Unfair Competition Law; (vi) violation of California’s Consumer Records Act; (vii) violation of the California Consumer Privacy Act; (viii) breach of implied contract; (ix) breach of confidence; (x) bailment; and (xi) violation of state data breach statutes;

**WHEREAS**, after the Court consolidated these first four filed cases on February 15, 2022, and designated the Consolidated Cases as *In re California Pizza Kitchen Data Breach Litigation*,

Master File No. 8:21-cv-01928-DOC-KES, the Parties agreed to engage in voluntary settlement negotiations and scheduled a formal mediation;

**WHEREAS**, after one full day and an additional half day of mediation (utilizing the services of JAMS mediator Bruce A. Friedman) and arms'-length negotiations between competent and experienced counsel for the Parties, on March 15, 2022, the Parties agreed to the terms of a proposed settlement, desiring to resolve the Consolidated Cases rather than continue litigating;

**WHEREAS**, Plaintiffs and their counsel believe that, in consideration of all the circumstances, and after a day and a half of mediation and prolonged and serious arm's-length settlement negotiations with CPK, the proposed settlement embodied in this Settlement Agreement is fair, reasonable, and adequate, and is in the best interests of all members of both the Settlement Class and the California Settlement Subclass (as defined in Section 1 below);

**WHEREAS**, CPK indicated its intent to contest every claim in the Consolidated Cases and maintained that it has consistently acted in accordance with governing laws, but after prolonged arm's-length settlement negotiations with Plaintiffs' counsel and considering the expenses that would be required to defend the Consolidated Cases and the benefits of a final resolution and classwide release, concluded that it is in its best interests to settle the Consolidated Cases based on the terms and conditions in this Settlement Agreement;

**WHEREAS**, the Parties and their respective counsel have engaged in formal mediation and arm's-length settlement negotiations and mutually desire to settle the Consolidated Cases fully, finally, and forever on behalf of the Settlement Class, the California Settlement Subclass, and for the Released Claims (defined in Section 9 below) in accordance with the terms and conditions of this Settlement Agreement, which the Parties believe constitutes a fair and reasonable



compromise of the claims and defenses asserted in the Consolidated Cases and upon final approval of the Court;

**WHEREAS**, based on their evaluation of the facts and the law, Plaintiffs and their counsel (hereinafter “Class Counsel”) have agreed to settle the Consolidated Cases after considering such factors as (1) the benefits to the Settlement Class; (2) the risk, uncertainty, cost, and delay of litigation; and (3) the desirability of obtaining relief for Plaintiffs, the Settlement Class, and the California Settlement Subclass now rather than later (or not at all);

**WHEREAS**, Plaintiffs and Class Counsel have determined that this Settlement Agreement provides substantial benefits to the Settlement Class and represents a fair, reasonable, and adequate settlement of the claims that are or could have been alleged in the Consolidated Cases;

**WHEREAS**, CPK and its counsel have made similar determinations, and, while denying wrongdoing, CPK enters into this Settlement Agreement to avoid the expense, inconvenience, and inherent risk of litigation, as well as the concomitant disruption of its business operations.

### **CERTIFICATION OF SETTLEMENT CLASS**

1. **The Settlement Class and California Settlement Subclass**: The Settlement Class is defined as follows:

“All persons who were sent notice of the Data Security Incident announced by defendant on or about November 15, 2021.”

The California Settlement Subclass is defined as follows:

“All persons residing in California who were sent notice of the Data Security Incident announced by defendant on or about November 15, 2021.”.

Specifically excluded from the Settlement Class and California Settlement Subclass are:

- (i) CPK’s officers and directors at the time of the mediation and/or at the time of the signing hereof;
- (ii) any entity in which CPK has a controlling interest; and (iii) the affiliates, legal representatives,

attorneys, successors, heirs, and assigns of CPK. Also excluded from the Settlement Class are members of the judiciary to whom this case is assigned, their families and members of their staff. The Settlement Class and California Settlement Subclass are estimated to include 103,767 and 30,781 individuals, respectively.

**2. Certification of Settlement Class:** Promptly after execution of this Settlement Agreement, Class Counsel will ask the Court to issue an order certifying the Settlement Class and California Settlement Subclass for settlement purposes only, appointing Plaintiffs the Settlement Class Representatives, and appointing the following attorneys as “Settlement Class Counsel”: Mason Barney of Siri & Glimstad LLP; David Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC; Daniel O. Herrera of Cafferty Clobes Meriwether & Sprengel LLP; and Rachele R. Byrd of Wolf Haldenstein Adler Freeman & Herz LLP. CPK agrees not to object to this request without waiver of its right to contest certification or the merits of the Consolidated Cases if the settlement does not receive final approval or the Effective Date (defined in Section 16 below) does not occur.

### **RELIEF TO THE SETTLEMENT CLASS**

**3. Relief to the Settlement Class:** If the proposed settlement receives final approval, CPK will provide benefits to members of the Settlement Class as follows:

- a. **Compensation for Out-of-Pocket Losses and Lost Time:** Defendant will agree to make available the following compensation to Settlement Class and California Settlement Subclass members who submit valid and timely claim forms with supporting documentation (“Claimants”). Claims will be subject to review for completeness and plausibility by a Claims Administrator, and the Claimants will have the opportunity to seek

review by the Settlement Referee designated herein, if they dispute the Claims Administrator's determination.

b. Compensation for Ordinary Losses: Defendant will provide compensation for documented unreimbursed out-of-pocket expenses and lost time, up to a total of \$1,000 per person, upon submission of a claim and supporting documentation, such as, but not limited to, the following:

- i. Out-of-pocket expenses incurred as a result of the Data Security Incident,<sup>1</sup> including unreimbursed bank fees (such as card replacement and over-limit fees), interest on short-term loans, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel;
- ii. Out-of-pocket expenses incurred for credit reports, credit freezes, credit monitoring, or other identity theft insurance product purchased between September 15, 2021 and the date of the close of the Claims Period (defined in Section 12 below);
- iii. Up to 3 hours of lost time, at \$20/hour, if at least one full hour was spent dealing with the Data Security Incident.

c. Compensation for Extraordinary Losses for a Victim of Actual Identity Theft: Defendant will provide up to \$5,000 in compensation to each Claimant for proven monetary loss as a result of actual identity theft if:

- i. The loss is an actual, documented, and unreimbursed monetary loss;

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<sup>1</sup> Data Security Incident means the cybersecurity incident involving Defendant giving rise to the action.

- ii. The loss was more likely than not caused by the Data Security Incident;
  - iii. The loss occurred after the Data Security Incident;
  - iv. The loss is not already covered by one or more of the other reimbursement categories; and
  - v. the settlement class member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance.
- d. California Statutory Claim Benefits: In addition to the above benefits, the California Settlement Subclass members will also be eligible for a separate, California statutory damages award. The amount awarded to California Settlement Subclass members who submit a claim shall be \$100. This additional amount can be combined with a claim for reimbursement for Lost Time, with reimbursement for Out-of-Pocket Losses, and (if applicable) with reimbursement for Extraordinary Losses, and shall be subject to the \$1,000 cap on compensation for ordinary losses and lost time.
- e. Credit Monitoring: 24 months of 3 bureau credit monitoring to Settlement Class members who enroll. This service will have substantially the same scope as identity monitoring services previously offered by CPK in its notification letters. For Settlement Class members who selected and enrolled in the 12 months of identity monitoring previously offered by CPK, the credit monitoring offered under this settlement shall be in addition to that period.

**4. Claims Payments.**

- a. Payments. The Claims Administrator will, at the election of the Claimant, mail award checks or send funds electronically (in an electronic payment format recommended by the Claims Administrator, such as PayPal or Venmo, and agreed-upon by the parties) for approved claims within 30 days following the Effective Date upon submission of a valid claim form and after CPK's or the Claims Administrator's confirmation through review of CPK's records that the Class Member is entitled to relief, or the Class Member's submission of sufficient documentation demonstrating an entitlement to relief under the settlement, whichever is later. No distributions will be made without authorization from the parties. A copy of the claim form agreed to by the parties is attached as Exhibit A.
- b. Returned Checks. If a check is returned as undeliverable, the Claims Administrator will re-mail the check if a forwarding address is provided. If a new address is not provided, or if the check is re-mailed and returned, the check will be cancelled and there will be no further obligation to attempt to make a payment to that class member.
- c. Uncashed/Cancelled Checks. Checks shall be valid for at least 90 days from the date of issue. A Class Member whose check is uncashed after the 90-day period may request a new check for up to six months from the date of the original check. Upon request, the Claims Administrator will provide Class Counsel with a report on uncashed or cancelled checks.

**5. Attorneys' Fees, Costs, and Service Award:**

- (a) Attorneys' Fees and Costs. CPK agrees not to object to Plaintiffs' request for combined attorneys' fees and costs to Class Counsel in an amount not to exceed a total of \$800,000, inclusive of costs ("Class Counsel Payment"). Class Counsel and Plaintiffs agree not to seek or accept a Class Counsel Payment greater than \$800,000. Class Counsel will petition for

approval of the Class Counsel Payment at least 14 days before the deadline for Settlement Class members to exclude themselves from the settlement or object thereto, or any other deadline set by the Court. CPK will pay the amount approved by the Court that does not exceed \$800,000.

The Court-approved Class Counsel Payment will not affect any benefits provided to Class Members or Plaintiffs. CPK will pay by wire transfer or check the Court-approved Class Counsel Payment within 15 business days of (1) the Effective Date or (2) the entry of an order awarding a Class Counsel Payment, whichever is later, to the attorney trust account of Class Counsel. CPK's obligations with respect to the Court-approved Class Counsel Payment shall be fully satisfied upon receipt of the funds by Class Counsel. Class Counsel will be responsible for any loss that may occur after receipt of the funds and for allocating the Court-approved Class Counsel Payment among Class Counsel or others. CPK will have no responsibility or liability in connection with the allocation of the Court-approved Counsel Payment, or for any tax obligations or payments associated with the payment. Class Counsel will bear all liability, and CPK will bear no liability (beyond the Court-approved Class Counsel Payment itself) in connection with any claim for payment made by any attorney who claims to have rendered services to, for, or on behalf of Plaintiffs, any Settlement Class member, or Class Counsel in connection with the Consolidated Cases and this settlement.

Except for the Court-approved Class Counsel Payment, Class Counsel will be responsible for all fees, costs, and expenses incurred by Plaintiffs or Class Counsel in connection with the Consolidated Cases. No interest will accrue with respect to the Court-approved Class Counsel Payment.

(b) Service Award. CPK agrees not to object to Plaintiffs' request for a service award in an amount not to exceed \$2,000 for each named Plaintiff listed in this Settlement Agreement

and Release for their time and effort on behalf of the Settlement Class. Class Counsel and each Plaintiff agree not to seek or accept an incentive award greater than \$2,000. Class Counsel will petition for approval of the service award at least 14 days before the opt-out or objection deadline, or any other deadline set by the Court. CPK will pay the amount approved by the Court that does not exceed \$2,000 per named Plaintiff. The Court-approved service award will not affect any other benefit provided to Class Members, including Plaintiffs. CPK will pay the Court-approved service awards within 15 business days of (1) the Effective Date or (2) the entry of an order approving the service awards, whichever is later, by wire transfer or check to the attorney trust account of Class Counsel, so long as the necessary documentation is provided by Class Counsel. CPK's obligation for payment of any Court-approved service award will be fully satisfied upon receipt of the check or wire transfer to Class Counsel. Plaintiffs will bear all liability, and CPK will bear no liability, for payment of taxes due, if any, on the Court-approved service award. No interest will accrue with respect to the Court-approved service award if paid in accordance with this Settlement Agreement.

**6. Business Practice Commitments:**

CPK, having engaged a third-party cybersecurity consultant that provided forensics, recovery, and remediation following the Data Security Incident, agrees to maintain certain recently implemented business practices and remedial measures as set forth below ("Business Practice Commitments") for a period of three (3) years following the Effective Date. These Business Practice Commitments are specific commitments and remedial measures designed to include continuous threat assessment processes to maintain CPK's security posture, and to provide protection against threats now and in the future, specifically with respect to the personally identifiable information of current and former employees, and include the following:



- (a) Endpoint protection: Ensure implementation of endpoint security measures, including appropriate implementation of endpoint security applications, patching mechanisms, logging and alerting.
- (b) Enhanced password protection. Require users to employ more complex account passwords, and to change those passwords on a regular basis.
- (c) Multi-factor authentication. Require multi-factor authentication in order to gain external access to email servers or systems located on CPK's networks.
- (d) Cybersecurity training and awareness program: Enhanced internal training and education for all employees in order to better enable them to identify potential security threats.

The Parties acknowledge that technical requirements for securing information evolve and change dynamically. In the event that technological or industry developments, or intervening changes in law or business practices, render specific Business Practice Commitments obsolete or make compliance by CPK with them unreasonable or technically impractical, CPK may modify its business practices as necessary to ensure appropriate security practices are being followed. All costs associated with implementing the Business Practice Commitments will be borne by CPK separate and apart from the relief afforded to Settlement Class members.

### **SETTLEMENT ADMINISTRATION**

#### **7. Settlement Administration:**

(a) The Parties have selected Epiq Class Action and Claims Solutions, Inc. ("Epiq") to serve as the third-party settlement claims administrator ("Claims Administrator"), provide notice of the settlement to the Settlement Class and otherwise administer the settlement, subject to Court approval. The Claims Administrator will administer the settlement, including (i)

not later than ten (10) calendar days after the filing of this Settlement Agreement with the Court, the Settlement Administrator, on Defendant's behalf shall serve or cause to be served notice of the proposed Settlement upon the appropriate federal and state officials, as provided by the Class Action Fairness Act, 28 U.S.C. §1715, et seq. ("CAFA") (ii) providing direct-mail postcard notification of the proposed settlement to the same people to whom CPK sent a pre-Lawsuit Notice of Data Event or similar written notice of the Data Security Incident that gives rise to this action, or email notice where valid email addresses are available; (iii) creating and hosting a website, publicly accessible for at least six months after the Effective Date, dedicated to providing information related to these Consolidated Cases, including access to relevant publicly available court documents, the settlement and this Settlement Agreement, including the short and long-form notices of the settlement (attached hereto as Exhibits B and C), and provide Settlement Class members with the ability to submit claims and supporting documentation for compensatory relief; (iv) maintaining a toll-free telephone number and P.O. Box by which Settlement Class members can seek additional information regarding this Settlement Agreement; (v) processing claims and supporting documentation submissions, and providing approved payments to Settlement Class members; (vi) processing requests for exclusion from Settlement Class members; and (vii) any other provision of this Settlement Agreement that relates to the settlement and claims administration. Upon reasonable notice, the Claims Administrator and CPK will make available for inspection by Class Counsel information reasonably necessary for Class Counsel to confirm that the Claims Administrator and CPK have complied with the settlement administration aspects of this Settlement Agreement.

(b) Review and Assistance. Class Counsel and CPK will be permitted to audit and review actual (or summary reports on) claims made, claims approved or denied, checks issued,

calculation of benefits under the settlement, and returned checks and uncashed checks to assist with the effectuation of the settlement and the Parties' respective desire to reasonably ensure that the benefits are administered in a manner to attempt to reach each Settlement Class member.

(c) Cost of Settlement Administration. CPK will be responsible for the cost of settlement administration, including the payment of the Claims Administrator. The cost of settlement administration will not affect any benefit provided to Settlement Class members, including Plaintiffs. Except for the Court-approved Class Counsel Payment and Court-approved service awards, CPK will not be responsible for, and will not pay, any additional costs or fees incurred by Plaintiffs or Class Counsel with respect to the negotiation, implementation, or administration of the settlement, or any costs incurred by any Settlement Class member in connection with participating in, opting out of, or objecting to the settlement.

(d) Dispute Resolution. In the event of a dispute over the validity of a claim or the denial of a check reissuance request, Settlement Class members or CPK shall be entitled to submit their claim to the designated Claims Referee, Bruce A. Friedman, Esq.. Settlement Class members or CPK must first notify the Claims Administrator that they intend to pursue the dispute resolution process, and CPK will have the option, at its sole discretion, to negotiate with the Settlement Class member to attempt to resolve the dispute, provided that CPK provides prior written notice to Class Counsel of its intent to do so. If CPK elects not to undertake a negotiation process or the process does not resolve the dispute within 10 days from the date the Settlement Class member or CPK notifies the Claims Administrator of the dispute, the Settlement Class member or CPK may then submit the claim to Claims Referee. CPK will provide notice to Class Counsel of any claims submitted to the Claims Referee. The Claims Referee's findings will be final and binding on both parties. CPK will pay the Claims Referee's fees for the dispute resolution

process. Settlement Class members and CPK will each bear their own attorneys' fees and any other costs of the dispute resolution process, if any. Class Counsel will have the option, but not the obligation, to participate in the dispute resolution process.

**8. No Other Financial Obligations on CPK:** CPK will not be obligated to pay any fees, expenses, or costs in connection with the Consolidated Cases or this Settlement Agreement other than the amounts and categories specifically provided for in this Settlement Agreement.

**RELEASE**

**9. Release:** Upon the Effective Date, Plaintiffs named in this Settlement Agreement and every Settlement Class member (except those who timely opt out), for themselves, their attorneys, spouses, beneficiaries, executors, representatives, heirs, successors, and assigns, in consideration of the relief set forth in this Settlement Agreement, fully and finally release CPK, its parents, subsidiaries, and affiliates, and all of their present and former officers, directors, employees, agents, attorneys, representatives, insurers, and legal representatives from any and all claims or causes of action, whether known or unknown, that concern, refer or relate to the Data Security Incident announced by CPK on or about November 15, 2021, and all other claims arising out of the Data Security Incident announced by CPK on or about November 21, 2021, that were asserted, or that could have been asserted, in the Consolidated Cases. The claims released in this section are referred to as the "Released Claims," and the parties released are referred to as the "Released Parties."

Plaintiffs and the Settlement Class members waive any principles of law similar to and including Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE

MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiffs and the Settlement Class agree that Section 1542 and all similar federal or state laws, rules, or legal principles of any other jurisdiction are knowingly and voluntarily waived in connection with the claims released in this Settlement Agreement, and agree that this is an essential term of this Settlement Agreement. Plaintiffs and the Settlement Class acknowledge that they may later discover claims presently unknown or suspected, or facts in addition to or different from those which they now believe to be true with respect to the matters released in this Settlement Agreement. Nevertheless, Plaintiffs and the Settlement Class fully, finally, and forever settle and release the Released Claims against the Released Parties.

**10. No Release of Unrelated Claims**

Notwithstanding the foregoing, the Parties expressly agree and acknowledge that the Release negotiated herein shall not apply to any litigation or claim not related to or arising out of the Data Security Incident.

**SETTLEMENT APPROVAL PROCESS**

**11. Preliminary Approval Order:** Plaintiffs will petition the Court for an order preliminarily approving this Settlement Agreement (the “Preliminary Approval Order”) promptly after this Settlement Agreement has been fully executed. A copy of the proposed Preliminary Approval Order is attached as Exhibit D.

**12. Class Notice:** Within 10 days of entry of the Preliminary Approval Order, CPK will provide the Claims Administrator with a list of Settlement Class members in Excel format that includes, to the extent available, the name and physical mailing address of each Settlement Class member, and the email address of each current employee who has a cpk.com email address and is a Settlement Class member. By no later than 30 days following entry of the Preliminary

Approval Order (the “Notice Date”), the Claims Administrator will send the Notice of Proposed Settlement (attached as Exhibit B) to Settlement Class members. The Notice of Proposed Settlement will advise that Settlement Class members have 90 days from the Notice Date to submit a claim for compensation (the “Claims Period”). The Claims Administrator will send Settlement Class members to whom CPK previously mailed notice of the Data Security Incident the above notice by U.S. mail or email where valid email addresses are available. Before mailing notice by U.S. mail, the Claims Administrator will update the Class Members’ addresses through a reliable service of the Claims Administrator’s choosing that is consistent with its customary business practices. If a notice is returned to the Claims Administrator as undelivered and a forwarding address is provided, the Claims Administrator will re-mail one additional time to the new address.

**13. Right of Exclusion:** Settlement Class members who submit a timely written request for exclusion from the Settlement Class will be excluded from the Settlement Class. A request for exclusion must be in writing and must state the name, address, and phone number of the person seeking exclusion. Each request must also contain a signed statement to the following effect: “I request to be excluded from the Settlement Class in the CPK lawsuit.” The request must be mailed to the Claims Administrator at the address provided in the Class Notice, and postmarked no later than 60 days after the Notice Date, or any other date set by the Court. A request for exclusion that does not include all of the foregoing information, or that is sent to an address other than the one designated in the Class Notice, or that is not mailed by the deadline will be invalid, and the person submitting the request will remain a Settlement Class member. A Settlement Class member who cashes a check from CPK or submits a valid claim form is not eligible for exclusion, and any request for exclusion will be invalid. Class Counsel will file a list of Settlement Class members requesting exclusion with the Court. If more than two percent (2%) of the Settlement

Class members request exclusion, CPK will have the right, at its sole discretion and within five business days after receipt of the list of exclusions from the Claims Administrator, to terminate this Settlement Agreement and render the settlement void and of no effect.

**14. Right to Object:** Any Settlement Class member who objects to the settlement may appear in person or through counsel, at his or her own expense, at the Final Approval Hearing to present any relevant evidence or argument. No Settlement Class member will be heard and no papers submitted thereby will be considered unless, no later than 60 days after the Notice Date, or any other date set by the Court, the Settlement Class member files with the Court, or mails or emails to Class Counsel and CPK's counsel written objections that include: (1) the title of the case; (2) the Settlement Class member's name, address, and telephone number; (3) all legal and factual bases for any objection; (4) copies of any documents that the Settlement Class member wants the Court to consider, and (5) the identity of the objector's attorney, if any. Should the Settlement Class member wish to appear at the Final Approval Hearing, the Settlement Class member must so state, and must identify any documents or witnesses the Settlement Class member intends to call on his or her behalf. Any Settlement Class member who fails to object in this manner will be deemed to have waived any objections.

**15. Final Judgement Order:** At the final approval hearing, the parties will ask the Court to enter final approval order and judgment (the "Final Judgment and Order"). A copy of the proposed Final Judgment and Order is attached as Exhibit E.

**16. Finality of Judgment:** The Final Judgment and Order will be deemed final, and the Effective Date will occur 35 days after the Final Judgment Order is entered if no notice of appeal or motion tolling the time for appeal is filed, or, if any such document is filed, 14 days after all appellate proceedings (including proceedings in the Court in the event of a remand) have been



finally terminated and this Settlement Agreement has been finally approved in all material respects.

### **MISCELLANEOUS PROVISIONS**

**17. Integration and Drafting:** This Settlement Agreement was drafted and negotiated by counsel for the Parties at arm's-length. It sets forth the entire agreement among the Parties.

**18. Amendment, Court Approval, Extensions:** This Settlement Agreement may not be amended without the written consent of all Parties and approval of the Court; provided, however, that the Parties may agree to reasonable extensions of time to carry out any provision of this Settlement Agreement, and provided further that any extension of more than 30 days must be approved by the Court.

**19. Construction:** This Settlement Agreement has been drafted by all Parties and shall not be construed for or against any of the Parties.

**20. Integration of Exhibits:** The exhibits to this Settlement Agreement are incorporated by reference and are an integral part of this Settlement Agreement.

**21. Counterparts:** This Settlement Agreement may be executed in counterparts, each of which will be considered an original. Executed signature pages are valid and enforceable whether they are originals or copies, and whether transmitted by facsimile, email, or any other means.

**22. No Evidence, No Admission:** In no event shall this Settlement Agreement, any of its provisions, or any negotiations, statements, or proceedings relating to it be offered or received as evidence in the Consolidated Cases or in any other proceeding, except in a proceeding to enforce this Settlement Agreement (including its release). Without limiting the foregoing, neither this Settlement Agreement nor any related negotiations will be offered or received as evidence, or as

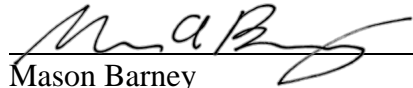
an admission or concession, by any person of any matter, including but not limited to any alleged wrongdoing on the part of CPK or the appropriateness of certification of any class.


**23. Tax Consequences:** CPK gives no opinion as to the tax consequences of the settlement to Settlement Class members or anyone else. Each Settlement Class member's or other person's tax obligations, if any, and the determination of those obligations, are the sole responsibility of the Settlement Class member or other person. CPK will act as it determines is required by the Internal Revenue Code in reporting any settlement benefits provided pursuant to this Settlement Agreement.

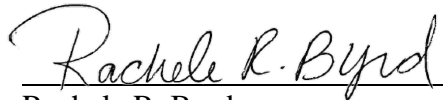
**24. Cooperation in Effecting Settlement:** The Parties, their successors and assigns, and their attorneys will implement this Settlement Agreement in good faith, use good faith in resolving any disputes that may arise in the implementation of this Settlement Agreement, cooperate with one another in seeking Court approval of this Settlement Agreement, and use their best efforts to effect the prompt consummation of this Settlement Agreement.


**25. Publicity:** The Parties will not make any public statement about the settlement that has not been approved by the other side, except as required or authorized by law. Approval of any proposed public statement of the other side will not be unreasonably withheld. The Parties will cooperate with each other regarding public statements about the settlement and may issue a joint statement/press release if they mutually agree to do so. Notwithstanding the foregoing, the Parties may include on their websites or provide to Settlement Class members, the notice and any signed orders from the Court regarding the settlement, and may respond to inquiries from Settlement Class members regarding the substance of the settlement, provided however that such responses shall in no way be disparaging to a Party. CPK may, at its sole discretion, make a public statement about its operating procedures, or changes to these procedures, relating to cybersecurity.

**26. Authority to Execute Agreement:** Each person executing this Settlement Agreement represents that he or she is authorized to execute it.

  
\_\_\_\_\_  
Mason Barney  
Date: May 2, 2022

  
\_\_\_\_\_  
David Lietz  
Date: May 2, 2022

  
\_\_\_\_\_  
Rachele R. Byrd  
Date: May 2, 2022

  
\_\_\_\_\_  
Daniel O. Herrera  
Date: May 2, 2022

**Attorneys for Plaintiffs and the Settlement Class**

\_\_\_\_\_

Date: \_\_\_\_\_

**LEWIS BRISBOIS LLP**  
Attorney for Defendant

\_\_\_\_\_  
Jon Kardassakis

Date: May 2, 2022  
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# **EXHIBIT D**

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

IN RE: CALIFORNIA PIZZA  
KITCHEN DATA BREACH  
LITIGATION

This Document Relates To:  
All Actions

Master File No. 8:21-cv-01928-DOC-KES

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

**DATE:** June 13, 2022  
**TIME:** 8:30 a.m.  
**CTRM:** 10 A  
**JUDGE:** Hon. David O. Carter

1 This matter is before the Court on the Plaintiffs’ Motion for Preliminary  
2 Approval of Class Action Settlement (“Motion”). Plaintiffs Kansas Gilleo, Sydney  
3 Rusen, Esteban Morales, Douglas Wallace, Brett Rigas, and Evencio Diaz  
4 (“Plaintiffs”), individually and on behalf of the proposed Settlement Class, and  
5 Defendant California Pizza Kitchen, Inc. (“Defendant” or “CPK” and, together with  
6 Plaintiffs, the “Parties”) have entered into a Settlement Agreement and Release,  
7 dated May 2, 2022 (“Settlement Agreement”), that, subject to the Court’s approval  
8 and final hearing on the matter, will resolve this lawsuit. Having considered the  
9 Motion, the Settlement Agreement and all corresponding and supporting documents  
10 attached thereto, the record in this matter, and the briefs and arguments of counsel,  
11 IT IS HEREBY ORDERED as follows:

12 1. Unless otherwise defined herein, all terms capitalized herein shall have  
13 the same definitions ascribed to them as in the Settlement Agreement.

14 2. The Court retains continuing and exclusive jurisdiction over this  
15 litigation, including Class Representatives, Defendant, and Settlement Class  
16 members, and all matters arising out of or connected with the settlement, including  
17 the administration and enforcement of the Settlement Agreement.

18 **Preliminary Approval**

19 3. The Court has carefully reviewed all of the terms of the proposed  
20 Settlement Agreement, all corresponding and supporting documents attached  
21 thereto, Plaintiffs’ Motion and corresponding papers filed therewith, including the  
22 declaration of counsel and the Claims Administrator. Based on its review of these  
23 documents, the Court finds the Settlement Agreement to be fair, reasonable, and  
24 adequate, and the result of vigilant, informed, non-collusive arms’-length  
25 negotiations overseen by an experienced and neutral mediator. The Court further  
26 finds that the Settlement Agreement is the result of informal discovery and the terms  
27 of the Settlement Agreement fall within the range of possible approval.  
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1           4.     The Court hereby GRANTS preliminary approval of the Settlement  
2 Agreement and all of the terms and conditions contained therein.

3                     **Preliminary Certification of Settlement Class**

4           5.     The Court preliminarily certifies, for settlement purposes only pursuant  
5 to Federal Rule of Civil Procedure 23(b)(3), the Settlement Class and subclass  
6 defined in the Settlement Agreement as follows:

7                     **Settlement Class:**

8                     All persons who were sent notice of the Data Security  
9 Incident announced by Defendant on or about November  
10 15, 2021.

11                    **California Settlement Subclass:**

12                    All persons residing in California who were sent notice of  
13 the Data Security Incident announced by Defendant on or  
14 about November 15, 2021.

15 Specifically excluded from the Settlement Class and California Settlement Subclass  
16 are: (i) CPK's officers and directors at the time of the mediation and/or at the time  
17 of the signing hereof; (ii) any entity in which CPK has a controlling interest; and (iii)  
18 the affiliates, legal representatives, attorneys, successors, heirs, and assigns of CPK.  
19 Also excluded from the Settlement Class are members of the judiciary to whom this  
20 case is assigned, their families and members of their staff. The Settlement Class and  
21 California Settlement Subclass are estimated to include 103,767 and 30,781  
22 individuals, respectively.

23           6.     The Court preliminarily finds that the Settlement Class and California  
24 Settlement Subclass each satisfy the requirements of Federal Rule of Civil Procedure  
25 23(a) for settlement purposes: (1) the Settlement Class and California Settlement  
26 Subclass are each sufficiently numerous that joinder of all members is impracticable,  
27 (2) there are questions of law or fact common to the Settlement Class and California  
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1 Settlement Subclass, (3) the Class Representatives' claims are typical of the  
2 Settlement Class and California Settlement Subclass members, and (4) the Class  
3 Representatives fairly and adequately protect the interests of the Settlement Class  
4 and California Settlement Subclass.

5 7. The Court hereby appoints Kansas Gilleo, Sydney Rusen, Esteban  
6 Morales, Douglas Wallace, Brett Rigas, and Evencio Diaz as the Class  
7 Representatives of the Settlement Class. The Court further appoints Sydney Rusen,  
8 Esteban Morales, and Doug Wallace as Class Representatives of the California  
9 Settlement Subclass.

10 8. The Court hereby appoints Mason Barney of Siri & Glimstad LLP;  
11 David Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC; Daniel O.  
12 Herrera Cafferty Clobes Meriwether & Sprengel LLP; and Rachele R. Byrd of Wolf  
13 Haldenstein Adler Freeman & Herz LLP as Settlement Class Counsel.

14 **Notice and Administration**

15 9. Pursuant to the Settlement Agreement, the parties have designated Epiq  
16 Class Action and Claims Solutions, Inc. ("Epiq") as the Claims Administrator. Epiq  
17 shall perform all duties necessary for notice and administration as set forth in the  
18 Settlement Agreement. Pursuant to the Settlement Agreement, Epiq will make  
19 important documents, such as the Settlement Agreement and Claim Form (which  
20 Settlement Class members have the option to submit online), accessible on the  
21 settlement website.

22 10. The Court finds that the Class Notice plan as set forth in the Settlement  
23 Agreement satisfies the requirements of due process and provides the best notice  
24 practicable under the circumstances pursuant to Federal Rule of Civil Procedure  
25 23(e)(1). The Class Notice plan is reasonably calculated to inform the Settlement  
26 Class members of the nature of the litigation, the terms and conditions of the  
27 Settlement Agreement, the right of Settlement Class members to object to the  
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1 Settlement Agreement or exclude themselves from the Settlement Class, including  
2 instructions about the process for doing so, and the Final Approval Hearing details.  
3 The Court approves the Class Notice plan, including the Claim Form, and directs the  
4 Settlement Administrator and the parties to proceed with providing Notice to the  
5 Settlement Class as set forth in the Settlement Agreement and this Order.

6 **Settlement Class Member Exclusions and Objections**

7 11. Settlement Class members who request to opt-out and exclude  
8 themselves from the Settlement Class must do so by notifying the Settlement  
9 Administrator in writing. To be valid, the opt-out request must be mailed to the  
10 Settlement Administrator no later than 60 days after the Notice Date, must be in  
11 writing and must state the name, address, and phone number of the person seeking  
12 exclusion, and must contain a signed statement to the following effect: "I request to  
13 be excluded from the Settlement Class in the CPK lawsuit." Settlement Class  
14 members who submit a valid and timely request for exclusion will not be bound by  
15 the terms of the Settlement Agreement. Any Settlement Class member who does not  
16 submit a timely request for exclusion in accordance with the Settlement Agreement  
17 will forfeit the opportunity to be excluded from the settlement and will be bound by  
18 the Settlement Agreement upon entry of the Final Judgment and Order.

19 12. Settlement Class members who wish to object to the Settlement  
20 Agreement must do so by submitting a written objection to the Settlement  
21 Administrator in accordance with the procedures outlined in the Class Notice and  
22 this Order, filed or postmarked no later than 60 days after the Notice Date and must  
23 include the following information:

- 24 (i) The name of this proceeding (*In re: California Pizza Kitchen*  
25 *Data Breach Litigation*, No. 8:21-cv-01928-DOC-KES or  
26 similarly identifying words such as CPK Data Breach Lawsuit);  
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- (ii) the Settlement Class member's name, address, and telephone number;
- (iii) all legal and factual bases for any objection;
- (iv) copies of any documents that the Settlement Class member wants the Court to consider;
- (v) the identity of the objector's attorney, if any; and
- (vi) should the Settlement Class member or their attorney wish to appear at the Final Approval Hearing, the Settlement Class member must so state, and must identify any documents or witnesses the Settlement Class member intends to submit, or call, on his or her behalf.

13. Any Settlement Class member who does not timely submit a written objection pursuant to the procedures outlined above and the procedures detailed in the Class Notice and Settlement Agreement waives the right to object or be heard at the Final Approval Hearing, shall be forever barred from making any objection to the Settlement Agreement, and will be bound by the Settlement Agreement upon entry of the Final Judgment and Order.

#### **Final Approval Hearing**

14. The Court will hold a Final Approval Hearing on \_\_\_\_\_, 2022 at \_\_\_\_\_ [a.m./p.m.], in Courtroom 10 A of the United States District Court for the Central District of California, Ronald Reagan Federal Building and United States Courthouse, 411 West Fourth Street, Santa Ana, CA, 92701-4516.

15. At the Final Approval Hearing, the Court will review, and rule on, the following issues:

- a. Whether this matter should be finally certified as a class action for settlement purposes under Fed. R. Civ. P. 23(a) and (b)(3);
- b. Whether the settlement should be approved as fair, reasonable,

and adequate under Fed. R. Civ. P. 23(e);

c. Whether this lawsuit should be dismissed with prejudice pursuant to the terms of the Settlement Agreement;

d. Whether the Settlement Class members should be bound by the releases set forth in the Settlement Agreement;

e. Whether the application of Class Counsel for an award of attorneys' fees, costs, and expenses and service awards should be approved under Fed. R. Civ. P. 23(h); and

f. Any other issues the Court deems appropriate.

16. Settlement Class members do not need to attend the Final Approval Hearing, nor take any other action to indicate their approval of the proposed Settlement Agreement (besides submitting the aforementioned Claim Form). However, any Settlement Class members who wish to be heard must appear at the Final Approval Hearing. The Final Approval Hearing may be postponed, adjourned, transferred, or continued without further notice to the Settlement Class members.

**Settlement Administration Timeline, Injunction, and Termination**

17. To facilitate the timely administration of this case, the Court hereby sets the following schedule:

Event	Deadline
Defendant to provide Settlement Class member data to the Claims Administrator	10 days after entry of this Order
Last day for Settlement Administrator to mail Settlement Notice to Settlement Class Members (the "Notice Date")	30 days after entry of this Order

Event	Deadline
Last day for Settlement Class Members to submit Claim Forms	90 Days from the Notice Date
Deadline to Submit Motion for Attorneys' Fees, Costs and Service Awards	At Least 14 Days Before the Objection Deadline
Deadline to Object and Comment on Settlement	60 Days from the Notice Date
Deadline to Submit Request for Exclusion	60 Days from the Notice Date
Final Approval Hearing	TBD

18. All proceedings and deadlines in this matter, except those required to implement this Order and the Settlement Agreement, are hereby stayed and suspended until further order from the Court.

19. In the event that the Settlement Agreement is terminated pursuant to the terms of the Settlement Agreement, (1) the Settlement Agreement and this Order shall become null and void and shall be without prejudice to the rights of the parties, shall have no further force or effect, and shall not be used in this litigation or any other proceedings for any purpose other than as necessary to enforce the terms of the Settlement Agreement that survived termination, (2) this litigation will revert to the status that existed before the Settlement Agreement was executed, and (3) no term(s) or draft(s) of the Settlement Agreement or any part of the settlement discussions, negotiations, or documentation of any kind, related to the Settlement Agreement, whatsoever, shall (a) be admissible into evidence for any purpose in this litigation or in any other action or proceeding other than as may be necessary to enforce the terms of the Settlement Agreement that survived termination, (b) be deemed an admission or concession by any settling party regarding the validity of any of the

Released Claims or the propriety of certifying any class against Defendant, or (c) be deemed an admission or concession by any of the parties regarding the truth or falsity of any facts alleged in the litigation or the availability or lack of availability of any defense to the Released Claims.

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_, 2022

\_\_\_\_\_  
HON. DAVID O. CARTER  
UNITED STATES DISTRICT COURT JUDGE