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

11 PRISCILLA WALL, individually and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 WESCOM CENTRAL CREDIT UNION
16 and BARRACUDA NETWORKS, INC.,

17 Defendants.

Case No. 5:23-cv-02293-CAS-SHK

**PLAINTIFF'S NOTICE OF MOTION
AND UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS SETTLEMENT**

Date: September 29, 2025

Time: 10:00 a.m.

Ctrm: 8D

Location: Via Zoom

(Assigned to Hon. Christina A. Snyder)

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD
PLEASE TAKE NOTICE THAT on September 2 , 2 2 at 1 A.M., via Zoom
Clic [oom lin \(link is external\)](#)
Telephone (669) 254-5252
ebinar ID 161 024 0348
Passcode 055182

or as soon thereafter as counsel may be heard before the Honorable Christina A. Snyder, at 350 W. First Street, Courtroom 8D, 8th Floor, Los Angeles, CA 90012, Plaintiff will and hereby does move this Court, pursuant to Federal Rule of Civil Procedure 23, for an order granting Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement.

Plaintiff bases this Motion for Preliminary Approval of Class Action Settlement on: this Notice; the Memorandum of Points and Authorities filed in support thereof; the Settlement Agreement and Release ("Settlement Agreement") and all exhibits attached thereto; the Declaration of John J. Nelson in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Nelson Decl."); all other records and papers on file in this action; any oral argument on the Motion; and all other matters properly before the Court.

Plaintiff seeks an order pursuant to Federal Rule of Civil Procedure 23(b)(3) certifying the Settlement Class more fully described in the Settlement Agreement, attached to the Motion for Preliminary Approval as Exhibit 1; preliminarily approving the Settlement as fair, reasonable, and adequate; directing notice to be disseminated to the Settlement Class in the form and manner proposed by the parties as set forth in the Settlement Agreement and attached as Exhibits A, B, and C thereto; appointing RG/2 to serve as the Settlement Administrator; appointing Plaintiff as the Class Representative and the undersigned attorney as Class Counsel; and setting a hearing date and schedule for final approval of the Settlement and consideration of Class Counsel's forthcoming

1 motion for an award of fees, costs, expenses, and service awards.

2 This Motion is made following the conference of counsel pursuant to L.R. 7-3.

3
4
5 DATED: August 29, 2025

Respectfully submitted,

6 /s/ John J. Nelson

7 John J. Nelson (SBN 317598)

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12 *Attorney for Plaintiff and*
13 *the Proposed Class*

14
15 **CERTIFICATE OF SERVICE**

16 The undersigned hereby certifies that on August 29, 2025 the foregoing document
17 was filed via the Court's ECF system, which will cause a true and correct copy of the same
18 to be served electronically on all ECF-registered counsel of record.
19

20 /s/ John J. Nelson

21 John J. Nelson (SBN 317598)

1 John J. Nelson (SBN 317598)
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PRISCILLA WALL, individually and on
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Plaintiff,

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WESCOM CENTRAL CREDIT UNION
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Defendants.

Case No. 5:23-cv-02293-CAS-SHK

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
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1 **I. INTRODUCTION**

2 This litigation arises out of an alleged incident (the “Incident”) affecting an Email
3 Secure Gateway product that Defendant Barracuda Networks, Inc. (“Barracuda” or
4 “Defendant”) provided to Wescom Credit Union. Plaintiff Priscilla Wall claims resulted
5 in the unauthorized access to her personal identifying information (“PII” or “Private
6 Information”) and that of approximately 32,964 others. Plaintiff alleges that Defendant’s
7 failure to implement reasonable data security practices resulted in injury to herself and all
8 other similarly situated.

9 While Defendant Barracuda Networks denies Plaintiff’s allegations and denies any
10 liability, the Parties have reached a settlement in this litigation to avoid the expense, risk,
11 exposure, inconvenience, uncertainty, and distraction of continued litigation. As further
12 explained herein, the terms of the proposed Settlement are fair, adequate, and reasonable;
13 the proposed Settlement Class meets the requirements for certification for purposes of
14 settlement, and the proposed notice program provides the best practicable notice under the
15 circumstances and comports with Fed. R. Civ. P. 23(c)(2). Accordingly, Plaintiff
16 respectfully requests that the Court take the first step in the approval process and enter the
17 proposed Preliminary Approval Order, which: (1) grants preliminary approval of the
18 proposed Settlement; (2) certifies the Settlement Class contemplated by the Parties’
19 Settlement Agreement (attached to the Declaration of John J. Nelson as **Exhibit 1**); (3)
20 orders that the Parties’ proposed Notice be sent to the Settlement Class; and (4) schedules
21 a final approval hearing to consider final approval of the proposed Settlement, as well as
22 approval of attorneys’ fees, costs, and service award to the Plaintiff.¹

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26 ¹ Plaintiff will file a separate motion for attorneys’ fees and the reimbursement of
27 litigation costs and expenses, as well as for service payments to the Class Representative,
28 along with supporting declarations and reports, contemporaneously with the motion
 seeking final approval of the settlement. Plaintiff has proposed a schedule for the filing of
 each of these motions in the Proposed Order.

II. BACKGROUND

A. History of the Litigation

This class action arises out of an Incident that took place between October 30, 2022 and May 30, 2023 in which Wescom Credit Union (“Wescom”) experienced unauthorized third-party access to emails and attachments stored on its ESG appliances. *See* Declaration of John Nelson, (“Nelson Decl.”) ¶ 2, filed concurrently herewith. The ESG appliance was provided to Wescom by Defendant. *Id.*, ¶ 2. The affected emails allegedly contained files on which Plaintiff’s and Class Members personal identifying information (“PII”) was stored and were potentially accessed by the threat actor. *Id.*

On May 30, 2023, Barracuda notified Wescom about a vulnerability with the ESG appliance. Wescom’s investigation of the Incident determined that the Private Information of approximately 32,964 individuals, including Plaintiff, was potentially impacted by the Incident. *Id.* Wescom began notifying individuals whose Private Information may have been impacted by the Incident on or around October 20, 2023.

On November 7, 2023, Plaintiff Priscilla Wall (“Plaintiff”) filed a class action complaint (“Complaint”) in the United States District Court for the Central District of California captioned *Wall v. Wescom Central Credit Union, et al.*, Case No. 5:23-cv-0223-CAS-SHK alleging injuries arising from the Data Breach on her own behalf and that of a putative class against both Barracuda and Wescom. *Id.* ¶ 3 Plaintiff and Wescom met and conferred following the filing of the Complaint and Wescom indicated that it intended to move to compel Plaintiff to arbitration. Plaintiff and Wescom thereafter resolved Plaintiff’s claims on an individual basis as to Wescom only. *Id.* ¶ 4.

Barracuda moved to dismiss Plaintiff’s Complaint on January 11, 2024 and Plaintiff responded in opposition thereto on February 20, 2024. On March 1, 2024 the Court issued an order denying Defendant’s motion as to the negligence and Unfair Competition Law claims and allowing it as to Plaintiff’s claim for unjust enrichment. Defendant filed an answer on May 7, 2024. Following the filing of Defendant’s answer to the Complaint, the Parties engaged in formal discovery efforts and propounded written discovery. *Id.* ¶ 5.

1 **B. Settlement Negotiations**

2 While discovery efforts were underway, the Parties agreed to explore the possibility
3 of early resolution. *Id.* ¶ 6. During settlement negotiations, the Parties continued to litigate
4 the action. *Id.* Throughout their negotiations, the Parties engaged in a significant exchange
5 of information, extensive evaluation and discussion of the relevant facts and law, and
6 carefully considered the risk and uncertainties of continued litigation. and ultimately
7 reached a settlement in principle. *Id.* ¶¶ 3, 7-8. The Parties have diligently negotiated,
8 drafted, and finalized the settlement agreement, notice forms, and came to an agreement
9 on a claims process and administrator. *Id.* ¶ 8. The Settlement Agreement was finalized
10 and signed by the Parties in August of 2025.

11 Through the Settlement Agreement, the Parties agreed to resolve all matters
12 pertaining to, arising from, or associated with this Litigation and the Incident, including
13 all claims that Plaintiff and Settlement Class Members have or may have had against
14 Barracuda and related persons and entities relating to the access of their Private
15 Information. Plaintiff now seeks preliminary approval of the Settlement.

16 **C. Terms of the Settlement**

17 The proposed Class is defined as follows;

18 All individuals who may have had Private Information potentially
19 compromised as a result of the Incident, and who were provided notice of the
20 Incident by Wescom. (the “Class”).

21 SA ¶ 44. The Class consists of approximately 32,964 individuals. SA ¶ 2. Excluded from
22 the Settlement Class are: (1) the judge presiding over the Action and members of her direct
23 family, and the court personnel working on the Action, including the Court personnel’s
24 direct family members, (2) Defendant, its subsidiaries, parent companies, successors,
25 predecessors, and any entity in which the Defendant or Defendant’s parent companies
26 have a controlling interest and their current or former officers and directors, (3) Wescom
27 Central Credit Union, its subsidiaries, parent companies, successors, predecessors, and
28

1 any entity in which the Wescom or Wescom's parent companies have a controlling interest
2 and their current or former officers and directors, and (4) Settlement Class Members who
3 submit a valid Request for Exclusion prior to the Opt-Out Deadline. SA ¶ 44.

4 1. The Settlement Benefits

5 Pursuant to the Settlement Agreement, Settlement Class Members may choose any
6 or all applicable categories of compensation subject to the requirements and limitations
7 set forth below. The overall compensation cap for any individual for all amounts claimed
8 for Ordinary Losses and Lost Time is \$500. SA ¶ 51. To submit a claim, a Class Member
9 needs only submit a Claim Form prior to the Claim Deadline. SA ¶¶ 14, 15, Ex. A.

10 All Settlement Class Members may claim compensation, up to a total of \$500.00,
11 upon submission of a Claim Form and supporting documentation, for out-of-pocket
12 monetary losses incurred as a result of the Incident, including, without limitation,
13 unreimbursed losses relating to unreimbursed bank fees, long distance phone charges, cell
14 phone charges (only if charged by the minute), data charges (only if charged based on the
15 amount of data used), postage, or gasoline for local travel; fees for credit reports, credit
16 monitoring, or any other insurance product purchased between October 2022 and the date
17 of the Claims Deadline. SA ¶ 51(i).

18 All Settlement Class Members are eligible to make a claim for compensation of up
19 to 3 hours of lost time (at \$20 per hour) spent dealing with the Incident, provided that the
20 Settlement Class Member submits an attestation in the Claim Form affirming that the time
21 was spent dealing with issues relating to the Incident. SA ¶ 51(ii).

22 Settlement Class Members will also be eligible for compensation up to \$1,500 for
23 proven Extraordinary Losses provided that (1) the loss is an actual, documented, and
24 unreimbursed loss; (2) the loss was more likely than not caused by the Incident; (3) the
25 loss occurred during a specified period; and (4) the loss is not already covered by one or
26 more of the other categories of settlement benefits, and the Settlement Class Member made
27 reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited
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1 to exhaustion of all available credit monitoring insurance and identity theft insurance. SA
2 ¶ 51(iii).

3 All Settlement Class Members shall be automatically provided with a 1-year
4 membership of 3B credit monitoring with at least \$1 million in fraud protection through
5 Intersections, LLC d/b/a Pango Group. The codes for the services will be sent with the
6 Notice, and Settlement Class Members will not be required to file a formal claim to obtain
7 this benefit, but rather will merely need to enroll and activate the service after the Effective
8 Date. SA ¶ 51(iv).

9 Notice and Administrative Expenses, including the cost of Notice, will be paid by
10 the Settlement Administrator and funded by Barracuda separate and apart from the relief
11 made available to Settlement Class Members. S.A. ¶ 52.

12 The Parties negotiated the Settlement Benefits (and structure) as fair compensation
13 by discussing the type of personal information allegedly collected and shared, and the
14 types of damages any such disclosures caused Class Members. Here, the benefits to the
15 Class outweigh the risk, time delay, and net expected value of continued litigation.

16 2. Administration of Notice and Claims

17 The Parties have agreed to use RG/2 Claims Administration (“Settlement
18 Administrator”) to act as the Settlement Administrator to oversee the administration of the
19 Settlement. The Declaration of William W. Wickersham Regarding Notice Administration
20 is attached to the Declaration of John J. Nelson as **Exhibit 2**. Notice will be given to the
21 Settlement Class via individual notice, and will be given by written, direct notice (attached
22 to the Settlement Agreement as Exhibit B) by email or U.S. Mail to all Settlement Class
23 Members. SA ¶ 59.

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

27 A settlement website will be established and administered by the Settlement
28 Administrator, and shall contain information about the Settlement, including electronic

copies of the exhibits to the Settlement Agreement (or any forms of these notices that are approved by the Court), the Settlement Agreement, and all Court documents related to the Settlement, a copy of the Long Form Notice, FAQs, a Claim Form that may be submitted online through the Settlement Website or mailed to the Settlement Administrator, and the deadlines for filing a Claim Form, objection to the Settlement Agreement, Request for Exclusion, Fee and Expense Application, and the date of the Final Approval Hearing. SA ¶ 49.

3. Exclusions and Objections

The Notice shall explain the procedure for Settlement Class Members to exclude themselves or “opt-out” of the Settlement by submitting a Request for Exclusion to the Settlement Administrator postmarked no later than the Opt-Out Deadline. SA ¶ 61. The proposed Opt-Out Deadline is 60 days after the Notice Date. SA ¶ 33. The Request for Exclusion must identify the name of the proceeding, the individual’s full name, current address, personal signature, and the words “Request for Exclusion” or a comparable statement that the individual does not wish to participate in the Settlement Agreement. *Id.* The Notice must state that any Settlement Class Member who does not file a timely Request for Exclusion in accordance with this Paragraph will lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement. *t. Id.* Any Settlement Class Member who does not file a timely Request for Exclusion will lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement.

The Notice shall also explain the procedure for Settlement Class Members to object to the Settlement by submitting a written Objection to the Settlement Administrator postmarked no later than the no later than the Objection Deadline. SA ¶ 62. The proposed Objection Deadline is also 60 days after the Notice Deadline. *Id.* ¶ 32. A written objection must: (1) the name of the proceeding, (2) the Settlement Class Member’s full name, current mailing address, email address, and telephone number, (3) a statement of the specific grounds for the objection, as well as any documents supporting the objection, (4)

1 the identity of any attorneys representing the objector, (5) a statement regarding whether
2 the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval
3 Hearing, (6) a statement identifying all class action settlements objected to by the
4 Settlement Class Member in the previous five (5) years, and (7) the signature of the
5 Settlement Class Member or the Settlement Class Member's attorney. *Id.* ¶ 62.

6 4. Attorneys' Fees, Costs and Service Awards to Class Representative

7 The Parties did not discuss attorneys' fees or a service award until after class relief
8 was agreed upon. Nelson Decl. ¶ 8. The Settlement Agreement contemplates that within
9 twenty-five (25) days after the Notice Deadline, Settlement Class Counsel will file a Fee
10 and Expense Application for an award of attorneys' fees to be paid by Defendant separate
11 and apart from the Settlement Benefits of up to One Hundred Twenty-Five Thousand
12 Dollars (\$125,000.00), which shall be inclusive of costs and expenses actually incurred.
13 SA ¶ 83. Plaintiff will also move the Court for a reasonable service award of \$5,000 to
14 Plaintiff, in recognition of her efforts on behalf of the Class. *Id.* at ¶ 84.

15 **D. Fairness Hearing**

16 If the proposed Settlement Class is certified and the Settlement preliminarily
17 approved, Plaintiff respectfully requests that the Court set a Final Fairness Hearing within
18 a reasonable time after the Notice Deadline, Objection Deadline, and Opt-Out Deadline;
19 and at least 90 days after the Settlement Administrator notifies the appropriate government
20 officials of this Settlement Agreement pursuant to the Class Action Fairness Act of 2005,
21 28 U.S.C. § 1715. SA ¶ 13.

22 **IV. LEGAL ARGUMENT**

23 Plaintiff brings this motion pursuant to the Federal Rules of Civil Procedure, Rule
24 23(e), under which court approval is required to finalize a class action settlement. Courts,
25 including those in this Circuit, endorse a three-step procedure for approval of class action
26 settlements: (1) preliminary approval of the proposed settlement followed by (2)
27 dissemination of court-approved notice to the class and (3) a final fairness hearing at which
28 class members may be heard regarding the settlement and at which evidence may be heard

1 regarding the settlement's fairness, adequacy, and reasonableness. Manual for Complex
2 Litig. (Fourth) (2004) § 21.63.

3 Here, Plaintiff requests that the Court take the first step, and grant preliminary
4 approval of the proposed Settlement Agreement. Federal courts strongly favor and
5 encourage settlements, particularly in class actions and other complex matters where the
6 inherent costs, delays, and risks of continued litigation might otherwise overwhelm any
7 potential benefit the class could hope to obtain. *See Class Plaintiffs v. City of Seattle*, 955
8 F.2d 1268, 1276 (9th Cir. 1992) (noting the "strong judicial policy that favors settlements,
9 particularly where complex class action litigation is concerned"); 4 Newberg on Class
10 Actions § 11.41 (4th ed. 2002) (citing cases). The Manual for Complex Litigation (Fourth)
11 advises that in cases presented for both preliminary approval and class certification, the
12 "judge should make a preliminary determination that the proposed class satisfies the
13 criteria." § 21.632.

14 Because a court evaluating certification of a class action that is being settled is
15 considering certification only in the context of settlement, the court's evaluation is
16 somewhat different than in a case that has not yet settled. *Amchem Prods., Inc. v. Windsor*,
17 521 U.S. 591, 620 (1997). In some ways, the court's review of certification of a settlement-
18 only class is lessened: as no trial is anticipated in a settlement-only class case, case
19 management issues need not be addressed. *See id.* Other certification issues, however,
20 such as "those designed to protect absentees by blocking unwarranted or overbroad class
21 definitions," require heightened scrutiny in the settlement context "for a court asked to
22 certify a settlement class will lack the opportunity, present when a case is litigated, to
23 adjust the class, informed by the proceedings as they unfold." *Id.*

24 As outlined below, the Court should certify the proposed class for settlement
25 purposes and preliminarily approve the Settlement.

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

27 Before assessing the parties' settlement, the Court should first confirm the
28 underlying Settlement Class meets the requirements of Rule 23(a). *See Amchem*, 521

U.S. at 620; Manual for Complex Litig. (Fourth), § 21.632. The requirements are well known: numerosity, commonality, typicality, and adequacy—each of which is met here. Fed. R. Civ. P. 23(a); *Ellis v. Costco Wholesale Corp.*, 657 F.3d. 970, 979–80 (9th Cir. 2011).

1. The Settlement Class is Sufficiently Numerous

Courts find numerosity where there are so many class members as to make joinder impracticable. *See* Fed. R. Civ. P. 23(a)(1). Courts will find numerosity is satisfied where a class includes at least 40 members. *Holly v. Alta Newport Hospital, Inc.*, 2020 WL 1853308, at *7 (C.D. Cal. April 10, 2020) (*citing Rannis v. Recchia*, 380 Fed. App’x 646, 651 (9th Cir. 2010)). Numbering approximately 32,964 individuals, the proposed Settlement Class easily satisfies Rule 23’s numerosity requirement.

2. The Settlement Class Satisfies the Commonality Requirement

The Settlement Class also satisfies the commonality requirement, which requires that class members’ claims “depend upon a common contention,” of such a nature that “determination of its truth or falsity will resolve an issue that is central to the validity of each [claim] in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Here, as in most data privacy cases, “[t]hese common issues all center on [defendant’s] conduct, satisfying the commonality requirement.” *In re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, 2016 WL 6902351, at *2 (N.D. Ga. Aug. 23, 2016). Here, common questions include, *inter alia*, whether Barracuda engaged in the wrongful conduct alleged; whether Settlement Class Members’ Private Information was unlawfully disclosed to third parties; whether Barracuda owed a duty to Plaintiff and Settlement Class members; whether Barracuda breached its duties; and whether Barracuda violated the common law and applicable statutes as alleged in the Complaint. Thus, Plaintiff has met the commonality requirement of Rule 23(a).

3. Plaintiff’s Claims and Barracuda’s Defenses are Typical

Plaintiff satisfies the typicality requirement of Rule 23 because Plaintiff’s claims are “reasonably coextensive with those of the absent class members.” *See* Fed. R. Civ. P.

23(a)(3); *Meyer v Portfolio Recovery Assocs.*, 707 F.3d 1036, 1042 (9th Cir. 2012) (upholding typicality finding). Plaintiff alleges that they were therefore impacted by the same Incident which may have disclosed their information to unauthorized parties, and that they were therefor impacted by the same harm 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. Plaintiff is an Adequate Settlement Class Representative

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, Plaintiff has no conflicts of interest with other class members, is subject to no unique defenses, and she and her counsel have and continue to vigorously prosecute this case on behalf of the class. Plaintiff is a member of the Settlement Class who experienced the same injuries and seek, like other Settlement Class members, compensation for Barracuda’s allegedly unlawful disclosure of their information. As such, her interests and those of her counsel are consistent with those of the Settlement Class. Further, counsel for Plaintiff has decades of combined experience vigorously litigating class actions, and are well suited to advocate on behalf of the Class. Nelson Decl. ¶¶ 20-24 & Ex. 2. Plaintiff satisfies 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, Plaintiff alleges 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

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

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

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

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

C. The Court Should Preliminarily Approve the Settlement

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

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

The Ninth Circuit has identified nine factors to consider in analyzing the fairness, reasonableness, and adequacy of a class settlement: (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of

maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the views of counsel; (7) the presence of a governmental participant; (8) the reaction of the class members to the proposed settlement and; (9) whether the settlement is a product of collusion among the parties. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011); *see also Hanlon*, 150 F.3d at 1026. Rule 23(e) requires a court to consider several additional factors, including that the class representative and class counsel have adequately represented the class, and that the settlement treats class members equitably relative to one another. Fed. R. Civ. P. 23(e).

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

1. The Strength of Plaintiff’s Case

Plaintiff believes she has built a strong case for liability. Plaintiff contends that Barracuda is liable for its allegedly unfair and unlawful conduct under common law tort theories as well as state consumer protection statutes, claims which courts have frequently upheld in data-disclosure cases against other defendants. Plaintiff believes she stands a reasonable chance of proving the allegations in the Complaint. However, Plaintiff also recognizes success is not guaranteed. It is “plainly reasonable for the parties at this stage to agree that the actual recovery realized and risks avoided here outweigh the opportunity to pursue potentially more favorable results through full adjudication.” *Dennis v. Kellogg Co.*, 2013 WL 6055326, at *3 (S.D. Cal. Nov. 14, 2013). “Here, as with most class actions, there was risk to both sides in continuing towards trial. The settlement avoids uncertainty for all parties involved.” *Chester v. TJX Cos.*, 2017 WL 6205788, at *6 (C.D. Cal. Dec. 5, 2017). Given the heavy obstacles and risks inherent in data disclosure class actions,

1 including class certification, summary judgment, and trial, the substantial benefits the
2 settlement provides favor preliminary approval of the settlement. Nelson Decl. ¶¶ 13-16.

3 2. The Risks, Expense, Complexity, and Likely Duration of Further
4 Litigation

5 Plaintiff believes her claims are viable and that she is likely to prevail on at least
6 some of the liability theories and statutory and common law claims Plaintiff pleaded in
7 her operative Complaint. While Plaintiff believes she has strong claims and would prevail,
8 success is not guaranteed, and Defendant has denied liability and indicated a strong
9 willingness to contest the claims both in litigation and arbitration.

10 The value achieved through the Settlement Agreement is guaranteed, where
11 chances of prevailing on the merits are uncertain — especially where serious questions of
12 law and fact exist, which is common in data disclosure litigation. This field of litigation is
13 evolving; there is no guarantee of the ultimate result. *See Gordon v. Chipotle Mexican*
14 *Grill, Inc.*, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) (“Data breach cases . . . are
15 particularly risky, expensive, and complex.”).

16 While Plaintiff has arguments and authorities that can support her allegations, the
17 number of issues in this case, which centers on a developing area of law—litigation
18 centering on data security practices and injuries arising from the disclosure of personal
19 information —creates significant uncertainty. There is no guarantee that the Court or a
20 jury would find Plaintiff’s arguments more persuasive during a trial or subsequent appeals.
21 Thus, despite Plaintiff’s confidence in the strength of this case, numerous legal issues and
22 factual disputes exist that undermine the certainty of a more favorable outcome for the
23 Settlement Class.

24 In addition, there are inherent risks associated with taking any novel class action to
25 trial, including pre-trial risks of obtaining class certification and defeating summary
26 judgment. And plaintiffs in cases in which their private information is shared without their
27 consent often allege injuries, such as the risk of future identity theft, and loss of control of
28 their sensitive information, which are the subject of intense controversy. Even if class

1 certification is obtained and Plaintiff is successful at trial, or, alternatively, if Barracuda
2 obtains summary judgment, Barracuda or Plaintiff would likely appeal, causing further
3 delay and raising expenses. The Settlement allows for Class Members to obtain benefits
4 within the near future—as opposed to potentially waiting for years—and eliminates the
5 possibility of receiving no benefits.

6 Moreover, the complexity, length, and expense of further litigation favors
7 settlement now. Continued litigation would likely involve costly discovery involving
8 experts regarding damages, motions for summary judgment, a motion for class
9 certification, and one or more interlocutory appeals, all of which would delay final
10 resolution. Litigating this case to a favorable conclusion will require a considerable
11 amount of time and resources and weighs in favor of accepting the Settlement now. *In re*
12 *Peanut Farmers Antitrust Litig.*, 2021 WL 3174247 (ED. Va. July 27, 2021), see also *In*
13 *re MicroStrategy, Inc. Securities Litigation*, 148 F. Supp 2d 654, 667 (E.D. Va. 2001)
14 (where the court granted plaintiffs’ motion for settlement, in part because “additional
15 litigation of plaintiffs’ claims...would likely have been protracted and costly...”).

16 Thus, given the risks Plaintiff faces going forward, the amounts offered in
17 Settlement is well-balanced against the hurdles Plaintiff will have to overcome to find
18 success later down the road. This factor also weighs in favor of approval.

19 3. The Risk of Maintaining Class Action Status Through Trial

20 While Plaintiff’s case is still in the pleadings stage, the parties have not briefed and
21 the Court has not yet certified any class treatment of this case. If this case was to proceed
22 through trial, Plaintiff would encounter risks in obtaining and maintaining certification of
23 the class. Defendant will certainly oppose certification if the case proceeds. Thus, Plaintiff
24 “necessarily risk[s] losing class action status.” *Grimm v. Am. Eagle Airlines, Inc.*, 2014
25 WL 12746376, at *10 (C.D. Cal. Sept. 24, 2014). Class certification in contested consumer
26 data privacy cases is not common—first occurring in *Smith v. Triad of Ala., LLC*, 2017
27 WL 1044692, at *16 (M.D. Ala. Mar. 17, 2017), a data breach case. While certification of
28

1 additional consumer data disclosure classes may well follow, the dearth of direct precedent
2 adds to the risks posed by continued litigation.

3 4. The Amount Offered in Settlement

4 In light of the risks and uncertainties presented by data disclosure litigation, the
5 value of the settlement favors approval. The settlement immediately makes significant
6 relief available to Settlement Class members. Each Settlement Class member is eligible to
7 make a claim for cash payments. Because the settlement amount here is reasonably
8 comparable to other settlements reached and approved in similar cases, this factor reflects
9 that the settlement is fair. *See Calderon v. Wolf Firm*, 2018 WL 6843723, at *7-8 (C.D.
10 Cal. Mar. 13, 2018) (comparing class settlement with other settlements in similar cases).

11 This settlement is a strong result for the Settlement Class in light of the difficulties
12 and expenses Settlement Class Members would face to pursue individual claims, and the
13 likelihood that they might be unaware of their claims, this settlement amount is
14 appropriate.

15 5. The Extent of Discovery Completed and the Stage of the
16 Proceedings

17 Before entering into any settlement discussions on behalf of class members, counsel
18 should have “sufficient information to make an informal decision.” *Linney v. Cellular*
19 *Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir. 1998). Here, Plaintiff and Class Counsel
20 vigorously and aggressively gathered all information available regarding Barracuda and
21 the Incident. Nelson Decl. ¶¶ 3, 6-8. In addition to engaging in formal discovery efforts,
22 the Parties also exchanged non-public information relating to the alleged disclosure of
23 information and the size of makeup of the Settlement Class. *Id.*

24 Class Counsel’s collective decades of experience in similar types of privacy and
25 data protection class actions provided substantive knowledge that enabled them to
26 represent Plaintiff’s and the Settlement Class’s interests without expending hundreds of
27 hours and enormous financial resources to come up to speed on the subject area. Nelson
28 Decl., ¶¶ 21-23. Plaintiff is well informed about the strengths and weaknesses of this case,

1 thus “the efficiency with which the Parties were able to reach an agreement need not
2 prevent this Court from granting . . . approval.” *Hillman v. Lexicon Consulting, Inc.*, 2017
3 WL 10433869, at *8 (C.D. Cal. April 27, 2017).

4 6. The Experience and Views of Counsel

5 Class Counsel initiated the lawsuit that is now pending shortly after Barracuda
6 informed Wescom of the Incident and Wescom in turn published notice alerting Plaintiff
7 and approximately 34,000 others of the Incident. Class Counsel has substantial experience
8 litigating complex class cases of various types, including data privacy cases such as this
9 one. *See* Nelson Decl., ¶¶ 21-23, Ex. 2. Having worked on behalf of the putative class for
10 well over a year, evaluated the legal and factual disputes, and dedicated significant time
11 and monetary resources to this litigation, proposed Class Counsel endorses the Settlement
12 without reservation. *Id.* ¶ 33. A great deal of weight is accorded to the recommendation of
13 counsel, who are most closely acquainted with the facts of the underlying litigation. *See*,
14 *e.g.*, *Norton v. Maximus, Inc.*, 2017 WL 1424636, at *6 (D. Idaho Apr. 17, 2017); *Nat’l*
15 *Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004). Thus, this
16 factor supports approval.

17 7. Governmental Participants

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

19 8. The Reaction of the Settlement Class to the Settlement

20 Because notice has not yet been given, this factor is not yet implicated; however,
21 Plaintiff supports the Settlement. Nelson Decl. ¶ 12.

22 9. Lack of Collusion Among the Parties

23 The Parties negotiated a substantial settlement through arms-length negotiations,
24 and only after Plaintiff prevailed on Defendant’s attempt to dismiss her Complaint and the
25 parties engaged in formal discovery. The Parties did not commence discussion of fees until
26 an agreement on all substantive portions of the class resolution had been reached. The
27 Court can rest assured that the negotiations were not collusive.
28

10. The Settlement Treats Settlement Class Members Equitably

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

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 any and all of the Settlement Benefits and all will be affirmatively provided with Credit Monitoring without needing to submit a claim. As such, this factor also weighs in favor of approval.

D. The Court Should Approve the Proposed Notice Program

Rule 23 requires that prior to final approval, the “court must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1)(B). For classes certified under Rule 23(b)(3), “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). “The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means.” *Id.* The “best notice practicable” means “individual notice to all members 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, 812 (1985). Class settlement notices must present information about a proposed settlement simply, neutrally, and understandably and must describe the terms of the class action settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard. *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 567 (9th Cir. 2019).

1 Here, the parties have agreed to a robust notice program to be administered by a
2 well-respected third-party class administrator, RG/2, which will use all reasonable efforts
3 to provide direct and individual notice to each potential Settlement Class member via
4 email notice. The costs of administering the settlement will be paid by Barracuda. SA ¶
5 31. The Notice and Claim Form negotiated by the Parties are clear and concise and inform
6 Settlement Class members of their rights and options under the settlement, including
7 detailed instructions on how to make a claim, object to the settlement, or opt-out of the
8 Settlement. SA Exs. A, B and C.

9 In addition to the direct notice, the Administrator will also establish a dedicated
10 Settlement Website and will maintain and update the website throughout the Claims
11 Period, with the forms of Short Notice, Long Notice, and Claim Form approved by the
12 Court, as well as the Settlement Agreement. *Id.*, ¶ 49. Plaintiff has negotiated a notice
13 program that is reasonably calculated under all the circumstances to apprise Settlement
14 Class members of the pendency of the action and afford them an opportunity to present
15 their objections. Because this notice plan ensures that Settlement Class members' due
16 process rights are amply protected, it should be approved by this Court.

17 **E. Appointment of Settlement Class Counsel**

18 Under Rule 23, "a court that certifies a class must appoint class counsel [who must]
19 fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B).
20 Courts generally consider the following attributes: the proposed class counsel's (1) work
21 in identifying or investigating potential claims, (2) experience in handling class actions or
22 other complex litigation, and the types of claims asserted in the case, (3) knowledge of the
23 applicable law, and (4) resources committed to representing the class. Fed. R. Civ. P.
24 23(g)(1)(A)(i-iv).

25 Here, proposed Class Counsel have extensive experience prosecuting class actions
26 and other complex cases, and specifically data privacy cases. *See* Nelson Decl., ¶¶ 20-23,
27 Ex. 3, Accordingly, the Court should appoint John J. Nelson of Milberg Coleman Bryson
28 Phillips Grossman, PLLC as Settlement Class Counsel.

1 **V. CONCLUSION**

2 For these reasons, Plaintiff respectfully requests that the Court enter an order: (1)
3 provisionally certifying the Settlement Class, (2) preliminarily approving the Settlement,
4 including all exhibits, (3) appointing Plaintiff Priscilla Wall as Class Representative, (4)
5 appointing John J. Nelson of Milberg Coleman Bryson Phillips Grossman, PLLC; as Class
6 Counsel, (5) appointing RG/2 as Settlement Administrator, (6) approving the form and
7 manner of Notice, and (7) approving the proposed schedule of events, and (8) scheduling
8 a Final Approval Hearing.

9
10 DATED: August 29, 2025

Respectfully submitted,

11 /s/ John J. Nelson

12 John J. Nelson (SBN 317598)

13 **MILBERG COLEMAN BRYSON**

14 **PHILLIPS GROSSMAN, PLLC**

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19 *Attorney for Plaintiff and*
20 *the Proposed Class*

21 **CERTIFICATE OF SERVICE**

22 The undersigned hereby certifies that on August 29, 2025 the foregoing document
23 was filed via the Court's ECF system, which will cause a true and correct copy of the same
24 to be served electronically on all ECF-registered counsel of record.

25 /s/ John J. Nelson

26 John J. Nelson (SBN 317598)