**NOT FOR PUBLICATION**

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STEVE PRYOR, individually, and on behalf of all others similarly situated; SILVIA CORTEZ; SABRINA SINGLETON; KAYLA DREVENAK; AMANDA EDWARDS; SUSAN FERRYMAN; TAYLOR GROSE; KATHERINE HULSEY; DEE R. IGLEHART; AMY JENKINS; STORMY LINGER; SANDRA HUNDLEY; JUSTIN MIEIR; LISA MIKEC; BRIAN O'CONNOR; KELLY ROGERS; LOUSHANDRA VAUGHN; BRITTNEY WOOD; CRYSTAL LINGER; SHANE SCHEIB,

Plaintiffs - Appellees,

MIRIAM MABEL BROWN; DAVID LOPEZ,

Objectors - Appellants,

v.

BLACKHAWK NETWORK, INC., doing business as Blackhawk Engagement Solutions,

Defendant - Appellee.

No. 24-4326

D.C. No. 3:22-cv-07084-CRB

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

STEVE PRYOR; SILVIA CORTEZ; SABRINA SINGLETON; KAYLA DREVENAK; AMANDA EDWARDS; SUSAN FERRYMAN; TAYLOR GROSE; KATHERINE HULSEY; SANDRA HUNDLEY; DEE R. IGLEHART; AMY JENKINS; STORMY LINGER; JUSTIN MIEIR; LISA MIKEC; BRIAN O'CONNOR; KELLY ROGERS; LOUSHANDRA VAUGHN; BRITTNEY WOOD; CRYSTAL LINGER; SHANE SCHEIB,

Plaintiffs - Appellees,

v.

MIRIAM MABEL BROWN; DAVID LOPEZ,

Objectors - Appellants,

v.

BLACKHAWK NETWORK, INC.,

Defendant - Appellee.

No. 24-6906

D.C. No. 3:22-cv-07084-CRB

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Submitted October 19, 2026[**]

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

San Francisco, California

Before: CALLAHAN and LEE, Circuit Judges, and EZRA, District Judge.[***]

Miriam "Mabel" Brown and David Lopez appeal the district court's approval of a class action settlement arising from a data breach involving website users' personally identifiable information. They also appeal the district court's order requiring them to post a $15,000 appeal bond under Federal Rule of Appellate Procedure 7. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. Standing as objectors. Because Brown and Lopez are not class members, they lack standing to object to the class settlement. We review questions of standing de novo. *Garcia v. Cnty. of Alameda*, 150 F.4th 1224, 1229 (9th Cir. 2025). In class action litigation, "[o]bjectors bear the burden of proving standing." *In re Transpacific Passenger Air Transp. Antitrust Litig.*, No. 23-15118, 2024 WL 810703, at *1 (9th Cir. Feb. 27, 2024), *cert denied sub nom. Xanadu Corp. v. Adlin*, 145 S. Ct. 278 (2024). Rule 23 provides that all class members, including absent members and class representatives, have standing to object to a settlement. Fed. R. Civ. P. 23(e)(5); *see also Devlin v. Scardelletti*, 536 U.S. 1, 8–9 (2002); *Radcliffe v. Experian Info. Sols. Inc.*, 715 F.3d 1157, 1162 (9th Cir. 2013). An objector who demonstrates class membership therefore meets the burden of proving standing.

[***] The Honorable David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.

Conversely, "objectors who fail to demonstrate their class membership are often held not to have standing, as they have not met the burden of showing that standing." 6 *Newberg on Class Actions* § 13:22 (5th ed.).

For those objectors in the latter category, we have held that "a non-settling entity generally lacks prudential standing to object to a settlement—or to challenge on appeal a district court's approval of a settlement, unless the non-settling entity demonstrates that it will 'sustain some formal legal prejudice as a result of the settlement.'" *Sweet v. Cardona*, 121 F.4th 32, 44 (9th Cir. 2024) (quoting *Waller v. Fin. Corp. of Am.*, 828 F.2d 579, 583 (9th Cir. 1987)). Such prejudice "exists only in [ ] rare circumstances," like when a "settlement agreement *formally* strips a non-settling party of a legal claim or cause of action." *Id.* at 45 (internal citations omitted).[1]

Here, Brown and Lopez are not members of the settlement class. The district court certified a settlement class of all "individuals whose Personally Indentifiable Information or payment car information . . . was impacted in Blackhawk Network, Inc.'s Date Security Incident." But Blackhawk submitted a sworn—and

[1] As we noted in *Sweet*, this might be better framed as asking "whether a non-settling entity has a 'cause of action' to object to the settlement, instead of asking whether the non-settling party has 'standing' to object to the settlement." 121 F.4th at 41 n.3. "Still, because we, and our sister circuits, have predominantly referred to the *Waller* formal-legal-prejudice requirement as a 'standing' requirement, we continue to do so here." *Id.* (collecting cases).

unrebutted—declaration stating that neither Brown nor Lopez was impacted by the data breach. They thus cannot object to a class settlement that does not bind them.

Brown and Lopez characterize Blackhawk's declaration as "self-serving," and state that Blackhawk customer service representatives sent reply emails stating, "Yes, was [*sic*] impacted your card" (in response to Brown's inquiry) and "Yesm [*sic*] the card it was affected" (to Lopez). But Blackhawk submitted a sworn declaration that the customer service representatives were mistaken. Brown and Lopez do not rebut that declaration, and instead vaguely assert that Blackhawk somehow "stole" and kept their money. As the district court notes in its appeal bond order, "[t]hose assertions, even if true, do not make Brown and Lopez members of the settlement class."

Brown and Lopez also assert that the settlement waives their rights under California Civil Code § 1542: "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." But the final settlement order expressly defines "Releasing Parties" as members of the settlement class. Brown and Lopez are not class members, so they are not releasing parties within the meaning of California Civil Code § 1542.

Moreover, it is well-settled that entities outside of the settlement class are not

bound by a settlement order's preclusive effect on class members. *See, e.g.*, *Vazquez v. Jan-Pro Franchising Int'l, Inc.*, 986 F.3d 1106, 1114–15 (9th Cir. 2021); *L.A. Branch NAACP v. L.A. Unified Sch. Dist.*, 750 F.2d 731, 741 (9th Cir. 1984). *See generally Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 327 n.7 (1979). Brown and Lopez retain the ability to pursue Blackhawk allegedly stealing funds from their prepaid cards. Neither the settlement, nor the district court's order approving the settlement, bars Brown and Lopez from bringing claims to remedy the alleged pecuniary harm in a separate lawsuit. *Cf. Sweet*, 121 F.4th at 46.

In short, because Brown and Lopez "do not have prudential standing to object to the settlement, we cannot review the settlement approved by the district court." *Id.* at 47 (internal quotation marks omitted).

2. Appeal bond. Finally, Brown and Lopez contend the district court erred by ordering them to post a $15,000 appeal bond.[2] We disagree. The amount of a bond necessary to secure payment of costs on appeal rests within the discretion of the district court, and the record before us evinces no abuse of that discretion. Fed. R. App. P. 7.

When determining whether to require class action objectors to post an appeal bond, courts in the Ninth Circuit consider: (1) the appellant's financial ability to post

[2] To date, Brown and Lopez have not posted any amount toward the $15,000 appeal bond, nor have they offered any justification for their noncompliance.

a bond; (2) the risk that the appellant will not pay the costs if the appeal loses; (3) the merits of the appeal; and (4) whether the appellant has shown bad faith or vexatious conduct. *See Jabbari v. Wells Fargo & Co.*, No. 15-cv-02159-VC, 2018 WL 11024841, at *7 (N.D. Cal. June 14, 2018); *Figure Eight Holdings, LLC v. Dr. Jays, Inc.*, 534 F. App'x 670, 670–71 (9th Cir. 2013).

On balance, the relevant factors weigh in favor of a bond. Brown and Lopez did not submit any evidence showing an inability to post an appeal bond. They appear to reside outside the jurisdiction of the Ninth Circuit. *See Padget v. Loventhal*, No. 04-cv-3946-EJD, 2015 WL 4240804, at *3 (N.D. Cal. July 13, 2015) (objector-appellant's residence outside circuit weighs in favor of bond). And the district court found that Brown and Lopez are not likely to succeed on the merits of their appeal. As to the amount of bond, the district court was within its discretion to accept the $15,000 amount offered in a sworn declaration by Kiley Grombacher, class counsel in the underlying action.

**AFFIRMED.**