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15
16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF LOS ANGELES**

18 KYNDAL CHRISTOFFERSON, NATALIE)
19 GERACE, AND ERIN RATELLE, individually)
and on behalf of all others similarly situated,)

20 Plaintiffs,)
21)

22 v.)

23 CREATION ENTERTAINMENT, INC.,)
24 Defendant.)

Case No. 19STCV11000

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

DATE: June 24, 2021
TIME: 9:00 a.m.
JUDGE: Hon. Elihu M. Berle
DEPT.: 6

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on June 24, 2021 at 9:00 a.m., or as soon thereafter as the
3 matter may be heard, in Department 6 of the Superior Court of California, County of Los Angeles,
4 located at 312 North Spring Street, Los Angeles, California 90012, Plaintiffs Kyndal Christofferson,
5 Natalie Gerace, and Erin Ratelle (collectively, "Plaintiffs") will move and do hereby move this Court,
6 pursuant to California Rules of Court, rule 3.769, *et seq.*, and California Code of Civil Procedure,
7 section 382, for an order finally approving the proposed settlement of this action and entering the Final
8 Approval Order and Judgment. Specifically, Plaintiffs seek a final order and judgment that, *inter alia*:
9 (i) finally approves the proposed Settlement; (ii) certifies the Settlement Class; and (iii) finds that the
10 Class Notice constituted the best practicable notice and was provided in accordance with the Court's
11 March 8, 2021 Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement
12 ("Preliminary Approval Order") and the terms of the Settlement.¹

13 This Motion is made on the grounds that the proposed Settlement is fair, reasonable and
14 adequate and that Class Notice has been provided in compliance with the Court's Preliminary
15 Approval Order and the terms of the Settlement.

16 This motion is based upon: this Notice of Motion and Motion; the accompanying
17 Memorandum of Points and Authorities; the Joint Declaration of Rachele R. Byrd, Benjamin F. Johns
18 and Tina Wolfson ("Joint Decl."); the Declaration of Julie N. Green on Behalf of CPT Group, Inc.,
19 Regarding Compliance With the Court Approved Notice Program ("Green Decl."); the individual
20 Declarations of Plaintiffs Kyndal Christofferson ("Christofferson Decl."), Natalie Gerace ("Gerace
21 Decl."), and Erin Ratelle ("Ratelle Decl."); all files and records in this action; and any argument and
22 evidence which the Court may consider.

23 DATED: May 7, 2021

By: 
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24
25
26 ¹ The "Settlement" is the First Amended Settlement Agreement and Release filed January 15,
27 2021 as Exhibit 1 to the Joint Declaration of Counsel for Plaintiffs in Support of Unopposed Motion
28 for an Order Preliminarily Approving Class Action Settlement, Directing Notice and Setting Final
Approval Hearing, filed January 15, 2021 ("Preliminary Approval Decl."), Ex. 1.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On March 8, 2021, this Court granted preliminary approval of the proposed Settlement² that
4 would resolve this litigation. The Court provisionally certified the proposed class pursuant to the
5 California Rules of Court (“CRC”) 3.769(c)-(f) for settlement purposes, preliminarily approved the
6 Settlement terms as fair, reasonable and adequate, directed notice to the class, and scheduled a final
7 approval hearing for June 24, 2021. Pursuant to CRC 3.769(a)-(b) and (g)-(h), Plaintiffs now submit
8 this memorandum in support of final approval of the Settlement.

9 The Settlement is fair, reasonable, and adequate and represents a substantial recovery for the
10 Class. Providing for a \$950,000 Settlement Fund, the Settlement delivers considerable relief to the
11 Settlement Class. Despite the strength of Plaintiffs’ claims, the Settlement Class would otherwise
12 continue to face significant litigation risk in the form of opposition to class certification, motions for
13 summary judgment, protracted fact and expert discovery, trial and potential appeals.

14 As a product of arms’ length negotiations between experienced and informed counsel, the
15 Settlement was reached after more than a year-and-a-half of litigation including considerable
16 discovery. The Settlement terms, notice to the class, and the claims process were negotiated to meet
17 the Los Angeles Superior Court’s Checklists for preliminary and final approval of class action
18 settlements.³

19 The Parties have complied with the Court’s Preliminary Approval Order and the reaction of
20 the Class has been overwhelmingly positive. While objections and opt outs are not due until May 24,
21 2021, as of the filing of this motion, in response to 57,020 direct Summary Notice emails, a print
22 publication campaign, an internet campaign, a press release, a website, and a toll-free number, no one
23

24 ² Unless otherwise noted, capitalized terms have the meaning ascribed to them in the First
25 Amended Settlement Agreement.

26 ³ See LOS ANGELES SUPERIOR COURT, COMPLEX CIVIL DEPARTMENT, *Checklist for Preliminary*
27 *Approval of Class Action Settlements* (Aug. 2020), <http://www.lacourt.org/division/civil/pdf/PreliminaryApprovalofClassActionSettlement.pdf> (last
28 visited May 6, 2021); LOS ANGELES SUPERIOR COURT, COMPLEX CIVIL DEPARTMENT, *Checklist for*
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May 6, 2021).

1 has objected to the Settlement and only one person has opted out.

2 A set forth herein, Plaintiffs respectfully request that the Court finally approve the Settlement.

3 **II. BACKGROUND**

4 Inasmuch as the background of this action has been detailed in Plaintiffs' motion for
5 preliminary approval, Plaintiffs set forth a summary of the case only to the extent relevant to the
6 instant motion.

7 **A. Plaintiffs' Allegations and Claims**

8 This litigation arose out of allegations of a Security Incident where Creation failed to
9 implement or maintain adequate security measures to protect the confidential personal information
10 entrusted to it by Creation's customers, which resulted in a data breach of Creation's systems from
11 approximately February 1, 2018 through October 10, 2018. FAC, ¶¶ 1-12, 44-54.

12 **B. The Case Litigation and Settlement**

13 The Settlement was reached after more than a year-and-a-half of work by the parties. *See* Joint
14 Decl. at ¶¶ 13-15. Plaintiffs engaged in discovery practice, including propounding and responding to
15 written discovery requests and producing responsive documents, which encompassed more than
16 7,000 pages documents from Creation pertaining to Settlement Class Members and the Security
17 Incident. *Id.* ¶ 12. After devoting an additional year to negotiating the precise terms of the Settlement,
18 the parties ultimately worked together to finalize and execute a Settlement Agreement, including its
19 Plan of Allocation, claims procedures and documentation.

20 **C. Preliminary Approval**

21 Plaintiffs filed their Preliminary Approval Motion on January 15, 2021. The parties attended
22 the preliminary approval hearing on February 22, 2021, and submitted modified notice provisions at
23 the Court's direction on March 1, 2021. The Court granted, as modified, Plaintiffs' motion for
24 preliminary approval on March 8, 2021, which provisionally certified the nationwide Settlement
25 Class and directed that notice be issued to class members pursuant to the Settlement.

26 **III. TERMS OF THE SETTLEMENT**

27 **A. The Settlement Fund**

28 The Settlement provides for the creation of a Settlement Fund in the amount of \$950,000.00

1 for: (1) all payments to Settlement Class Members who submit valid claims; (2) costs of Claims
2 Administration; (3) the Attorneys’ Fees and Expenses Award, if any; and (4) the Representative
3 Plaintiffs’ Award, if any. Joint Declaration of Counsel for Plaintiffs in Support of Unopposed Motion
4 for an Order Preliminarily Approving Class Action Settlement, Directing Notice and Setting Final
5 Approval Hearing, filed January 15, 2021 (“Preliminary Approval Decl.”), Ex. 1, ¶ 2.1.

6 The distribution plan ensures that all Class Members are eligible to readily receive payment
7 from the Settlement Fund by submitting a claim for one of two types of Settlement Payments that will
8 be paid from the Settlement Fund, either (i) a Basic Settlement Payment; or (ii) an Extraordinary
9 Reimbursement Settlement Payment, as follows:

10 (i) Basic Settlement Payment - Class Members who submit a claim for a Basic Settlement
11 Payment are eligible to receive \$200.00, regardless of whether they experienced any fraudulent or
12 unauthorized charges on their credit or debit cards used to make purchases from Creation and
13 regardless of whether they experienced any identity theft as a result of the Security Incident. If a
14 Settlement Class Member experienced any fraudulent or unauthorized charges on his or her credit or
15 debit card used to make a purchase from Creation, this Basic Settlement Payment includes expense
16 reimbursement for: (a) lost time spent dealing with replacement card issues or having fraudulent
17 charges reversed; (b) costs of credit reports, credit monitoring, and identity theft protection purchased
18 between February 1, 2018 and April 19, 2019 (the “Unauthorized Charge Period”); and (c) other
19 miscellaneous expenses (e.g., unreimbursed charges or fees from banks or credit card companies
20 related to reissuance of cards, overdrafts, unavailability of funds, late payments; telephone/cell phone
21 charges; postage; interest on payday loans related to card cancellation and replacement issues.)
22 Preliminary Approval Decl., Ex. 1, ¶ 2.2.1.

23 (ii) Extraordinary Reimbursement Settlement Payment - Class Members who submit a claim
24 for an Extraordinary Reimbursement Settlement Payment with sufficient documentation who—
25 (a) during the Unauthorized Charge Period experienced one or more fraudulent or unauthorized
26 charges that are claimed by the Class Member in good faith to be more likely than not caused by the
27 Security Incident on a credit or debit card he or she used to make a purchase from Creation, which
28 charges were not denied or reimbursed; (b) has made reasonable efforts to avoid or seek

1 reimbursement for his or her losses, including but not limited to exhaustion of all available credit
2 monitoring insurance and identity theft insurance; and (c) submits an Approved Claim for an
3 Extraordinary Reimbursement Settlement Payment—shall be eligible to receive reimbursement of up
4 to \$10,000.00 for unreimbursed losses related to the Security Incident, including: (i) unreimbursed
5 unauthorized charges during the Unauthorized Charge Period⁴ on a credit or debit card used to make
6 a purchase from Creation that more likely than not resulted from the Security Incident; (ii) over one
7 hour and up to three hours of lost time spent dealing with unauthorized charges due to the Security
8 Incident, at a rate of \$20.00 per hour, if such time can be documented with reasonable specificity by
9 answering questions on the Claim Form; and (iii) out of pocket expenses. *Id.* at ¶ 2.2.2.

10 If, after the Claims Deadline has passed and the Attorneys’ Fees and Expenses Award and the
11 Representative Plaintiffs’ Awards have been paid in full out of the Settlement Fund, the total dollar
12 value of all Approved Claims is less than the amount remaining in the Settlement Fund, then the
13 Claims Administrator shall increase the payment amount for all Approved Claims *pro rata* among all
14 Class Members, up to a maximum of twice the total amounts set forth for the Basic or Extraordinary
15 Reimbursement Settlement Payments set forth in the First Amended Settlement Agreement, *i.e.*, up to
16 \$400.00 or \$20,000, respectively. *Id.* ¶¶ 7.3.1. If, however, the total dollar value of all Approved
17 Claims at the payment rates set forth in the First Amended Settlement Agreement exceeds the amount
18 remaining in the Settlement Fund, the payment amount for all Approved Claims shall be reduced *pro*
19 *rata* among all Class Members who submitted Approved Claims. *Id.* ¶ 7.3.2.

20 The Claims Administrator will mail the Settlement Payment checks or electronically transfer
21 funds for Approved Claims to Class Members within the later of 90 days after the Effective Date or
22 30 days after all disputed claims have been resolved. *Id.* ¶ 7.5. If there is any balance remaining in
23 the Settlement Fund Account 90 days after the Claims Administrator completes the process for
24 stopping payment on any Settlement Payment checks that remain uncashed, the Claims Administrator
25 shall donate the balance of the Fund Account as a *cy pres* donation to Public Justice. *Id.* ¶ 7.6.

26 **B. Value of Enhanced Security Measures**

27 Further, Creation has implemented enhanced data security measures, valued at \$119,337.87,

28 ⁴ The “Unauthorized Charge Period” is February 1, 2018 through April 19, 2019. Preliminary Approval Decl., Ex. 1, ¶ 2.2.1.

1 designed to prevent another, similar security incident from occurring in the future. Joint Decl., ¶ 28.
2 These commitments will ensure the adequacy of Creation’s data security practices, and will provide
3 ongoing protection for any Settlement Class Members’ information remaining on Creation’s data
4 systems, as well as providing protection for consumers in the future.

5 **C. The Release is Narrowly Tailored to the Claims**

6 The Release contained in the First Amended Settlement Agreement is narrowly tailored to
7 provide that Plaintiffs and Class Members shall unconditionally release, relinquish and discharge
8 Creation, and its past or present parents, subsidiaries, divisions, and all other Persons acting on
9 Creation’s behalf, from any claims that were asserted, or that could reasonably have been asserted,
10 in the action based upon and/or arising out of the facts alleged in the operative Complaint, including,
11 as to the Representative Plaintiffs, Unknown Claims that any of them do not know or suspect to exist
12 at the time of the release. *See* Preliminary Approval Decl., ¶¶ 1.23, 1.24, 1.36, 8.1-8.3.

13 **IV. NOTICE TO THE CLASS**

14 The Court’s order granting preliminary approval appointed CPT Group, Inc. (“CPT”) to serve
15 as the Settlement Administrator and to provide notice to the Settlement Class. As detailed in the Green
16 Declaration CPT fully implemented Class Notice as directed in the Preliminary Approval Order to
17 reach as many Settlement Class Members as possible and was extraordinarily robust. Settlement Class
18 Members received notice in various ways, as detailed below.

19 **A. Notice and Settlement Administration**

20 **1. Direct Notice by Email and First-Class Mail**

21 CPT caused the approved Summary Notice to be emailed to 57,020 Settlement Class Members
22 whose email addresses were furnished from Creation’s records. Green Decl. ¶ 15. CPT reasonably
23 determined that 3,066 email notices bounced and were undeliverable. *Id.*, ¶ 16. Therefore, CPT
24 mailed Summary Notice postcards to those 3,066 Settlement Class Members to whom Email Notice
25 ‘bounced-back’ and to those for whom an email address was not provided. *Id.*, ¶¶ 15, 16. In total,
26 including direct email notice and postcard notice, Class Notice was successfully sent to 56,126
27 Settlement Class Members. *Id.* ¶ 16.

28 Moreover, once entered by the Court, the Final Order and Judgment will be posted on the

1 Settlement Website. Joint Decl., ¶ 38.

2 **2. The Dedicated Settlement Website, Toll-Free Number, Press Releases and**
3 **Publication Notice**

4 CPT established and operates a dedicated Settlement Website (“Website”),
5 www.CreationSettlement.com, as well as a dedicated toll-free number, 1-888-413-2867. *Id.*, ¶¶ 7, 9.
6 These resources provide information about the Settlement and claims process to Settlement Class
7 Members in real time and allows them to request access to the Claim Form and other documents.
8 Posted on the Website for public viewing and download are the Long Form Notice, Summary Notice,
9 Claim Form, First Amended Settlement Agreement, Preliminary Approval Order and accompanying
10 joint declaration. *Id.* at ¶ 9. As of May 7, 2021, there have been 7,885 unique visitors to the Website,
11 and over 34,000 web pages have been presented to visitors. *Id.* at ¶ 10.

12 Additionally, beginning on or about March 24, 2021, CPT caused the Summary Notice to be
13 published in the *Los Angeles Times* Newspaper for 4 consecutive weeks, disseminated the press release
14 to PR Newswire US1 National Newswire and PR Newswire’s “Entertainment” Microslist, and
15 implemented a 4-week digital advertising campaign. *Id.* at ¶¶ 12- 14.

16 Ultimately, CPT reached by email 94.6% of the class members for whom defendant provided
17 an email address (based on emails sent versus returned as undeliverable) and reached by mail 99.5%
18 of those class members for whom CPT mailed a summary notice postcard (based on postcards mailed
19 versus undeliverable). To supplement direct notice, the notice plan sought to reach approximately 75%
20 of the target audience (i.e., the Settlement Class) nationwide through digital internet banner
21 advertisements, paid keyword search on Google & Bing, and social media advertisement campaign on
22 Facebook, supplemented by a nationwide press release, settlement website, and call center. *Id.*, ¶ 17.

23 **B. Claims, Requests for Exclusion, Opt Outs, and Objections**

24 The deadline to submit requests for exclusion or to file an objection is May 24, 2021. Joint
25 Decl., ¶ 42. The deadline to submit claims is June 22, 2021. *Id.*, ¶ 40. So far, only 1 class member
26 has requested exclusion from the Settlement, and there have been no objections filed. *Id.*, ¶ 42.

27 As of May 7, 2021, CPT has received 1,426 claims, which accounts for 2.4% of the class.
28 Green Decl., ¶¶ 20-22. This rate is on par with what CPT would expect at this point in the notice

1 period. *Id.*, ¶ 22. CPT anticipated a 3.5% filing rate for this matter based on our experience and
2 knowledge of similar data breach-related cases; typical claims filing rates fall within the range of 1%-
3 5% These claims are subject to review and audit by CPT. *Id.* Claimants who submit forms that do
4 not meet the submission requirements will be given notice and an opportunity to remedy any curable
5 deficiencies. *Id.*, ¶ 20.

6 **C. Settlement Notice and Administration Expenses**

7 As of May 7, 2021, CPT has incurred approximately \$57,000 in expenses associated with
8 identifying and notifying class members and administering the Settlement Fund. Green Decl. ¶ 24.
9 At preliminary approval, CPT estimated that notice and administration costs would total
10 approximately \$66,000. As explained in the Green Declaration, with the dissemination of a reminder
11 email and postcard, CPT expects its future notice and administration costs will be \$16,500 (totaling
12 \$73,500). *Id.*, ¶ 24.

13 **V. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE AND THE**
14 **COURT SHOULD FINALLY APPROVE THE SETTLEMENT**

15 **A. Standards for Final Approval of Class Action Settlement**

16 California Rules of Court (“CRC”), rule 3.769(a) provides: “A settlement or compromise of
17 an entire class action, or of a cause of action in a class action, or as to a party, requires the approval
18 of the court after hearing.” The Court has broad discretion to approve or reject a proposed settlement.
19 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001), *disapproved on other*
20 *grounds in Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260, 269 (2018); *Mallick v. Super.*
21 *Ct.*, 89 Cal. App. 3d 434, 438 (1979); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996).

22 California has a well-established and strong public policy favoring compromises of litigation.
23 *Hamilton v. Oakland Sch. Dist.*, 219 Cal. 322, 329 (1933) (“[I]t is the policy of the law to discourage
24 litigation and favor compromises”); *see also Ebensteiner Co., Inc. v. Chadmar Group*, 143 Cal. App.
25 4th 1174, 1179-80 (2006). This policy is particularly compelling in class actions. *See 7-Eleven*
26 *Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1152 (2000).

27 Preliminary approval is the first of three steps in the approval process for settlements of class
28 actions. The second is dissemination of notice of the Settlement to all Class Members. The third is
a final settlement approval hearing, at which evidence and argument concerning the fairness,

1 adequacy, and reasonableness of the Settlement may be presented and Class Members may be heard
2 regarding the Settlement. *See* CRC 3.769; MANUAL FOR COMPLEX LITIGATION §§ 21.632-21.635
3 (4th ed. 2004). The standard for final approval is whether the Settlement is “fair, adequate and
4 reasonable” to the Class. *Wershba*, 91 Cal. App. 4th at 244-45.

5 **B. The Settlement is Entitled to a Presumption of Fairness**

6 “The burden is on the proponent of the settlement to show that it is fair and reasonable.
7 However, ‘a presumption of fairness exists where: (1) the settlement is reached through arm’s-length
8 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
9 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
10 small.’” *Wershba*, 91 Cal. App. 4th at 245 (citing *Dunk*, 48 Cal. App. 4th at 1802). The Settlement
11 is entitled to a presumption of fairness because it was reached only as a result of extensive,
12 contentious, arm’s-length negotiations by knowledgeable counsel after sufficient investigation and
13 discovery.

14 **1. The Settlement is the Result of Arm’s-Length Negotiations**

15 The Settlement was the product of extensive arm’s-length negotiations between counsel for
16 the Parties who are very experienced consumer class action practitioners. Joint Decl. ¶ 9. Though
17 cordial and professional, the settlement negotiations were adversarial and non-collusive in nature.
18 *Id.* ¶ 10. The Settlement is the product of the Parties’ and their counsel’s substantial effort and
19 included an all-day mediation session on October 29, 2019 with the Honorable Peter D. Lichtman
20 (Ret.), an experienced and impartial mediator. *Id.* ¶ 9. Case law recognizes that a respected mediator
21 provides a high degree of assurance that the settlement is the result of arm’s-length bargaining. *See,*
22 *e.g., Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 52-53 (2008). While the mediation did not result
23 in a settlement on that day, the Parties continued extensive discussions after the mediation through
24 which the basic terms of a settlement were negotiated and finalized. The Parties also engaged in
25 formal discovery which informed the settlement discussions. Joint Decl. ¶ 12. The Parties spent over
26 ten months negotiating every aspect of the Settlement, which culminated in execution of a
27 Memorandum of Understanding on or about August 31, 2020, and execution of the first settlement
28 agreement on November 9, 2020. *Id.* ¶¶ 13, 15.

1 **2. Sufficient Investigation and Discovery Have Been Conducted**

2 The Parties thoroughly investigated and evaluated the factual and legal strengths and
3 weaknesses of this case before reaching the Settlement. The Parties entered into a stipulated
4 protective order and engaged in formal discovery regarding the Security Incident, Plaintiffs’ claims,
5 and Creation’s defenses. Joint Decl. ¶ 8. Creation propounded form and special interrogatories and
6 a request for production of documents. *Id.*, ¶ 12. Plaintiffs timely responded to Creation’s written
7 discovery requests and produced responsive documents. *Id.* Plaintiffs propounded, and Creation
8 responded to, a request for production of documents. *Id.* Creation produced 7,000 pages of
9 documents pertaining to potential Class Members and the Security Incident. This is entirely
10 sufficient to allow the Court to ascertain that this Settlement is the product of informed, arms-length
11 negotiation.

12 **3. Class Counsel is Experience in Similar Litigation**

13 In determining whether a proposed settlement is fair, reasonable and adequate, California
14 courts value highly the opinion of experienced counsel. *See, e.g., Chavez*, 162 Cal. App. 4th at 53.
15 There is no dispute regarding Class Counsel’s experience and ability. Collectively, Class Counsel
16 have many decades of experience litigating complex class actions in state and federal courts having
17 represented millions of consumers in numerous class actions. Joint Decl. ¶ 44. Based upon this
18 experience, Class Counsel believe the Settlement is fair, reasonable and adequate and in the best
19 interest of the Class members. *Id.* Additionally, Plaintiffs, as the proposed Class Representatives,
20 have no conflicts with the Settlement Class, have participated actively in the case, and are represented
21 by attorneys experienced in class action litigation. *Id.* at ¶ 43. Accordingly, this factor weighs in
22 favor of final approval.

23 **C. The Settlement is Fair, Adequate and Reasonable**

24 “In determining whether a class settlement is fair, adequate and reasonable, the trial court
25 should consider relevant factors, such as the strength of plaintiffs’ case, the risk, expense, complexity
26 and likely duration of further litigation, the risk of maintaining class action status through trial, the
27 amount offered in settlement, the extent of discovery completed and the stage of the proceedings,
28 the experience and views of counsel, the presence of a governmental participant, and the reaction of

1 the class members to the proposed settlement.” *Wershba*, 91 Cal. App. 4th at 244-45 (internal
2 quotations and citation omitted). Reference to these factors demonstrates that the Settlement is well
3 within the range of approval.

4 **1. The Strength of Plaintiffs’ Case Balanced Against the Amount**
5 **Offered in Settlement Favors Approval**

6 The \$950,000.00 Settlement Fund represents a significant recovery for the Settlement Class.
7 In determining whether the Settlement is fair and warrants approval, the Court must assess whether
8 the relief offered is reasonable in light of the strength of Plaintiffs’ case. *Kullar v. Foot Locker*
9 *Retail, Inc.*, 168 Cal. App. 4th 116, 129 (2008). Plaintiffs believe that they have strong bases for
10 both liability and damages in this case. As set forth in the operative FAC, the evidence suggests that
11 Creation failed to implement basic levels of information security when it came to its customers’
12 Personal Information causing it to be accessed and captured by unauthorized users. Nevertheless,
13 Creation has not conceded liability and has maintained a number of defenses to Plaintiffs’ claims.

14 **2. The Benefits of the Settlement Balanced Against the Risk,**
15 **Expense, Complexity and Duration of Further Litigation Favors**
16 **Final Approval**

17 The benefits of this Settlement must also be balanced against the risk, expense, and
18 complexity of further litigation. *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1152.
19 An evaluation of the Settlement must be tempered by recognition that any compromise involves
20 concessions by the settling parties. Indeed, the very essence of a settlement agreement is
21 compromise, “a yielding of absolutes and an abandoning of highest hopes.” *Officers for Justice v.*
22 *Civil Serv. Comm’n*, 688 F.2d 615, 624 (9th Cir. 1982) (citation omitted).⁵

23 Plaintiffs and their counsel believe that their claims are meritorious for the reasons discussed
24 *supra*. Despite this, there are significant obstacles to Plaintiffs obtaining a classwide judgment,
25 including persuading the Court to certify the proposed class and proving classwide damages.
26 Although nearly all class actions involve a high level of risk, expense, and complexity, historically,
27 data breach cases face substantial hurdles in surviving even past the pleadings stage. *See, e.g.*,

28 ⁵ California courts look to procedures and standards from the federal courts for “guidance on
matters involving class action procedures.” *Cellphone Termination Fee Cases*, 186 Cal. App. 4th
1380, 1392 n.18 (2010) (upholding final approval of class action settlement) (citations omitted).

1 *Hammond v. The Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060 (RMB) (RLE), 2010 U.S. Dist.
2 LEXIS 71996, at *2-3 (S.D.N.Y. June 25, 2010) (collecting cases). Even cases of wide-spread
3 notoriety and implicating data far more sensitive than at issue here have been found wanting. *See,*
4 *e.g., In re U.S. Office of Pers. Mgmt. Data Sec. Breach Litig.*, 266 F. Supp. 3d 1, 19 (D.D.C. 2017)
5 (“The Court is not persuaded that the factual allegations in the complaints are sufficient to establish
6 . . . standing.”), reversed in part, 928 F.3d 42 (D.C. Cir. June 21, 2019) (holding that plaintiffs had
7 standing to bring a data breach lawsuit). For now, data breach cases are among the riskiest and
8 uncertain of all class action litigation, making settlement the more prudent course when a reasonable
9 deal is available. A resolution of this matter mitigates substantial risk for both Parties.

10 In addition, this litigation could quickly grow cost prohibitive for both Parties beginning with
11 preparation for class certification briefing, including expert retention, depositions, and intensive
12 written discovery, and continuing through motions for summary judgment and then trial. While
13 Plaintiffs are confident in the strength of their case, Creation has denied liability from the outset and
14 would have certainly put forth robust defenses at every stage of the litigation. In contrast to the
15 uncertainty and delays attendant to continued litigation, the settlement before the Court provides
16 certain relief to the consumers who make up this class. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*,
17 213 F.3d 454, 459 (9th Cir. 2000) (“difficulties in proving the case” favored settlement approval);
18 *Aguirre v. DirecTV, LLC*, No. CV16-06836 SJO (JPRx), 2017 U.S. Dist. LEXIS 221839 (C.D. Cal.
19 Oct. 6, 2017) (summary judgment and continuing litigation risks supported approval).

20 Furthermore, the coronavirus pandemic has caused significant negative ramifications to
21 Creation’s business of hosting in-person conferences. This reduces the likelihood of any meaningful
22 recovery by the Settlement Class, other than through available insurance limits.

23 In light of these risks and uncertainties presented by continued litigation in this case, the First
24 Amended Settlement Agreement is an extraordinary result for the Settlement Class. “[T]he very
25 essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes,”
26 and “it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive
27 litigation that induce consensual settlements.” *Officers for Justice*, 688 F.2d at 624-25 (internal
28 quotations and citations omitted). “The proposed settlement is not to be judged against a

1 hypothetical or speculative measure of what *might* have been achieved by the negotiators.” *Id.* at
2 625 (citations omitted). Rather, any analysis of a fair settlement amount must account for the risks
3 of further litigation and trial, as well as expenses and delays associated with continued litigation.
4 *See Retta v. Millennium Prods.*, No. CV15-1801 PSG AJWx, 2017 U.S. Dist. LEXIS 220288, at *14
5 (C.D. Cal. Aug. 22, 2017).

6 Taking all the foregoing arguments and defenses into account, the Settlement represents a
7 realistic and fair value of the class claims. Proceeding with the litigation would impose significant
8 risk of no recovery as well as ongoing, substantial additional expenditures of time and resources.
9 By contrast, the settlement will yield a prompt, certain, and substantial recovery for Settlement Class
10 Members, which also benefits Defendant and the Court.

11 **3. The Risk of Maintaining Class Action Status Through Trial** 12 **Favors Final Approval**

13 This case is far closer to the beginning than the end, and Plaintiffs have many mountains to
14 surmount before being able to adjudicate their claims at trial. Plaintiffs have not yet moved for class
15 certification after what would likely be extensive discovery, including by experts with divergent
16 views on Defendant’s level of negligence and the appropriate manner of calculating damages. And
17 while Plaintiffs believe they have strong arguments in favor of class certification, as with other
18 aspects of data breach litigation, there is little directly analogous precedent to rely upon. This dearth
19 of direct precedent adds to the risks posed by continued litigation, and even after obtaining class
20 certification, there is always a risk of decertification before trial. The Court could also decide to
21 certify the Settlement Class for liability purposes but require Settlement Class members to prove
22 their respective damages individually, likely requiring individual trials for each Settlement Class
23 Member to receive a benefit. *See, e.g., Smith v. Triad of Alabama, LLC*, No. 1:14-CV-324-WKW,
24 2017 U.S. Dist. LEXIS 38574 (M.D. Ala. Mar. 17, 2017), on reconsideration in part, 2017 U.S. Dist.
25 LEXIS 140594 (M.D. Ala. Aug. 31, 2017) (adopting this bifurcated approach). And if Plaintiffs
26 manage to obtain class certification they will likely have to beat back attempts by Defendant to derail
27 the case through summary judgment before finally reaching trial. If Plaintiffs then meet success at
28 trial, any decision can be appealed by Defendant, further delaying final resolution of the action.
These significant risks weigh strongly in favor of final approval of the Settlement.

1 **4. The Amount Offered in Settlement and the Estimate of Recovery**
2 **to Each Settlement Class Member Favors Final Approval**

3 Plaintiffs believe that the \$950,000 settlement is a favorable result and falls within the range
4 of possible approval. To evaluate this factor, “courts primarily consider plaintiffs’ expected recovery
5 balanced against the value of the settlement offer.” *In re Tableware Antitrust Litig.*, 484 F. Supp.
6 2d 1078, 1080 (N.D. Cal. 2007). The settlement ensures fairness because all Settlement Class
7 Members can recover regardless of whether they experienced any fraudulent or unauthorized charges
8 or, in the alternative, opt to seek extraordinary reimbursement for unreimbursed fraud.

9 The Settlement Payments available to eligible Class Members – either \$200.00 for Basic
10 Settlement Payments or up to \$10,000.00 for Extraordinary Settlement Payments – are substantial
11 in light of the reported average of actual out-of-pocket expenses due to a data breach.⁶ The instant
12 settlement structure provides “a significant, easy-to-obtain benefit to class members” without all the
13 risks and uncertainties attendant to continued litigation. *In re Haier Freezer Consumer Litig.*, No.
14 5:11-CV-02911-EJD, 2013 U.S. Dist. LEXIS 72132, at *14 (N.D. Cal. May 21, 2013). The benefits
15 available here compare favorably to what Settlement Class Members could recover if successful at
16 trial. In the experience of Plaintiffs’ counsel who have litigated a number of data breach cases, have
17 spoken to victims of other data breaches, and have reviewed claims data from other settlements, the
18 relief provided by this Settlement should be considered a solid victory for the Settlement Class.

19 Additionally, the monetary benefits provided by the Settlement compare favorably with those
20 of other settlements in data breach class actions that have been approved by courts. *See, e.g., Gordon,*
21 *et. al. v. Chipotle Mexican Grille, Inc.*, No. 1:17-cv-01415-CMA-SKC, 2019 U.S. Dist. LEXIS
22 215430 (D. Colo. Dec. 16, 2019) (final approval of a claims-made settlement for more than 10
23 million class members able to recover up to \$250 for out-of-pocket expenses or up to \$10,000 for
24 extraordinary expenses); *In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807
25 (N.D. Ohio Aug. 12, 2019) (approving a \$4.325 million settlement fund for 1.5 million class
26 members to receive \$10 per affected card used to make purchases and \$40 per card that experienced

27 ⁶ For individuals who experienced actual identity theft, a 2014 Congressional Report stated
28 that these victims incurred an average of \$365 in expenses dealing with the fraud. *See* Kristin
Finklea, *Identity Theft: Trends and Issues*, CONGRESSIONAL RESEARCH SERVICE (January 16, 2014),
p. 2, <https://fas.org/sgp/crs/misc/R40599.pdf> (last visited May 6, 2021).

1 fraudulent charges); *T.A.N. v. PNI Digital Media, Inc.*, No. 2:16-cv-00132 (S.D. Ga. Oct. 20, 2017)
2 (approving settlement for 766,000 class members to be reimbursed up to \$250/claim for out-of-
3 pocket expenses plus up to \$10,000/claim for reimbursement of extraordinary expenses); *In re*
4 *Heartland Payment Sys., Inc. Customer Data Security Breach Litig.*, 851 F. Supp. 2d 1040, 1048-
5 1069 (S.D. Tex. 2012) (approving settlement that provided up to \$2.4 million to pay for out-of-
6 pocket losses); *Bray, et. al. v. Gamestop Corp.*, No. 1:17-cv-01365, 2018 U.S. Dist. LEXIS 226221
7 (D. Del. Dec. 19, 2018) (approving settlement for 1.3 million class members that would reimburse
8 up to \$235/claim including, *inter alia*, expenses for lost time, payment for each card with fraudulent
9 charges, costs of obtaining credit report, costs of credit monitoring and identity theft protection, as
10 well as up to \$10,000/claim for extraordinary expenses).

11 Further, Creation has implemented enhanced data security measures, valued at \$119,337.87,
12 designed to prevent another, similar security incident from occurring in the future. These
13 commitments will ensure the adequacy of Creation’s data security practices, and will provide
14 ongoing protection for any Settlement Class Members’ information remaining on Creation’s data
15 systems, as well as providing protection for consumers in the future. Without this Settlement, there
16 is nothing Settlement Class Members could do individually to achieve similar promises from
17 Creation regarding data security going forward. The Settlement is calculated to ensure that Creation
18 has employed the necessary resources to address prior data security vulnerabilities, and the best
19 practices and accountabilities needed for long-term, proactive data security.

20 Class Counsel assert that the Settlement benefits provided to Plaintiffs and Settlement Class
21 Members present a substantial recovery, especially considering the strengths of the claims and the
22 litigation risks described above. The considerable classwide relief provided by the Settlement thus
23 weighs heavily in favor of final approval. *See, e.g., Wren v. RGIS Inventory Specialists*, No. C-06-
24 05778 JCS, 2011 U.S. Dist. LEXIS 38667, at *24 (N.D. Cal. Apr. 1, 2011) (“While settlement
25 amounts that are close to the plaintiffs’ estimate of damages provide strong support for approval of
26 the settlement, settlement offers that constitute only a fraction of the potential recovery do not
27 preclude a court from finding that the settlement offer is fair.”) (citing *In re Mego Fin. Corp. Sec.*
28 *Litig.*, 213 F.3d at 459); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (holding

1 that the possibility that the settlement amount could have been greater “does not mean the settlement
2 presented was not fair, reasonable or adequate.”); *Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068
3 MMC, 2007 U.S. Dist. LEXIS 8476, at *13 (N.D. Cal. Jan. 26, 2007) (finding settlement of wage
4 and hour class action for 25% to 35% of the claimed damages to be reasonable).

5 **5. The Extent of Discovery Completed Favors Final Approval**

6 As discussed above, the Parties thoroughly investigated and evaluated the factual and legal
7 strengths and weaknesses of this case before reaching the Settlement. Plaintiffs propounded, and
8 Creation responded to, a request for production of documents, and Creation produced 7,000 pages
9 of documents pertaining to potential Class Members and the Security Incident.

10 **6. The Experience and Views of Counsel Support Final Approval**

11 As discussed above, collectively, Class Counsel have many decades of experience litigating
12 complex class actions in state and federal courts. Byrd Decl., ¶ 5; Johns Decl., ¶ 5; Wolfson Decl., ¶
13 5. Class Counsel have represented millions of consumers in numerous class actions. Byrd Decl., ¶
14 11; Johns Decl., ¶ 11*; Wolfson Decl., ¶ 11. Based upon this experience, Class Counsel believe the
15 Settlement is fair, reasonable and adequate and in the best interest of the Settlement Class Members.
16 Joint Decl., ¶ 44. Accordingly, this factor weighs in favor of final approval.

17 **7. Presence of a Governmental Participant**

18 No governmental entity or agency is a party to this lawsuit. Accordingly, this factor is
19 neutral.

20 **8. The Positive Reaction of Class Members Favors Final Approval**

21 The objection and opt out deadlines are not until May 24, 2021. Preliminary Approval Order,
22 ¶ 21. Notably, to date, the Claims Administrator has not received any objections and only one person
23 has opted-out. *See* Green Decl., ¶ 20. “It is established that the absence of a large number of
24 objections to a proposed class action settlement raises a strong presumption that the terms of a
25 proposed class settlement action are favorable to the class members.” *Nat’l Rural Telecomms. Coop.*
26 *v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004); 4 NEWBERG ON CLASS ACTIONS, § 11:48
27 (“Courts have taken the position that one indication of the fairness of a settlement is the lack of or
28 small number of objections [citations omitted]”). The small percentage of Settlement Class

1 Members objecting indicates overwhelming support for the Settlement and strongly favors its
2 approval. *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1152-1153 (one factor that
3 “lead[s] to a presumption the settlement was fair” is that only “a small percentage of objectors” came
4 forward; 9 objections out of 5,454 noticed class members represented “overwhelming positive”
5 response).

6 **VI. THE CLASS SHOULD BE CERTIFIED**

7 California Code of Civil Procedure section 382 provides in part that “when the question is
8 one of a common or general interest, of many persons, or when the parties are numerous, and it is
9 impracticable to bring them all before the court, one or more may sue . . . for the benefit of all.”
10 Section 382 further authorizes a class action when a plaintiff meets his or her burden to establish the
11 existence of an ascertainable class and a well-defined community of interest. *See Lockheed Martin*
12 *Corp. v. Super. Ct.*, 29 Cal. 4th 1096, 1103-04 (2003). The California Supreme Court has held that
13 the “community of interest requirement embodies three factors: (1) predominant common questions
14 of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class
15 representatives who can adequately represent the class.” *Richmond v. Dart Indust., Inc.*, 29 Cal. 3d
16 462, 470 (1981).

17 It is well-established that trial courts should use a “lesser standard of scrutiny” for determining
18 the propriety of certifying a settlement class, as opposed to a litigation class. *See, e.g., Dunk*, 48 Cal.
19 App. 4th at 1807 n.19. This is appropriate because no trial is anticipated for a settlement class, so the
20 case management issues inherent in trying classwide claims need not be confronted; and the trial
21 court’s fairness review of the settlement protects the interests of the non-representative class
22 members. *See id.*; *see also Officers for Justice*, 688 F.2d at 633 (“Th[e] relationship between the
23 certification determination and the merits of the case is further attenuated within the context of the
24 settlement evaluation process [C]ertification issues raised by class action litigation that is
25 resolved short of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc.*
26 *v. Windsor*, 521 U.S. 591, 620 (1997) (“Confronted with a request for settlement-only class
27 certification, a district court need not inquire whether the case, if tried, would present intractable
28 management problems . . . for the proposal is that there be no trial.”). As discussed below, for the

1 purposes of settlement only, Plaintiffs ask the Court to certify the Settlement Class under section 382
2 of the Cal. Code of Civil Procedure.

3 **A. Numerosity and Ascertainability**

4 Numerosity is met if a proposed class is so large that joinder of all members would be
5 impracticable. *See* Cal. Civ. Proc. § 382. Here, Defendant’s records show (and Defendant does not
6 dispute for the purposes of settlement) that the data breach of Creation’s systems resulted in the theft
7 of more than 57,000 consumers’ Personal Information. Green Decl., ¶ 5. Therefore, the Settlement
8 Class is sufficiently numerous.

9 Additionally, a proposed settlement class is ascertainable if it is “defined in objective terms
10 that make the eventual identification of class members possible.” *Noel v. Thrifty Payless, Inc.*,
11 7 Cal. 5th 955, 980 (2019) (emphasis omitted). The First Amended Settlement Agreement defines
12 the Settlement Class as: “All individuals residing in the United States who used a debit or credit card
13 to make a purchase from Creation and whose Personal Information was accessed and/or
14 compromised by unauthorized individuals as part of the Security Incident.” *See* Preliminary
15 Approval Decl., ¶ 1.30. Defendant provided a list of Settlement Class Members and their mailing
16 and email addresses to the Claims Administrator. *See id.*, ¶ 4.1; Green Decl. ¶ 5. As such, the
17 Settlement Class easily meets the ascertainability requirement for class certification.

18 **B. Well-Defined Community of Interest**

19 **1. Commonality and Superiority**

20 To justify class certification, the proponent must show that questions of law or fact common
21 to the class predominate over the questions affecting the individual members. *See Arenas v. El Torito*
22 *Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Wash. Mut. Bank v. Super. Ct.*, 24 Cal. 4th
23 906, 913 (2001)). The central questions behind the claims in this litigation are: (1) whether Creation
24 violated California state law—including but not limited to California Civil Code, section 1798.82,
25 the California Data Breach Notification Act—by failing to adequately secure Plaintiffs’ and Class
26 Members’ Personal Information and provide timely and accurate notice of the Security Incident to
27 Plaintiffs and the Class; (2) whether Plaintiffs and the Class would be entitled to relief by reason of
28 Defendant’s wrongful conduct; (3) what is the proper measure of damages; and (4) whether Plaintiffs

1 and the Class would be entitled to equitable relief by reason of Creation’s wrongful conduct. The
2 answers to these questions depend on common evidence that does not vary by Settlement Class
3 Member, and so can be fairly resolved—whether through litigation or settlement—for all Class
4 Members at once. Given these common questions and the large number of potential Settlement Class
5 Members, each with relatively small amounts of damages, litigating this case as a class action is
6 superior to each having to file his or her own lawsuit. *See Lazar v. Hertz Corp.*, 143 Cal. App. 3d
7 128, 143 (1983) (“The class action has been held appropriate when numerous parties suffer injury of
8 insufficient size to warrant individual action and when denial of class relief would result in unjust
9 advantage to the wrongdoer.”).

10 **2. Typicality**

11 “[T]ypicality will be satisfied so long as the named representatives’ claims share the same
12 essential characteristics as the claims of the class at large.” Newberg, § 3:29 (quotations and citation
13 omitted). Here, typicality is satisfied because the claims of the Settlement Class arise from the same
14 misconduct that Plaintiffs seek to remedy: Plaintiffs and each member of the Settlement Class had
15 their data and Personal Information compromised in the same way by the same conduct by Creation.
16 *See, e.g., Just Film, Inc. v. Buono*, 847 F.3d 1108, 1118 (9th Cir. 2017) (“it is sufficient for typicality
17 if the plaintiff endured a course of conduct directed against the class”).

18 **3. Adequacy of Representation**

19 The proposed class representative and class counsel must establish that they will adequately
20 represent the proposed class. *See Barboza v. W. Coast Digital GSM, Inc.*, 179 Cal. App. 4th 540, 546
21 (2009). As set forth *supra*, Class Counsel are highly experienced in litigating consumer protection
22 class actions. *See* Byrd Decl., ¶ 11; Johns Decl., ¶ 11; Wolfson Decl., ¶ 11. Moreover, Plaintiffs, as
23 the proposed Class Representatives, have no conflicts with the Settlement Class and have participated
24 actively in the case. *See* Christofferson Decl., Gerace Decl., and Ratelle Decl.; *see also Espinosa v.*
25 *Ahearn (In re Hyundai & Kia Fuel Econ. Litig.)*, 926 F.3d 539, 566 (9th Cir. 2019) (adequacy
26 satisfied if plaintiffs and their counsel lack conflicts of interest and are willing to prosecute the action
27 vigorously on behalf of the class); *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las*
28 *Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001) (class counsel adequacy may be established

1 by the fact that counsel are experienced practitioners).

2 **VII. THE NOTICE PLAN SATISFIES DUE PROCESS AND WAS EXECUTED IN**
3 **ACCORDANCE WITH THE COURT’S PRELIMINARY APPROVAL ORDER**

4 Due process requires that reasonable notice of the settlement be given to all potential class
5 members. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974). Moreover, “notice of the final
6 approval hearing must be given to the class members in the manner specified by the court.” CRC
7 3.769(f). The notice methods utilized here complied with the direction of the Preliminary Approval
8 Order. Notice was conveyed through a broad, multi-layered, multimedia program. *See generally*
9 *Green Decl.* Consequently, the Settlement meets the requirements for reasonable notice in order to
10 obtain final approval.

11 On May 6, 2021, Class Counsel discovered that a banner on the Creation Settlement Website,
12 the paid ads, and the publication notice inadvertently included inaccurate information with respect
13 to Settlement Class Member eligibility. Joint Decl., ¶ 21. Specifically, the Settlement Website, paid
14 ads and publication notice stated that individuals may be eligible for a payment from a class action
15 settlement if they are a U.S. resident who used a debit or credit card to make a purchase from
16 Creation between February 1, 2018 through October 10, 2018. This language is inaccurate because
17 the Settlement Class is not limited to those who made purchases during that time frame, but includes
18 those who made purchases any time prior to October 10, 2018.⁷ Accordingly, Settlement Class
19 Members who made purchases from Creation prior to February 1, 2018 are also included in the
20 Settlement Class. Once Class Counsel discovered this, Class Counsel immediately contacted the
21 Claims Administrator and requested this statement be removed from the Settlement Website. Joint
22 Decl., ¶ 21.

23 Class Counsel believe that the Notice provided was still sufficient because the email notice

24
25 ⁷ The Settlement Class is defined as follows: “[A]ll individuals residing in the United States
26 who used a debit or credit card to make a purchase from Creation and whose Personal Information
27 was accessed and/or compromised by unauthorized individuals as part of the Security Incident.”
28 Settlement Agreement, ¶ 1.30. The “Security Incident” is defined as “the data breach that affected
Creation’s computer systems from approximately February 1, 2018 through October 10, 2018, and
which was publicly disclosed by Creation on March 19, 2019, and includes, but is not limited to, the
intrusion or actions that are the subject of the Litigation and are described in the Complaint and
Representative Plaintiffs’ court filings in the Litigation.” *Id.* at ¶ 1.28

1 that was sent directly to 57,020 Settlement Class Members did not include the inaccurate language
2 discussed above. Joint Decl., ¶ 22. Additionally, the Settlement Website included the correct
3 definition of the Settlement Class as did the Summary Notice, Long Notice and Claim Form, all of
4 which were posted on the Settlement Website. Additionally, Class Counsel has elected to send an
5 additional reminder notice to Settlement Class Members. *Id.* Lastly, the Claims Administrator has
6 confirmed that Settlement Class Members who in fact made purchases from Creation prior to
7 February 1, 2018 have submitted claims. Green Decl., ¶ 26. For the reasons given in the Joint
8 Declaration, Class Counsel believe that, in spite of this error, notice to the Settlement Class was
9 adequate.

10 **VIII. THE OBJECTIONS SHOULD BE OVERRULED**

11 Any objections to the Settlement are due May 24, 2021. As of the date of filing this motion,
12 the claims administrator has not received any objections.⁸

13 **IX. CONCLUSION**

14 For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for
15 final approval and enter the Final Approval Order and the Final Judgment, which will be submitted
16 on June 10, 2021.

17 DATED: May 7, 2021

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28 ⁸ Pursuant to the Court's preliminary approval order, Plaintiffs will file a supplemental brief on June 10, 2021, to address any other objections received by the Claims Administrator.

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