

1 RACHELE R. BYRD (190634)  
byrd@whafh.com  
2 BRITTANY N. DEJONG (258766)  
dejong@whafh.com  
3 **WOLF HALDENSTEIN ADLER**  
**FREEMAN & HERZ LLP**  
4 750 B Street, Suite 1820  
San Diego, CA 92101  
5 Telephone: (619) 239-4599  
6 Facsimile: (619) 234-4599

7 BENJAMIN F. JOHNS (*pro hac vice*)  
bfj@chimicles.com  
8 BEENA M. MCDONALD (*pro hac vice*)  
bmm@chimicles.com  
9 **CHIMICLES SCHWARTZ KRINER**  
**& DONALDSON-SMITH LLP**  
10 One Haverford Centre  
361 West Lancaster Avenue  
11 Haverford, PA 19041  
Telephone: (610) 642-8500  
12 Facsimile: (610) 649-3633

TINA WOLFSON (174806)  
twolfson@ahdootwolfson.com  
**AHDOOT & WOLFSON, PC**  
2600 West Olive Ave., Suite 500  
Burbank, CA 91505  
Telephone: (310) 474-9111  
Facsimile: (310) 474-8585

13 *Counsel for Plaintiffs*

14  
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF LOS ANGELES**

17  
18 KYNDAL CHRISTOFFERSON, NATALIE )  
GERACE, AND ERIN RATELLE, )  
19 individually and on behalf of all others )  
20 similarly situated, )

21 Plaintiffs, )

22 v. )

23 CREATION ENTERTAINMENT, INC., )

24 Defendant. )

Case No. 19STCV11000

**JOINT DECLARATION OF RACHELE  
R. BYRD, BENJAMIN F. JOHNS, AND  
TINA WOLFSON IN SUPPORT OF  
MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT AND  
MOTION FOR AN AWARD OF  
ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES  
AND REPRESENTATIVE  
PLAINTIFFS' AWARD**

DATE: June 24, 2021

TIME: 9:00 a.m.

JUDGE: Hon. Elihu M. Berle

DEPT.: 6

1 We, Rachele R. Byrd, Benjamin F. Johns, and Tina Wolfson, declare as follows:

2 1. Rachele R. Byrd is a partner at Wolf Haldenstein Adler Freeman & Herz LLP (“Wolf  
3 Haldenstein”), one of the attorneys of record for Plaintiffs.<sup>1</sup> Ms. Byrd submits this declaration in  
4 support of Plaintiffs’ Motion for Final Approval of Class Action Settlement and Motion for an Award  
5 of Attorneys’ Fees, Reimbursement of Expenses, and Representative Plaintiffs’ Award. Ms. Byrd  
6 makes this declaration based on her own personal knowledge, and if called to do so, could and would  
7 testify to the matters contained herein.

8 2. Benjamin F. Johns is a partner in the law firm of Chimicles Schwartz Kriner &  
9 Donaldson-Smith LLP (“Chimicles”), one of the attorneys of record for Plaintiffs. Mr. Johns submits  
10 this declaration in support of Plaintiffs’ Motion for Final Approval of Class Action Settlement and  
11 Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Representative Plaintiffs’  
12 Award. Mr. Johns makes this declaration based on his own personal knowledge, and if called to do  
13 so, could and would testify to the matters contained herein.

14 3. Tina Wolfson is a principal and founding partner of the law firm of Ahdoot &  
15 Wolfson, PC (“Ahdoot & Wolfson”), one of the attorneys of record for Plaintiffs. Ms. Wolfson is  
16 also a board member of the proposed *cy pres* recipient, Public Justice, but she will not receive any  
17 personal financial benefit as a result of the proposed distribution and has no control over how the  
18 funds are spent. Ms. Wolfson submits this declaration in support of Plaintiffs’ Motion for Final  
19 Approval of Class Action Settlement and Motion for an Award of Attorneys’ Fees, Reimbursement  
20 of Expenses, and Representative Plaintiffs’ Award. Ms. Wolfson makes this declaration based on  
21 her own personal knowledge, and if called to do so, could and would testify to the matters contained  
22 herein.

23 4. This declaration sets forth the scope of this litigation, including pleadings, motions  
24 and discovery, to show why the settlement of this action on the terms agreed to is fair, reasonable and  
25

26 <sup>1</sup> Unless otherwise noted, capitalized terms have the meanings ascribed to them in the First  
27 Amended Settlement Agreement and Release dated January 15, 2021 (“Settlement”) attached as  
28 Exhibit 1 to the Joint Declaration of Counsel for Plaintiffs in Support of Unopposed Motion for an  
Order Preliminarily Approving Class Action Settlement, Directing Notice and Setting Final Approval  
Hearing (“Preliminary Approval Decl.”), filed on January 15, 2021.

1 adequate for the Settlement Class. While Settlement Class Members have until May 24, 2021 to  
2 request exclusion from, or object to, the Settlement, to date, the Claims Administrator has received  
3 one request for exclusion and no objections. Given that more than 57,000 notices were sent to  
4 potential Settlement Class Members, the receipt of only one request for exclusion and no objections  
5 to date further confirms that the proposed Settlement represents an excellent result, is eminently fair,  
6 reasonable and adequate and should be approved by the Court.

7 **I. HISTORY OF THE LITIGATION AND SETTLEMENT NEGOTIATIONS**

8 5. This is a proposed class action on behalf of a class brought against Creation  
9 Entertainment, Inc. (“Creation”). Plaintiffs allege that sensitive financial and personal non-public  
10 information, including, but not limited to, their and Class Members’ (a) names, (b) addresses,  
11 (c) email addresses, and (d) payment card information (including, *inter alia*, card numbers, expiration  
12 dates, and security codes (“CVV numbers”)) (collectively, “Personal Information”) was accessed and  
13 captured from Creation’s systems by unauthorized users during a period of time that ended on or  
14 around October 2018 (the “Security Incident”).

15 6. On or about April 2, 2019, Kyndal Christofferson filed a complaint in the Los Angeles  
16 County Superior Court, captioned, *Kyndal Christofferson v. Creation Entertainment, Inc.*, Case No.  
17 19STCV11000. On that same date, Erin Ratelle filed a complaint in the Los Angeles County Superior  
18 Court captioned, *Erin Ratelle v. Creation Entertainment, Inc.*, Case No. 19STCV10998. Plaintiff  
19 Ratelle voluntarily dismissed her complaint on April 25, 2019. On July 3, 2019, Plaintiffs  
20 Christofferson, Gerace and Ratelle filed a First Amended Class Action Complaint (“FAC”) in Case  
21 No. 19STCV11000.

22 7. The Complaint alleges that Creation failed to implement or maintain adequate security  
23 measures to protect the confidential personal information entrusted to it by Creation customers which  
24 resulted in a massive data breach of Creation’s systems from approximately February 1, 2018 to  
25 October 10, 2018. FAC, ¶¶ 1-12, 44-54. The FAC brought claims against Creation for: (1)  
26 negligence; (2) breach of implied contract; (3) violation of the California Data Breach Notification  
27 Act, California Civil Code, § 1798.80, *et seq.*; (4) violation of the California Unfair Competition Law,  
28 California Business & Professions Code, § 17200, *et seq.*; (5) violation of the California Consumers

1 Legal Remedies Act, California Civil Code, § 1750, *et seq.*; (6) violation of the Maryland Consumer  
2 Protection Act, Md. Code Ann., Com. Law § 13-101, *et seq.*; and (7) unjust enrichment. *Id.*, ¶¶ 87-  
3 159. Defendant filed an Answer to the FAC on August 27, 2019.

4 8. The Parties thereafter engaged in formal discovery regarding the Security Incident,  
5 Plaintiffs' claims, and Creation's defenses.

6 9. On October 29, 2019, the Parties participated in good faith, arm's-length settlement  
7 discussions during an all-day mediation with the Honorable Peter D. Lichtman (Ret.) of JAMS in Los  
8 Angeles, California. The Parties failed to resolve the matter during that mediation session, but agreed  
9 to continue settlement negotiations with the ongoing assistance of Judge Lichtman.

10 10. Though cordial and professional, the settlement negotiations were adversarial and  
11 non-collusive in nature.

12 11. Following mediation, the Parties continued to engage in extensive discussions over  
13 the course of many months during which the basic terms of a settlement were eventually negotiated  
14 and finalized.

15 12. The Parties also engaged in formal discovery, which informed the Settlement  
16 discussions, as follows:

17 a. Plaintiffs propounded, and Creation responded to, a request for production of  
18 documents. Creation produced 7,000 pages of documents pertaining to potential Class Members and  
19 the Security Incident.

20 b. Creation propounded form and special interrogatories and requests for  
21 production of documents, and Plaintiffs timely responded to all of Creation's written discovery  
22 requests and produced responsive documents.

23 13. The Parties spent over ten months negotiating every aspect of the Settlement.

24 14. The Settlement was reached after extensive investigation and research, production of  
25 documents by Defendant, including a report regarding the Security Incident, and a thorough  
26 evaluation of Plaintiffs' claims in light of such information.

27 15. The Parties ultimately signed a Memorandum of Understanding on or about August  
28 31, 2020.

1           16.     At a status conference on July 8, 2020, the Parties notified the Court of the Settlement.

2           17.     Since then, the Parties have worked together to document the Settlement. On  
3 November 9, 2020, Plaintiffs filed their motion for preliminary approval of the Parties’ proposed  
4 Settlement Agreement and Release dated November 9, 2020.

5           18.     On December 8, 2020, counsel for both Parties appeared at the preliminary approval  
6 hearing before the Honorable Elihu M. Berle. Judge Berle directed the Parties to meet and confer and  
7 discuss issues noted by the Court during the hearing.

8           19.     The Parties then worked to update the Settlement Agreement and its respective  
9 exhibits and declarations, and executed the First Amended Settlement Agreement and Release dated  
10 January 15, 2021. On February 22, 2021, Plaintiffs appeared at the preliminary approval hearing  
11 before the Honorable Elihu M. Berle. Judge Berle directed Plaintiffs to incorporate various dates  
12 provided by the Court regarding the Notice Plan and submit redlined versions of the [Proposed] Order  
13 Granting Preliminary Approval of Class Action Settlement and exhibits attached thereto. On March  
14 8, 2021, this Court granted Plaintiffs’ Motion for Preliminary Approval.

15           20.     After the Court preliminarily approved the Settlement, Class Counsel worked closely  
16 with the Claims Administrator to supervise dissemination of notice to Settlement Class Members.  
17 These efforts included reviewing and editing the language and format of the website, banner  
18 advertisements, Facebook mock-ups, paid search ad mock-up, Long Form Notice, Summary Notice,  
19 Publication Notice, and the Press Release. Class Counsel also worked with the Settlement  
20 Administrator to monitor exclusion requests and objections.

21           21.     On May 6, 2021, Class Counsel discovered that a banner on the Creation Settlement  
22 Website, the paid ads, and the publication notice inadvertently included inaccurate information with  
23 respect to Settlement Class Member eligibility. Specifically, the Settlement Website, paid ads and  
24 publication notice stated that individuals may be eligible for a payment from a class action settlement  
25 if they are a U.S. resident who used a debit or credit card to make a purchase from Creation between  
26 February 1, 2018 through October 10, 2018. This language is inaccurate because the Settlement Class  
27 is not limited to those who made purchases during that time frame, but includes those who made  
28

1 purchases any time prior to October 10, 2018.<sup>2</sup> Accordingly, Settlement Class Members who made  
2 purchases from Creation prior to February 1, 2018 are also included in the Settlement Class. Once  
3 Class Counsel discovered this, Class Counsel immediately contacted the Claims Administrator and  
4 requested this statement be removed from the Settlement Website.

5 22. Class Counsel believe that the Notice provided was still sufficient because the email  
6 notice that was sent directly to 57,020 Settlement Class Members did not include the inaccurate  
7 language discussed above. Additionally, the Settlement Website included the correct definition of the  
8 Settlement Class as did the Summary Notice, Long Notice and Claim Form, all of which were posted  
9 on the Settlement Website. Furthermore, Class Counsel has elected to send an additional reminder  
10 notice to Settlement Class Members. Therefore, Class Counsel believe that, in spite of this error,  
11 notice to the Settlement Class was adequate.

## 12 **II. THE SETTLEMENT**

### 13 **A. The Settlement Class**

14 23. The Settlement Class consists of all individuals in the United States who used a debit  
15 or credit card to make a purchase from Creation and whose Personal Information was accessed and/or  
16 compromised by unauthorized individuals as part of the Security Incident. Excluded from the  
17 Settlement Class are:

- 18 a. Creation and its officers and directors;
- 19 b. All Settlement Class Members who timely and validly request exclusion from  
20 the Settlement Class;
- 21 c. The Judge assigned to evaluate the fairness of this Settlement;
- 22 d. The attorneys representing the Parties in the Litigation;

---

23  
24 <sup>2</sup> The Settlement Class is defined as follows: “[A]ll individuals residing in the United States  
25 who used a debit or credit card to make a purchase from Creation and whose Personal Information  
26 was accessed and/or compromised by unauthorized individuals as part of the Security Incident.”  
27 Preliminary Approval Decl., Ex. 1, ¶ 1.30. The “Security Incident” is defined as “the data breach  
28 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.*, ¶ 1.28

1 e. Banks and other entities that issued payment cards which were utilized at  
2 Creation during the Security Incident; and

3 f. Any Person found by a court of competent jurisdiction to be guilty under  
4 criminal law of initiating, causing, aiding, or abetting the criminal activity occurrence of the Security  
5 Incident or who pleads *nolo contendere* to any such charge.

6 *Id.*, ¶ 1.30.

7 **B. The Settlement Consideration**

8 24. The parties have negotiated payment of a non-reversionary fixed sum of \$950,000.00  
9 (the “Settlement Fund”) in exchange for a release of all claims that were or could have been asserted  
10 in the case.

11 25. Notice and administration expenses will be deducted from the Settlement Fund, along  
12 with attorneys’ fees, expense reimbursements and Representative Plaintiffs’ Awards approved by the  
13 Court. The balance will be applied to pay the claims of Settlement Class Members. Plaintiffs are  
14 requesting 33% of the Settlement Fund for attorneys’ fees, plus reimbursement of reasonable  
15 expenses incurred of \$19,871.08, as well as a \$2,500 service award to each of the three Class  
16 Representative Plaintiffs for the time they invested in, and the risks they undertook in pursuing, this  
17 litigation.

18 26. Notice and administration expenses are estimated to be approximately \$66,000.

19 27. If these deductions are allowed in full, the Settlement will provide approximately  
20 \$525,000 to pay Class Member claims.

21 28. We are informed by Creation’s counsel and believe that, as a result of the instant  
22 litigation, Creation has implemented enhanced data security measures, at a cost of \$119,337.87,  
23 which provide meaningful benefits to the Class. These security measures are described in the  
24 Declaration of Fred Alumyan and in the Declaration of Jack Martirosian, filed in support of Plaintiffs’  
25 Motion for Preliminary Approval on January 15, 2021.

26 **C. Distribution of the Settlement Fund**

27 29. The distribution plan ensures that all Class Members are eligible to readily receive  
28 payment from the Settlement Fund by submitting a claim for one of two types of Settlement Payments

1 that will be paid from the Settlement Fund, either (i) a Basic Settlement Payment or (ii) an  
2 Extraordinary Reimbursement Settlement Payment, as follows:

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

16 b. Extraordinary Reimbursement Settlement Payment - Settlement Class  
17 Members who opt to submit a claim for an Extraordinary Reimbursement Settlement Payment with  
18 sufficient documentation—who: (a) during the Unauthorized Charge Period experienced one or more  
19 fraudulent or unauthorized charges that are claimed by the Settlement Class Member in good faith to  
20 be more likely than not caused by the Security Incident on a credit or debit card he or she used to  
21 make a purchase from Creation, which charges were not denied or reimbursed; (b) has made  
22 reasonable efforts to avoid or seek reimbursement for his or her losses, including but not limited to  
23 exhaustion of all available credit monitoring insurance and identity theft insurance; and (c) submits  
24 an Approved Claim for an Extraordinary Reimbursement Settlement Payment—shall be eligible to  
25 receive reimbursement of up to \$10,000.00 for unreimbursed losses related to the Security Incident,  
26 including (i) unreimbursed unauthorized charges during the Unauthorized Charge Period on a credit  
27 or debit card used to make a purchase from Creation that more likely than not resulted from the  
28 Security Incident; (ii) over one hour and up to three hours of lost time spent dealing with unauthorized



1 charges due to the Security Incident, at a rate of \$20.00 per hour, if such time can be documented  
2 with reasonable specificity by answering questions on the Claim Form; and (iii) out of pocket  
3 expenses. *Id.*, ¶ 2.2.2.

4 30. Regardless of which option Settlement Class Members pursue, all Settlement Class  
5 Members seeking a Settlement Payment must complete and submit a written claim form to the Claims  
6 Administrator. *Id.*, ¶ 2.3.

7 31. Settlement Class Members may submit a Settlement Claim for one type of Settlement  
8 Payment; if a Settlement Class Member submits a Claim Form seeking more than one type of  
9 Settlement Payment, the Claims Administrator shall pay the single Settlement Payment of the highest  
10 dollar value supported by a valid Claim Form and any required documentation. *Id.*, ¶ 2.2.

11 32. Settlement Class Members may only submit one Settlement Claim, and only one  
12 Settlement Claim may be submitted per credit or debit card used with Creation. *Id.*

13 33. Settlement Class Members must sign the Claim Form and establish that they used a  
14 credit or debit card to make a purchase from Creation by either submitting a receipt, bank statement  
15 or credit card to reflect the purchase. *Id.*, ¶ 2.3. If no such documentation is available, Settlement  
16 Class Members shall attest under penalty of perjury that he or she made a debit or credit card purchase  
17 from Creation, identifying the approximate date and location of purchase, and provide the last four  
18 digits of his or her credit or debit card number. *Id.* Failure to provide such supporting documentation  
19 as requested on the Claim Form will result in denial of a Settlement Claim. *Id.* Additional information  
20 and documentation will be required of Class Members seeking Extraordinary Reimbursement  
21 Settlement Payments in order to show unauthorized charges were denied or not reimbursed, time  
22 spent on tasks related to unauthorized charges or the Security Incident, out-of-pocket expenses, and  
23 attestation of reasonable efforts to avoid or seek reimbursement for the loss. *Id.*

24 34. If a Settlement Class Member submits an incomplete or unsigned Claim Form, or a  
25 Claim Form that is not accompanied by sufficient documentation to determine the validity of the  
26 claim, the Claims Administrator shall request additional information and give the Settlement Class  
27 Member thirty (30) days to cure any defect before rejecting the claim. *Id.*, ¶ 7.2.1.

28 35. If, after the Claims Deadline has passed and the Attorneys' Fees and Expenses Award

1 and the Representative Plaintiffs' Awards have been paid in full out of the Settlement Fund, the total  
2 dollar value of all Approved Claims is less than the amount remaining in the Settlement Fund, then  
3 the Claims Administrator shall increase the payment amount for all Approved Claims *pro rata* among  
4 all Settlement Class Members. *See id.*, ¶ 7.3.1. In this scenario, the payment amount per Settlement  
5 Class Member may be up to a maximum of twice the total amounts for the Basic or Extraordinary  
6 Reimbursement Settlement Payments set forth in the Settlement Agreement, *i.e.*, up to a maximum  
7 of \$400.00 or \$20,000, respectively. *Id.*

8 36. If, however, at that time, the total dollar value of all Approved Claims at the payment  
9 rates set forth in the Settlement Agreement exceeds the amount remaining in the Settlement Fund,  
10 the payment amount for all Approved Claims shall be reduced *pro rata* among all Settlement Class  
11 Members who submitted Approved Claims. *Id.*, ¶ 7.3.2.

12 37. If there is any balance remaining in the Settlement Fund Account 90 days after the  
13 Claims Administrator completes the process for stopping payment on any Settlement Payment checks  
14 that remain uncashed, the Claims Administrator shall donate the balance of the Fund Account as a *cy*  
15 *pres* donation to Public Justice. *Id.*, ¶ 7.6. Established 35 years ago, Public Justice is a national non-  
16 profit legal advocacy organization that is dedicated to fighting injustices on behalf of ordinary persons  
17 and preserving access to the courts in order to combat social and economic injustice, protect the  
18 Earth's sustainability, and challenge predatory corporate conduct and government abuses on a wide  
19 range of important civil rights and environmental issues. *See* Declaration of F. Paul Bland, Executive  
20 Director of Public Justice, filed January 15, 2021 *see also* [https://www.publicjustice.net/donate/cy-](https://www.publicjustice.net/donate/cy-pres-awards/)  
21 [pres-awards/](https://www.publicjustice.net/donate/cy-pres-awards/). Specifically, related to the operative Complaint in the instant case, Public Justice  
22 regularly represents consumers who have suffered privacy injuries and will use any *cy pres* award to  
23 advocate for and enforce the privacy rights of consumers against corporations and institutions. *Id.*

24 38. Class Counsel will ensure that, once entered, the Final Order and Judgment is made  
25 available on the Settlement Website.

26 **III. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE UNDER THE**  
27 **CIRCUMSTANCES AND WARRANTS APPROVAL**

28 39. The Notice Plan was extraordinarily robust. The Claims Administrator gave notice to

1 the Settlement Class via 57,020 direct Summary Notice emails, a print publication campaign, an  
2 internet campaign, a press release, a website, and a toll-free number. Additionally, Creation posted  
3 a link to the Settlement Website on its home page.

4 40. Settlement Class Members have 90 days, or until June 22, 2021, to submit their claims.  
5 This claims period was negotiated by Class Counsel so that the Settlement Class Members would  
6 have sufficient time to submit their claims.

7 41. The Claims Administrator reports that as of May 1, 2021, the number of claims  
8 submitted is 1,426. Of these, 1,416 sought a Basic Settlement Payment and 7 sought an Extraordinary  
9 Reimbursement Settlement Payment. While Settlement Class Members can submit claims until June  
10 22, 2021, the current claims rate is 2.4%, which is on par with what we would expect at this point in  
11 the notice period and is similar to the typical claims rates seen in these types of settlements.

12 42. Settlement Class Members were also provided with an opportunity to opt out or object  
13 to the Settlement. While the deadline to opt out or object is not until May 24, 2021, to date, the  
14 Claims Administrator has received only one request for exclusion and no objections.

#### 15 **IV. RECOMMENDATIONS OF CLASS COUNSEL**

16 43. Plaintiffs, as the proposed Class Representatives, have no conflicts with the Settlement  
17 Class, have participated actively in the case, and are represented by attorneys experienced in class  
18 action litigation.

19 44. Wolf Haldenstein, Chimicles, and Ahdoot & Wolfson each have considerable  
20 experience in class action litigation, including the prosecution and resolution of consumer class  
21 actions. In negotiating this Settlement, we have considered the relative risks and benefits of settlement  
22 in relation to the risks of litigation. We have also negotiated this Settlement to comply in all respects  
23 with the relevant case law, the Code of Civil Procedure and the California Rules of Court. We believe  
24 that, considering the relative benefits of settlement at this time on the terms offered in comparison to  
25 the risk of a less favorable outcome, taking into account the considerable risk, expense and delay  
26 attendant upon obtaining an order certifying a consumer class action such as this one, and the  
27 prospects of prevailing at trial and on appeal, the proposed Settlement meets the standards for  
28 approval under California Rules of Court, rule 3.76 in that the Court will likely be able to approve

1 the Settlement as fair, reasonable adequate and certify the class for purposes of judgment. We  
2 respectfully request that the Court grant final approval.

3 **V. THE REASONABLENESS OF PLAINTIFFS' REQUEST FOR ATTORNEYS' FEES**  
4 **AND REIMBURSEMENT OF EXPENSES**

5 45. Class Counsel seek an award of attorneys' fees of 33% of the Settlement Fund, or  
6 \$313,500, plus reimbursement of up to \$20,000 in expenses as compensation for their considerable  
7 investment of time and effort and their success in achieving the Settlement. Class Counsel have  
8 incurred \$19,871.08 in unreimbursed out-of-pocket costs and have invested a collective lodestar of  
9 \$617,971. Therefore, the requested fee award represents a negative multiplier of .51. Class Counsel's  
10 request for 33% of the Settlement Fund in attorneys' fees is in line with the benchmark for similar  
11 cases. The Class Notice advised Settlement Class Member that Class Counsel would seek 33% of the  
12 Settlement Fund (or \$313,500) plus reasonable expenses not to exceed \$20,000.

13 46. For the past two years, Class Counsel have devoted substantial attorney time and out-  
14 of-pocket expense to develop and prosecute this litigation to a successful conclusion against a  
15 Defendant represented by experienced defense counsel. This litigation was undertaken by Class  
16 Counsel on a wholly contingent basis. From the outset, Class Counsel understood that they were  
17 embarking on an intensive, complex and expensive litigation with no guarantee of ever being  
18 compensated for the substantial investment of time and money the case required. In undertaking the  
19 responsibility, Class Counsel were obligated to assure that sufficient attorney resources were  
20 dedicated to the prosecution of this litigation and that funds were available to compensate staff and  
21 pay for out-of-pocket expenses. There are numerous cases where plaintiffs' counsel in contingent  
22 cases such as this, after the investment of thousands of hours, received no compensation. It is only  
23 because defendants and their counsel know that the leading members of the plaintiffs' class action  
24 bar are actually prepared to, and will, force a resolution on the merits and go to trial that meaningful  
25 settlements in actions such as this can occur.

26 47. When Class Counsel undertook to act for the Plaintiffs in this matter, we were aware  
27 that the only way we would be compensated was to achieve a successful result. The benefits conferred  
28 on Plaintiffs and the Class by this Settlement are particularly noteworthy in that, despite the existence

1 of the substantial risks presented here, the Class Members obtained via the Settlement a substantial  
2 monetary benefit.

3 48. Class Counsel's combined lodestar, based upon the current usual and customary  
4 hourly billing rate of each firm, is \$617,971 as of April 30, 2021.

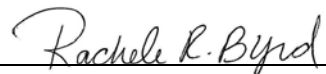
5 **VI. REPRESENTATIVE PLAINTIFFS' AWARD**

6 49. The First Amended Settlement Agreement also provides that Class Counsel will apply  
7 for service awards for the Representative Plaintiffs in the amount of \$2,500 each, to be paid from the  
8 Settlement Fund, in recognition of their contributions on behalf of the Settlement Class. The Class  
9 Notice informed Settlement Class Members that Class Counsel would request approval of service  
10 awards of \$2,500 for each of the three Representative Plaintiffs.

11 50. In fulfilling their duties as Class Representatives, the Plaintiffs each supervised  
12 counsel, reviewed pleadings, and responded to discovery. All three Plaintiffs preserved and provided  
13 documents to Class Counsel for use and/or production in the litigation.

14 51. Attached hereto as **Exs. A, B, and C** are the declarations of the Plaintiffs Kyndal  
15 Christofferson, Natalie Gerace, and Erin Ratelle, respectively, which provide additional detail  
16 concerning the time and effort they each expended on this litigation.


17 We declare under penalty of perjury under the laws of the State of California that the foregoing  
18 is true and correct. Executed this 7th day of May, 2021 at San Diego, California, Haverford,  
19 Pennsylvania, and Los Angeles, California, respectively.

20 

21 RACHELE R. BYRD

22 

23 BENJAMIN F. JOHNS

24 

25 TINA WOLFSON  
26  
27  
28

# EXHIBIT A

1 RACHELE R. BYRD (190634)  
byrd@whafh.com  
2 BRITTANY N. DEJONG (258766)  
dejong@whafh.com  
3 **WOLF HALDENSTEIN ADLER**  
**FREEMAN & HERZ LLP**  
4 750 B Street, Suite 1820  
5 San Diego, CA 92101  
6 Telephone: (619) 239-4599  
Facsimile: (619) 234-4599

7 BENJAMIN F. JOHNS (*pro hac vice*)  
bfj@chimicles.com  
8 BEENA M. MCDONALD (*pro hac vice*)  
bmm@chimicles.com  
9 **CHIMICLES SCHWARTZ KRINER**  
**& DONALDSON-SMITH LLP**  
10 One Haverford Centre  
11 361 West Lancaster Avenue  
12 Haverford, PA 19041  
Telephone: (610) 642-8500  
Facsimile: (610) 649-3633

TINA WOLFSON (174806)  
twolfson@ahdootwolfson.com  
**AHDOOT & WOLFSON, PC**  
2600 West Olive Ave., Suite 500  
Burbank, CA 91505  
Telephone: (310) 474-9111  
Facsimile: (310) 474-8585

13 *Counsel for Plaintiffs*

14  
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF LOS ANGELES**

17  
18 KYNDAL CHRISTOFFERSON, NATALIE )  
GERACE, AND ERIN RATELLE, )  
19 individually and on behalf of all others )  
20 similarly situated, )  
21 Plaintiffs, )  
22 v. )  
23 CREATION ENTERTAINMENT, INC., )  
24 Defendant. )

Case No. 19STCV11000  
**DECLARATION OF KYNDAL  
CHRISTOFFERSON IN SUPPORT OF  
PLAINTIFFS' MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT AND MOTION FOR AN  
AWARD OF ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES  
AND REPRESENTATIVE  
PLAINTIFFS' AWARD**  
DATE: June 24, 2021  
TIME: 9:00 a.m.  
JUDGE: Hon. Elihu M. Berle  
DEPT.: 6

1 I, Kyndal Christofferson, declare as follows:

2 1. I am a named plaintiff and a court-appointed Class Representative in the above-  
3 captioned litigation. I submit this declaration in support of Plaintiffs' Motion for Final Approval of  
4 Class Action Settlement and Motion for an Award of Attorneys' Fees, Reimbursement of Expenses  
5 and Representative Plaintiffs' Award. I have personal knowledge of the following facts set forth  
6 herein, and if called upon to do so, I could, and would, competently testify thereto.

7 2. The Court appointed me as a Class Representative in its March 8, 2021 Order Granting  
8 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. I used a debit or credit card  
9 to make a purchase from Creation Entertainment, Inc. ("Creation"), and my Personal Information<sup>1</sup>  
10 was accessed and/or compromised by unauthorized individuals as part of the Security Incident.

11 3. I spoke with experienced attorneys to determine if I would retain them to handle my  
12 case. They spent time communicating with me about the facts of this case and the law, including  
13 what was involved in being a class representative. In the end, I decided to vindicate not only my own  
14 rights, but also those of other customers who were affected by the Security Incident by serving as a  
15 class representative in this class action lawsuit. Instrumental in my decision to be a class  
16 representative was my own desire to provide recourse to a proposed Class of fellow customers who  
17 were affected by the Security Incident. Since agreeing to serve, I have diligently and faithfully  
18 fulfilled my obligations, and I was instrumental in achieving the relief obtained for the Settlement  
19 Class.

20 4. On or about April 2, 2019, I filed, by and through my attorneys, a class action  
21 complaint, on my behalf and on behalf of other similarly situated customers of Creation who were  
22 affected by the Security Incident.

23 5. I have participated in this litigation from its inception through settlement discussions.  
24 I have been in regular contact with my attorneys during the course of this matter. I estimate that I  
25 have spent approximately 15 hours of my time on this litigation to date. Among other things, I have  
26 spent time speaking with and otherwise communicating with Class Counsel; producing relevant  
27 documents; responding to interrogatories; and reviewing pleadings filed in this action.

28 \_\_\_\_\_  
<sup>1</sup> Unless otherwise noted, capitalized terms have the meaning ascribed to them in the First Amended Settlement Agreement and Release dated January 15, 2021.



1           6.       I am familiar with the work involved in prosecuting this action and worked closely  
2 with my attorneys in prosecuting the action and in obtaining the relief provided by the Settlement.  
3 Throughout the three years that I have been involved in this litigation, I made myself available to  
4 discuss developments in the case as part of my duty as a Class Representative. I have devoted  
5 significant time and attention to this case.

6           7.       I have fairly represented the absent Class members and herein request that the Court  
7 approve this Settlement. I have maintained the best interests of the Settlement Class while performing  
8 my class representative duties.

9           8.       My counsel and I have fairly and adequately represented the interests of the Settlement  
10 Class. My chosen counsel, Wolf Haldenstein Adler Freeman & Herz LLP, Chimicles Schwartz  
11 Kriner & Donaldson-Smith LLP and Ahdoot & Wolfson, PC have demonstrated their valuable  
12 experience and qualifications in conducting the pending litigation. They are experienced in  
13 prosecuting class actions such as this and have successfully prosecuted numerous class actions in  
14 recent years. They have continued to provide fair and vigorous representation for the Settlement Class  
15 in this matter. My attorneys have advised me in writing of their agreement on how the attorneys' fees  
16 will be shared, and I have consented to such agreement in writing.

17           9.       By serving as one of only three Class Representatives in this action, I bore a certain  
18 amount of risk that other Settlement Class Members did not bear. In addition to the time I spent  
19 participating in this prosecution of this case, I took a risk by coming forward and filing this class  
20 action as I took a stand against this corporation. As a result of my stepping forward, Settlement Class  
21 Members will receive the benefit of the Settlement to compensate them for the Security Incident.

22           10.      Based on the foregoing, I respectfully request that this Court award me an incentive  
23 award of \$2,500.

24           I declare under penalty of perjury under the laws of the State of California that the foregoing  
25 is true and correct. Executed this 6<sup>th</sup> day of May, 2021 at Millersville, Maryland.

26  
27 

28  
KYNDAL CHRISTOFFERSON

# EXHIBIT B

1 RACHELE R. BYRD (190634)  
byrd@whafh.com  
2 BRITTANY N. DEJONG (258766)  
dejong@whafh.com  
3 **WOLF HALDENSTEIN ADLER**  
**FREEMAN & HERZ LLP**  
4 750 B Street, Suite 1820  
5 San Diego, CA 92101  
6 Telephone: (619) 239-4599  
Facsimile: (619) 234-4599

7 BENJAMIN F. JOHNS (*pro hac vice*)  
bfj@chimicles.com  
8 BEENA M. MCDONALD (*pro hac vice*)  
bmm@chimicles.com  
9 **CHIMICLES SCHWARTZ KRINER**  
**& DONALDSON-SMITH LLP**  
10 One Haverford Centre  
11 361 West Lancaster Avenue  
Haverford, PA 19041  
12 Telephone: (610) 642-8500  
Facsimile: (610) 649-3633

TINA WOLFSON (174806)  
twolfson@ahdootwolfson.com  
**AHDOOT & WOLFSON, PC**  
2600 West Olive Ave., Suite 500  
Burbank, CA 91505  
Telephone: (310) 474-9111  
Facsimile: (310) 474-8585

13 *Counsel for Plaintiffs*

14  
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF LOS ANGELES**

17  
18 KYNDAL CHRISTOFFERSON, NATALIE )  
GERACE, AND ERIN RATELLE, )  
19 individually and on behalf of all others )  
20 similarly situated, )  
21 Plaintiffs, )  
22 v. )  
23 CREATION ENTERTAINMENT, INC., )  
24 Defendant. )

Case No. 19STCV11000  
**DECLARATION OF NATALIE  
GERACE IN SUPPORT OF  
PLAINTIFFS' MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT AND MOTION FOR AN  
AWARD OF ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES,  
AND REPRESENTATIVE  
PLAINTIFFS' AWARD**  
DATE: June 24, 2021  
TIME: 9:00 a.m.  
JUDGE: Hon. Elihu M. Berle  
DEPT.: 6

1 I, Natalie Gerace, declare as follows:

2 1. I am a named plaintiff and a court-appointed Class Representative in the above-  
3 captioned litigation. I submit this declaration in support of Plaintiffs’ Motion for Final Approval of  
4 Class Action Settlement and Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses,  
5 and Representative Plaintiffs’ Award. I have personal knowledge of the following facts set forth  
6 herein, and if called upon to do so, I could, and would, competently testify thereto.

7 2. The Court appointed me as a Class Representative in its March 8, 2021 Order Granting  
8 Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. I used a debit or credit card  
9 to make a purchase from Creation Entertainment, Inc. (“Creation”) and my Personal Information<sup>1</sup>  
10 was accessed and/or compromised by unauthorized individuals as part of the Security Incident.

11 3. I spoke with experienced attorneys to determine if I would retain them to handle my  
12 case. They spent time communicating with me about the facts of this case and the law, including  
13 what was involved in being a class representative. In the end, I decided to vindicate not only my own  
14 rights, but also those of other customers who were affected by the Security Incident by serving as a  
15 class representative in this class action lawsuit. Instrumental in my decision to be a class  
16 representative was my own desire to provide recourse to a proposed Class of fellow customers who  
17 were affected by the Security Incident. Since agreeing to serve, I have diligently and faithfully  
18 fulfilled my obligations, and I was instrumental in achieving the relief obtained for the Settlement  
19 Class.

20 4. On or about July 3, 2019, I filed, by and through my attorneys, a First Amended Class  
21 Action Complaint on my behalf and on behalf of other similarly situated customers of Creation who  
22 were affected by the Security Incident.

23 5. I have participated in this litigation from its inception through settlement discussions.  
24 I have been in regular contact with my attorneys during the course of this matter. I estimate that I  
25 have spent approximately 55 hours of my time on this litigation to date. Among other things, I have  
26 spent time speaking with and otherwise communicating with Class Counsel; producing relevant  
27 documents; responding to interrogatories; and reviewing pleadings filed in this action.

28 \_\_\_\_\_  
<sup>1</sup> Unless otherwise noted, capitalized terms have the meaning ascribed to them in the First Amended Settlement Agreement and Release dated January 15, 2021.

1           6. I am familiar with the work involved in prosecuting this action and worked closely  
2 with my attorneys in prosecuting the action and in obtaining the relief provided by the Settlement.  
3 Throughout the three years that I have been involved in this litigation, I made myself available to  
4 discuss developments in the case as part of my duty as a Class Representative. I have devoted  
5 significant time and attention to this case.

6           7. I have fairly represented the absent Settlement Class members and herein request that  
7 the Court approve this Settlement. I have maintained the best interests of the Settlement Class while  
8 performing my class representative duties.

9           8. My counsel and I have fairly and adequately represented the interests of the Settlement  
10 Class. My chosen counsel, Wolf Haldenstein Adler Freeman & Herz LLP, Chimicles Schwartz  
11 Kriner & Donaldson-Smith LLP, and Ahdoot & Wolfson, PC, have demonstrated their valuable  
12 experience and qualifications in conducting the pending litigation. They are experienced in  
13 prosecuting class actions such as this and have successfully prosecuted numerous class actions in  
14 recent years. They have continued to provide fair and vigorous representation for the Settlement Class  
15 in this matter. My attorneys have advised me in writing of their agreement on how the attorneys' fees  
16 will be shared, and I have consented to such agreement in writing.

17           9. By serving as one of only three Class Representatives in this action, I bore a certain  
18 amount of risk that other Settlement Class Members did not bear. In addition to the time I spent  
19 participating in this prosecution of this case, I took a risk by coming forward and filing this class  
20 action as I took a stand against this corporation. As a result of my stepping forward, Settlement Class  
21 Members will receive the benefit of the Settlement to compensate them for the Security Incident.

22           10. Based on the foregoing, I respectfully request that this Court award me an incentive  
23 award of \$2,500.

24           I declare under penalty of perjury under the laws of the State of California that the foregoing  
25 is true and correct. Executed this 6<sup>th</sup> day of May, 2021 at Los Angeles, California.

26  
27   
28 NATALIE GERACE

# EXHIBIT C

1 RACHELE R. BYRD (190634)  
byrd@whafh.com  
2 BRITTANY N. DEJONG (258766)  
dejong@whafh.com  
3 **WOLF HALDENSTEIN ADLER**  
**FREEMAN & HERZ LLP**  
4 750 B Street, Suite 1820  
5 San Diego, CA 92101  
6 Telephone: (619) 239-4599  
Facsimile: (619) 234-4599

7 BENJAMIN F. JOHNS (*pro hac vice*)  
bfj@chimicles.com  
8 BEENA M. MCDONALD (*pro hac vice*)  
bmm@chimicles.com  
9 **CHIMICLES SCHWARTZ KRINER**  
**& DONALDSON-SMITH LLP**  
10 One Haverford Centre  
11 361 West Lancaster Avenue  
12 Haverford, PA 19041  
Telephone: (610) 642-8500  
Facsimile: (610) 649-3633

TINA WOLFSON (174806)  
twolfson@ahdootwolfson.com  
**AHDOOT & WOLFSON, PC**  
2600 West Olive Ave., Suite 500  
Burbank, CA 91505  
Telephone: (310) 474-9111  
Facsimile: (310) 474-8585

13 *Counsel for Plaintiffs*

14  
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF LOS ANGELES**

17  
18 KYNDAL CHRISTOFFERSON, NATALIE )  
19 GERACE, AND ERIN RATELLE, )  
20 individually and on behalf of all others )  
21 similarly situated, )  
22 Plaintiffs, )  
23 v. )  
24 CREATION ENTERTAINMENT, INC., )  
25 Defendant. )

Case No. 19STCV11000  
**DECLARATION OF ERIN RATELLE  
IN SUPPORT OF PLAINTIFFS'  
MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT AND  
MOTION FOR AN AWARD OF  
ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES,  
AND REPRESENTATIVE  
PLAINTIFFS' AWARD**  
DATE: June 24, 2021  
TIME: 9:00 a.m.  
JUDGE: Hon. Elihu M. Berle  
DEPT.: 6

I, Erin Ratelle, declare as follows:

1. I am a named plaintiff and a court-appointed Class Representative in the above-captioned litigation. I submit this declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Representative Plaintiffs' Award. I have personal knowledge of the following facts set forth herein, and if called upon to do so, I could, and would, competently testify thereto.

2. The Court appointed me as a Class Representative in its March 8, 2021 Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. I used a debit or credit card to make a purchase from Creation Entertainment, Inc. ("Creation") and I believe my Personal Information<sup>1</sup> was accessed and/or compromised by unauthorized individuals as part of the Security Incident.

3. I spoke with experienced attorneys to determine if I would retain them to handle my case. They spent time communicating with me about the facts of this case and the law, including what was involved in being a class representative. In the end, I decided to vindicate not only my own rights, but also those of other customers who were affected by the Security Incident by serving as a class representative in this class action lawsuit. Instrumental in my decision to be a class representative was my own desire to provide recourse to a proposed Class of fellow customers who were affected by the Security Incident. Since agreeing to serve, I have diligently and faithfully fulfilled my obligations, and I was instrumental in achieving the relief obtained for the Settlement Class.

4. On or about April 2, 2019, I filed, by and through my attorneys, a class action complaint, on my behalf and on behalf of other similarly situated customers of Creation who were affected by the Security Incident.

5. I have participated in this litigation from its inception through settlement discussions. I have been in regular contact with my attorneys during the course of this matter. I estimate that I have spent approximately 18 hours of my time on this litigation to date. Among other things, I have spent time speaking with and otherwise communicating with Class Counsel;

---

<sup>1</sup> Unless otherwise noted, capitalized terms have the meaning ascribed to them in the First Amended Settlement Agreement and Release dated January 15, 2021.



producing relevant documents; responding to interrogatories; and reviewing pleadings filed in this action.

6. I am familiar with the work involved in prosecuting this action and worked closely with my attorneys in prosecuting the action and in obtaining the relief provided by the Settlement. Throughout the three years that I have been involved in this litigation, I made myself available to discuss developments in the case as part of my duty as a Class Representative. I have devoted significant time and attention to this case.

7. I have fairly represented the absent Class members and herein request that the Court approve this Settlement. I have maintained the best interests of the Settlement Class while performing my class representative duties.

8. My counsel and I have fairly and adequately represented the interests of the Settlement Class. My chosen counsel, Wolf Haldenstein Adler Freeman & Herz LLP, Chimicles Schwartz Kriner & Donaldson-Smith LLP, and Ahdoot & Wolfson, PC have demonstrated their valuable experience and qualifications in conducting the pending litigation. They are experienced in prosecuting class actions such as this and have successfully prosecuted numerous class actions in recent years. ~~They have continued to provide fair and vigorous representation~~ for the Settlement Class in this matter. My attorneys have advised me in writing of their agreement on how the attorneys' fees will be shared, and I have consented to such agreement in writing.

9. By serving as one of only three Class Representatives in this action, I bore a certain amount of risk that other Settlement Class Members did not bear. In addition to the time I spent participating in this prosecution of this case, I took a risk by coming forward and filing this class action as I took a stand against this corporation. As a result of my stepping forward, Settlement Class Members will receive the benefit of the Settlement to compensate them for the Security Incident.

10. Based on the foregoing, I respectfully request that this Court award me an incentive award of \$2,500.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 6th day of May, 2021 at San Diego, California.

  
ERIN RATELLE