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

17 KYNDAL CHRISTOFFERSON, NATALIE
18 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.

25 Case No. 19STCV11000

26 **FIRST AMENDED SETTLEMENT
27 AGREEMENT AND RELEASE**

28 (COMPLEX LITIGATION
PROGRAM-CLASS ACTIONS)

Case Assigned for All purposes to
Judge Elihu M. Berle

DEPT.: 6

FIRST AMENDED SETTLEMENT AGREEMENT AND RELEASE

This First Amended Settlement Agreement (“Agreement”), dated as of January 15, 2021, is made and entered into by and among the following Settling Parties: (1) Kyndal Christofferson (“Christofferson”), Natalie Gerace (“Gerace”) and Erin Ratelle (“Ratelle”) (collectively, “Representative Plaintiffs”), individually and on behalf of the Settlement Class, and (2) Creation Entertainment, Inc. (“Creation”), by and through their respective counsel.

RECITALS

WHEREAS, on April 2, 2019, Christofferson filed a complaint in the Superior Court of the State of California, County of Los Angeles (the “Court”) entitled *Kyndal Christofferson v. Creation Entertainment, Inc.*, Case No. 19STCV11000;

WHEREAS, on April 2, 2019, Ratelle filed a complaint in the Court entitled *Erin Ratelle v. Creation Entertainment, Inc.*, Case No. 19STCV10998;

WHEREAS, on April 25, 2019, Ratelle voluntarily dismissed her complaint;

WHEREAS, on July 3, 2019, Representative Plaintiffs Christofferson, Gerace and Ratelle filed a First Amended Class Action Complaint (“Complaint”) in Case No. 19STCV11000 (the “Litigation” or the “Action”);

WHEREAS, the Complaint asserts claims against Creation for: (1) negligence; (2) breach of implied contract; (3) violation of the California Data Breach Notification Act, California Civil Code § 1798.100, *et seq.*; (4) violation of the California Unfair Competition Law, California Business & Professions Code § 17200, *et seq.*; (5) violation of the California Consumer Legal Remedies Act, California Civil Code § 17500, *et seq.*; (6) violation of the Maryland Consumer Protection Act, Maryland Code Ann., Commercial Law § 13-101, *et seq.*; and (7) unjust enrichment, arising from the “Security Incident,” as such term is defined in Section 1.28 hereof:

WHEREAS, Creation denies all material allegations of the Complaint, denies that it is liable for the Security Incident, denies that certification of any class is appropriate, and contends that it would prevail in the Litigation:

WHEREAS, the Settling Parties exchanged formal discovery regarding the Security

1 Incident, the Representative Plaintiffs' claims and Creation's defenses; participated in good faith,
2 arms-length settlement discussions during a day-long mediation with the Honorable Peter D.
3 Lichtman (Ret.) of JAMS in Los Angeles, California on October 29, 2019; and engaged in
4 extensive discussions after the mediation through which the basic terms of a settlement were
5 negotiated and finalized;

6 WHEREAS, Class Counsel conducted a thorough examination and evaluation of the
7 relevant law and facts to assess the merits of the claims to be resolved in this settlement and how
8 best to serve the interests of the putative class in the Litigation. Based on this investigation and the
9 negotiations described above, Class Counsel have concluded, taking into account the sharply
10 contested issues involved, the risks, uncertainty and cost of further prosecution of this Litigation,
11 and the benefits to be received by the Settlement Class pursuant to this Agreement, that a
12 settlement with Creation on the terms set forth in this Agreement is fair, reasonable, adequate and
13 in the best interests of the putative class;

14 WHEREAS, to help protect its customers, Creation has taken extensive steps to improve its
15 data security and prevent future cyberattacks; and

16 WHEREAS, this First Amended Settlement Agreement is intended to fully, finally and
17 forever resolve all claims and causes of action asserted, or that could have been asserted based
18 upon the facts alleged in the Complaint, against Creation and the Released Persons, by and on
19 behalf of the Representative Plaintiffs and Settlement Class Members, and any other such actions
20 by and on behalf of any other consumers and putative classes of consumers originating, or that
may originate, in jurisdictions in the United States, relating to the Security Incident.

21 NOW, THEREFORE, IT IS HEREBY AGREED, by and between the Representative
22 Plaintiffs, Class Counsel, and Creation, that, subject to the approval of the Court as provided for in
23 this Agreement, the Litigation and Released Claims shall be fully and finally settled, compromised
24 and released, and the Litigation shall be dismissed with prejudice, on the following terms and
conditions:

25 **I. DEFINITIONS**

26 As used in this Agreement, the following terms have the meanings specified below:
27

1.1 “Agreement,” “Settlement,” or “Settlement Agreement” means this First Amended Settlement Agreement and Release and the settlement embodied in this Agreement, including all attached Exhibits (which are an integral part of this Agreement and are incorporated in their entirety by reference).

1.2 “Approved Claims” means valid Settlement Claims in an amount approved by the Claims Administrator or found to be valid through the Dispute Resolution Process, as set forth in this Agreement.

1.3 “Attorneys’ Fees and Expenses Award” means the amount awarded by the Court to be paid to Class Counsel from the Settlement Fund, such amount to be in full and complete satisfaction of Class Counsel’s claim or request (and any request made by any other attorneys) for payment of attorneys’ fees, costs, disbursements and compensation in the Litigation.

1.4 “Claim Form” means the claim form attached hereto as **Exhibit A**, or a claim form approved by the Court that is substantially similar to **Exhibit A**.

1.5 “Claims Administration” means the processing of Settlement Claims received from Settlement Class Members, including but not limited to the processing of payment of Approved Claims by the Claims Administrator, as well as any other duties and obligations of the Claims Administrator as set forth in this Settlement.

1.6 “Claims Administrator” means CPT Group, or such other company experienced in administering class action claims generally and specifically those of the type provided for and made in data breach litigation, as may be jointly agreed upon by the Settling Parties and approved by the Court.

1.7 “Claims Deadline” or “Claims Period” means the deadline by which Settlement Class Members must submit any valid Settlement Claims. The Claims Deadline shall be 90 days after the Notice Date and shall be clearly stated in the Notice and on the Claim Form.

1.8 “Class Counsel” means Rachele R. Byrd and Brittany N. DeJong of Wolf Haldenstein Adler Freeman & Herz LLP (“Wolf Haldenstein”), Benjamin F. Johns and Beena M. McDonald of Chimicles Schwartz Kriner & Donaldson-Smith LLP, and Tina Wolfson and Theodore W. Maya of Abdoot & Wolfson PC.

1 1.9 “Class Notice” means the notice of this settlement that is contemplated by this
2 Agreement, and which shall include the Publication Notice, Long Notice, and Summary Notice,
3 substantially in the form attached hereto as **Exhibit B**, **Exhibit C** and **Exhibit D**, respectively.

4 1.10 “Creation” or “Defendant” means Creation Entertainment, Inc.

5 1.11 “Dispute Resolution Process” means the process for resolving disputed Settlement
6 Claims as set forth in ¶ 7.2 of this Agreement.

7 1.12 “Effective Date” means the date on which the Final Approval Order in the Action
8 becomes “Final.” “Final” means: one (1) business day after all of the following conditions have
9 been satisfied: (a) the Final Approval Order has been entered; and (b)(i) if reconsideration and/or
10 appellate review is not sought from Final Approval Order, the expiration of the time for the filing
11 or noticing of any motion for reconsideration, appeal, petition, and/or writ; or (b)(ii) if
12 reconsideration and/or appellate review is sought from the Final Approval Order: (A) the date on
13 which the Final Approval Order is affirmed and is no longer subject to judicial review, or (B) the
14 date on which the motion for reconsideration, appeal, petition, or writ is dismissed or denied and
15 the Final Judgment is no longer subject to judicial review.

16 1.13 “Final Approval Hearing” means the final hearing to be conducted by the Court in
17 connection with the determination of the fairness, adequacy and reasonableness of this Agreement
18 and the proposed settlement of the Litigation, including Class Counsel’s application for the
19 Attorneys’ Fees and Expenses Award and the Representative Plaintiffs’ Award.

20 1.14 “Final Approval Order” means the Court’s Final Approval Order and Judgment,
21 substantially in the form attached hereto as **Exhibit E**, which, among other things, approves this
22 Agreement and the Settlement as fair, adequate and reasonable and confirms the final certification
23 of the Settlement Class.

24 1.15 “Notice Date” means the date on which the Class Notice to the Settlement Class
25 Members is substantially complete. The Notice Date shall be as soon as reasonably practicable,
26 but no later than 60 days following entry of the Preliminary Approval Order.

27 1.16 “Objection Deadline” means 60 days after the Notice Date and shall be clearly
28 stated in the Notice and on the Claim Form.

1.17 “Opt Out” means a Settlement Class Member: (i) who timely submits a properly completed and executed Request for Exclusion; and (ii) who does not rescind that Request for Exclusion before the Opt Out Date; and (iii) as to which there is not a successful challenge to the Request for Exclusion.

1.18 “Opt Out Date” means the date by which Settlement Class Members must mail their Request for Exclusion in order for that request to be excluded from the Settlement Class to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes. The Opt Out Date shall be 60 days after the Notice Date and shall be clearly stated in the Notice and on the Claim Form.

1.19 “Out of Pocket Expenses” means only the following types of expenses:

(a) unreimbursed payment card fees or bank fees incurred as a result of the Security Incident, including unreimbursed bank fees, unreimbursed card reissuance fees, unreimbursed overdraft fees, unreimbursed charges related to unavailability of funds, unreimbursed late fees, unreimbursed over-limit fees and unreimbursed fees relating to an account being frozen or otherwise unavailable due to the Security Incident; (b) cell, internet or text charges related to the Security Incident; (c) costs or charges for obtaining credit reports or credit freezes as a result of the Security Incident; and (d) postage costs incurred as a result of the Security Incident.

1.20 “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

1.21 “Personal Information” means information that is or could be used, whether on its own or in combination with other information, to identify, locate, or contact a person, and further includes, without limitation, names, addresses, email addresses and payment card information (including, *inter alia*, card numbers, expiration dates, and security codes (“CVV numbers”)).

1.22 “Preliminary Approval Order” means the Court’s order granting, among other

things, conditional certification of the Settlement Class, preliminary approval of this Agreement and the Settlement, and approval of the form and method of Class Notice, substantially in the form attached hereto as **Exhibit F**.

1.23 “Released Claims” means any claims that were asserted, or that could reasonably have been asserted in the Litigation based upon and/or arising out of the facts alleged in the operative Complaint, against the Released Persons, and that arise out of, or relate in any way to any or all of the acts, omissions, facts, matters, transactions, or occurrences that were alleged in the Litigation (based upon and/or arising out of the facts alleged in the Complaint).

“Released Claims” does not include the right of any Settlement Class Member or any of the Released Persons to enforce the terms of the settlement contained in this Agreement, does not release any claims that are not related to the Security Incident or the allegations, facts or circumstances described in the Litigation and/or Complaint, and shall not include any claims of Settlement Class Members who have timely excluded themselves from the Settlement Class.

1.24 “Released Persons” means Creation, and all of Creation’s current or former directors, officers, members, administrators, employees, parents, subsidiaries, divisions, affiliates, related entities, assigns, predecessors, successors, principals, agents, attorneys, insurers, reinsurers, beneficiaries, trustees, and all other Persons acting on Creation’s behalf, other than any Person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Security Incident or who pleads nolo contendere to any such charge.

1.25 “Representative Plaintiffs” means Kyndal Christofferson, Natalie Gerace and Erin Ratelle.

1.26 “Representative Plaintiffs’ Award” means such funds as may be awarded by the Court to the Representative Plaintiffs in recognition of their time, effort, and service to the Class, expended in pursuing the Action and in fulfilling their obligations and responsibilities as the Class representatives.

1.27 “Request for Exclusion” means a fully completed and properly executed written request that is timely delivered to the Claims Administrator by a Settlement Class Member under Section V of this Agreement and is postmarked on or before the Opt Out Date. For a Request for Exclusion to be properly completed and executed, it must: (a) state the Settlement Class Member’s full name, address and telephone number; (b) contain the Class Member’s personal and original signature or the original signature of a person authorized by law to act on the Class Member’s behalf with respect to a claim or right such as those asserted in the Litigation, such as a trustee, guardian or person acting under a power of attorney; and (c) state unequivocally the Settlement Class Member’s intent to be excluded from the Settlement. If a Settlement Class Member’s Request for Exclusion includes persons who were co-signers or co-holders on the same payment card account, the Settlement Class Member’s Request for Exclusion shall be deemed to be properly completed and executed as to that payment card only if all co-signers or co-holders elect to and validly opt out in accordance with the provisions of this Paragraph. All Requests for Exclusion must be submitted individually in connection with a Settlement Class Member, *i.e.*, one request is required for every Settlement Class Member seeking exclusion.

1.28 “Security Incident” means 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.

1.29 “Settlement Claim” means a claim for settlement benefits made under the terms of this Agreement.

1.30 “Settlement Class” means all individuals residing in the United States who used a debit or credit card to make a purchase from Creation and whose Personal Information was accessed and/or compromised by unauthorized individuals as part of the Security Incident. The Settlement Class specifically excludes: (i) Creation and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement

1 Class; (iii) the Judge assigned to evaluate the fairness of this Settlement; (iv) the attorneys
2 representing the Parties in the Litigation; (v) banks and other entities that issued payment cards
3 which were utilized at Creation during the Security Incident; and (vi) any other Person found
4 by a court of competent jurisdiction to be guilty under criminal law of initiating, causing,
5 aiding, or abetting the criminal activity occurrence of the Security Incident or who pleads *nolo*
6 *contendere* to any such charge.

7 1.31 “Settlement Class Member(s)” means a member(s) who falls within the
8 definition of the Settlement Class.

9 1.32 “Settlement Fund” means an amount equal to Nine Hundred Fifty Thousand
10 Dollars and No Cents (\$950,000.00), which shall be the sole and exclusive source of payment
11 to Settlement Class Members, costs of Claims Administration, any Attorneys’ Fees and
12 Expenses Award, and any Representative Plaintiffs’ Award.

13 1.33 “Settlement Payments” means the amount remitted by the Claims Administrator
14 out of the Settlement Fund to Settlement Class Members who submit Approved Claims, as
15 provided in Sections II and VII of this Agreement.

16 1.34 “Settling Parties” means, collectively, Creation and Representative Plaintiffs,
17 individually and on behalf of the Settlement Class.

18 1.35 “Unauthorized Charge Period” means the time from February 1, 2018 to April
19, 2019.

20 1.36 “Unknown Claims” means any of the Released Claims that any of the
21 Representative Plaintiffs does not know or suspect to exist in his or her favor at the time of the
22 release of the Released Persons that, if known by him or her, might have affected his or her
23 settlement with, and release of, the Released Persons, or might have affected his or her
24 decision to participate in this Settlement Agreement. With respect to any and all Released
25 Claims, the Settling Parties stipulate and agree that upon the Effective Date, the Representative
26 Plaintiffs expressly shall have and by operation of the Judgment shall have released any and all
27 Released Claims, including Unknown Claims, and waived the provisions, rights, and benefits
conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits

1 conferred by any law of any state, province, or territory of the United States which is similar,
2 comparable, or equivalent to California Civil Code § 1542, which provides:

3 A general release does not extend to claims which the creditor does not know or
4 suspect to exist in his or her favor at the time of executing the release, which if
5 known by him or her must have materially affected his or her settlement with the
debtor.

6 Representative Plaintiffs may hereafter discover facts in addition to, or different from,
7 those that they now know or believe to be true with respect to the subject matter of the
8 Released Claims, but the Representative Plaintiffs expressly shall have, and by operation of
9 the Final Approval Order shall have, upon the Effective Date, fully, finally and forever settled
10 and released any and all Released Claims, including Unknown Claims.

11 1.37 All time periods herein stated in terms of “days” shall be in calendar days
unless otherwise expressly stated.
12

13 II. SETTLEMENT CONSIDERATION

14 2.1 In consideration for the settlement and Releases provided herein, Creation will
fund a Settlement Fund in the amount of Nine Hundred Fifty Thousand Dollars (\$950,000.00)
15 within 15 business days from entry of the Court’s Preliminary Approval Order. The
16 Settlement Fund shall be the only source of payment for: (a) payment to Settlement Class
17 Members submitting valid Settlement Claims; (b) costs of Claims Administration; (c) the
18 Attorneys’ Fees and Expenses Award, if any, to Class Counsel; and (d) the Representative
19 Plaintiffs’ Award, if any.

20 2.2 Settlement Class Members may make a Settlement Claim for one of two types
21 of Settlement Payments to be paid from the Settlement Fund: (i) a Basic Settlement Payment;
22 or (ii) an Extraordinary Reimbursement Settlement Payment. These Settlement Payment
23 categories are exclusive and not cumulative, and Settlement Class Members may not receive
24 more than one type of Settlement Payment. If a Settlement Class Member submits a Claim
25 Form seeking more than one type of Settlement Payment, the Claims Administrator shall pay
26 the single Settlement Payment of the highest dollar value supported by a valid Claim Form and
27 any required documentation. Only one Settlement Claim may be submitted per Settlement

Class Member, and only one Settlement Claim may be submitted per credit or debit card used with Creation. If more than one valid claim is submitted for a single payment card, the largest valid claim filed will be processed and the remaining claims will be denied as duplicative.

2.2.1 Basic Settlement Payment. Every Settlement Class Member who submits an Approved Claim for a Basic Settlement Payment is eligible to receive a Basic Settlement Payment of \$200.00, regardless of whether he or she experienced any fraudulent or unauthorized charges on his or her credit or debit card used to make a purchase from Creation and regardless of whether he or she experienced any identity theft as a result of the Security Incident. If a Settlement Class Member experienced any fraudulent or unauthorized charges on his or her credit or debit card used to make a purchase from Creation, this Basic Settlement Payment includes expense reimbursement for: (i) lost time spent dealing with replacement card issues or having fraudulent charges reversed; (ii) costs of credit reports, credit monitoring, and identity theft protection purchased between February 1, 2018 and April 19, 2019 (the “Unauthorized Charge Period”); and (iii) other miscellaneous expenses (e.g., unreimbursed charges or fees from banks or credit card companies related to reissuance of cards, overdrafts, unavailability of funds, late payments; telephone/cell phone charges; postage; interest on payday loans related to card cancellation and replacement issues.) The amount to be paid for Basic Settlement Payments is subject to adjustment as described in ¶ 7.3 below.

2.2.2 Extraordinary Reimbursement Settlement Payment. A Settlement Class Member who: (i) during the Unauthorized Charge Period experienced one or more fraudulent or unauthorized charges that are claimed by the Settlement Class Member in good faith to be more likely than not caused by the Security Incident on a credit or debit card he or she used to make a purchase from Creation, which charges were not denied or reimbursed; (ii) has made reasonable efforts to avoid or seek reimbursement for his or her losses, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance; and (iii) submits an Approved Claim for an Extraordinary Reimbursement Settlement Payment, shall be eligible to receive an Extraordinary Reimbursement Settlement Payment consisting of reimbursement of up to \$10,000.00 total for the following unreimbursed losses

related to the Security Incident: (a) unreimbursed unauthorized charges during the Unauthorized Charge Period on a credit or debit card used to make a purchase from Creation that more likely than not resulted from the Security Incident; (b) up to three hours of lost time spent dealing with unauthorized charges or otherwise dealing with the Security Incident, at a rate of \$20.00 per hour, but only if at least one full hour was spent, and only if the time can be documented with reasonable specificity by answering the questions on the Claim Form; and (c) Out of Pocket Expenses. The amounts to be paid for Extraordinary Reimbursement Settlement Payments are subject to adjustment as described in ¶ 7.3 below.

2.3 Settlement Class Members seeking a Settlement Payment under this Agreement must complete and submit a written Claim Form to the Claims Administrator, postmarked or submitted electronically in accordance with the requirements for electronic submission of a Claim Form, on or before the Claims Deadline, which the Settling Parties propose shall be the 90th day after the Notice Date. The Claim Form must: (a) be signed by the Settlement Class Member with a statement that his or her claim is true and correct to the best of his or her belief; and (b) establish that the Settlement Class Member used a credit or debit card to make a purchase from Creation by: (i) submitting a receipt, bank statement or credit card statement showing such a purchase or, (ii) if none of the documents in ¶ 2.3(b)(i) are available, the Settlement Class Member shall attest under penalty of perjury that he or she made a credit or debit card purchase from Creation, shall identify the location and approximate date of purchase, and shall provide the last four digits of his or her credit card number (or, if the credit card number is no longer available, the Settlement Class Member shall attest under penalty of perjury that it is no longer available). Failure to provide supporting documentation as set forth in this Paragraph and Paragraph 2.3.1 or as requested on the Claim Form or by the Claims Administrator shall result in denial of a Settlement Claim.

2.3.1 *Additional Information Required for Extraordinary Reimbursement Settlement Payment.* In addition to the information and documentation required in ¶ 2.3, a Settlement Class Member seeking an Extraordinary Reimbursement Settlement Payment must also provide: (i) documentation sufficient to show unauthorized charges made during the

1 Unauthorized Charge Period that were not reimbursed or denied and all claimed losses from
2 such charges; (ii) insofar as the Settlement Class Member seeks reimbursement for time spent,
3 a reasonably specific description of time spent and tasks performed dealing with unauthorized
4 charges or otherwise dealing with the Security Incident and the tasks performed, attested to
5 under oath; (iii) documentation sufficient to show Out of Pocket Expenses and that such
6 expenses were primarily incurred because of, and plausibly arose from, the Security Incident;
7 and (iv) an attestation that the Settlement Class Member made reasonable efforts to avoid or
8 seek reimbursement for the loss, including from the applicable bank or payment card servicer
9 and through exhaustion of any available credit monitoring insurance and identity theft
insurance, but has been unsuccessful.

10 **2.3.2 Confidentiality of Information Submitted by Settlement Class Members.**

11 Information submitted by Settlement Class Members pursuant to this Agreement and in
12 connection with a Settlement Claim shall be deemed confidential and protected as such by the
13 Settling Parties and the Claims Administrator.

14 **2.4** Nothing in this Settlement Agreement shall be construed to provide for a
15 double payment for the same loss or injury that was reimbursed or compensated by any other
16 source. No payment shall be made for emotional distress, personal/bodily injury, or punitive
17 damages, as all such amounts are not recoverable pursuant to the terms of the Settlement
18 Agreement. Settlement Class Members must exhaust all available credit monitoring insurance
19 and identity theft insurance before any Extraordinary Reimbursement Settlement Payment will
20 be authorized or paid.

21 **III. PRELIMINARY SETTLEMENT APPROVAL AND FINAL APPROVAL**

22 **3.1** As soon as practicable after the execution of the Settlement Agreement, Class
23 Counsel shall submit this Settlement Agreement to the Court and file a motion for preliminary
24 approval of the settlement with the Court requesting entry of a Preliminary Approval Order in
25 the form attached hereto as **Exhibit F**, or an order substantially similar to such form, which
26 shall, *inter alia*:

- 27 (a) Stay all proceedings in the Litigation other than those related to approval of the

1 Settlement;

2 (b) Preliminarily and conditionally certify the Settlement Class for settlement
3 purposes only and preliminarily approve this Agreement for purposes of issuing Notice;

4 (c) Appoint Representative Plaintiffs as the Settlement Class representatives, for
5 settlement purposes only;

6 (d) Appoint Class Counsel as counsel of the Settlement Class, for settlement
7 purposes only;

8 (e) Approve the notice program, as set forth in Section IV herein (the “Notice
9 Program”);

10 (f) Approve the form and contents of a publication notice (“Publication Notice”)
11 substantially similar to the one attached hereto as **Exhibit B**, a Summary Notice to be
12 emailed to Settlement Class Members (“Summary Notice”) substantially similar to the one
13 attached hereto as **Exhibit D**, and a long form notice (“Long Notice”) to be posted on the
14 settlement website substantially similar to the one attached hereto as **Exhibit C**, which
15 together shall include a fair summary of the Settling Parties’ respective litigation positions,
16 the general terms of the settlement set forth in the Settlement Agreement, instructions for
17 how to object to or submit a Request for Exclusion from the settlement, the process and
18 instructions for making Settlement Claims to the extent contemplated herein, and the date,
time and place of the Final Approval Hearing;

19 (g) Approve a Claim Form substantially similar to that attached hereto as **Exhibit**
20 **A**;

21 (h) Appoint the Claims Administrator;

22 (i) Schedule an appropriate Opt Out Date, Objection Deadline, and other
23 settlement-related dates and deadlines to be included in the Class Notice; and

24 (j) Schedule the Final Approval Hearing.

25 3.2 Defendant will not oppose entry of the Preliminary Approval Order so long as it
26 is substantially in the form attached to this Agreement as **Exhibit F**, and is otherwise
27 consistent with this Agreement.

1 3.3 Class Counsel and Defendant's counsel shall request that the Court hold a Final
2 Approval Hearing after notice is completed and at least 25 days after the Opt Out Date, and
3 grant Final Approval of the settlement set forth herein.

4 3.4 The proposed Final Approval Order that shall be filed with the motion for final
5 approval shall be in the form set forth in **Exhibit E** as agreed upon by Defendant and Class
6 Counsel and shall, among other things:

- 7 (a) Determine that the Settlement Agreement is fair, adequate, and reasonable;
- 8 (b) Finally certify the Settlement Class for settlement purposes only;
- 9 (c) Determine that the Notice Program satisfies due process requirements;
- 10 (d) Constitute Final Judgment as to all claims in the Complaint;
- 11 (e) Bar and enjoin any Settlement Class Members who did not timely opt out in
12 accordance with the requirements of the Agreement from asserting any of the Released
13 Claims; and
- 14 (f) Release and forever discharge Creation and the Released Persons from the
15 Released Claims, as provided for in this Agreement.

IV. NOTICE PROGRAM

16 4.1 No later than 10 business days after entry of the Preliminary Approval Order,
17 Creation will provide the Claims Administrator with a Settlement Class Member list that
18 includes the name, email address and/or mailing address of each Settlement Class Member.
19 The Claims Administrator shall cause notice to be disseminated to the Settlement Class
20 pursuant to the Preliminary Approval Order and the Notice Program, as described below, and
21 in compliance with all applicable laws, including, but not limited to, California Rules of Court,
22 rule 3.769, the Due Process Clause of the United States Constitution, and any other applicable
23 statute, law or rule, and be effectuated pursuant to provisions set forth below, the costs of
24 which shall be costs of Claims Administration.

25 4.2 Within 30 days of entry of the Preliminary Approval Order, Summary Notice,
26 substantially in the form of **Exhibit D**, shall be provided to Settlement Class Members via
27 email. Notice shall also be provided by Publication Notice, notice on a dedicated settlement

1 website, and notice through Creation's website as follows:

2 4.2.1 Within 30 days after the Preliminary Approval Order, the Claims
3 Administrator shall establish a dedicated settlement website that includes this Settlement
4 Agreement, the Long Notice, and the Claim Form approved by the Court, the costs of
5 which shall be costs of Claims Administration. The Claims Administrator shall maintain
6 and update the website throughout the Claims Deadline. The Claims Administrator will
7 also provide copies of this Settlement Agreement, the Long Notice, and the Claim Form
8 approved by the Court upon request. A toll-free number with interactive voice recognition
9 FAQs shall also be made available to address Settlement Class Members' inquiries.

10 4.2.2 Commencing no later than 30 days after entry of the Preliminary Approval
11 Order, Publication Notice, substantially in the form of **Exhibit B**, shall be provided to
12 Settlement Class Members in accordance with the Publication Plan to be submitted with
13 the Motion for Preliminary Approval.

14 4.2.3 Within 30 days after entry of the Preliminary Approval Order, Creation
15 shall prominently post a link to the settlement website on the home page of Creation
16 (<https://www.creationent.com/>) for the entire Claims Period. Creation shall be entitled to
17 remove the link from the website at the conclusion of the Claims Period.

18 4.3 The Notice Program shall be subject to approval by the Court as meeting
19 constitutional due process requirements.

20 4.4 The Long Notice, Summary Notice, Publication Notice, and Claim Form
21 approved by the Court may be adjusted by the Claims Administrator, in consultation and
22 agreement with the Settling Parties, as may be reasonable and necessary and not inconsistent
23 with such approval.

24 4.5 Prior to the Final Approval Hearing, counsel for the Settling Parties shall cause
25 to be filed with the Court an appropriate declaration from the Claims Administrator
26 demonstrating compliance with the Court-approved Notice Program.

27 4.6 The Notice Program shall commence within 30 days of entry of the Preliminary
28 Approval Order and shall be completed within 60 days of entry of the Preliminary Approval

1 Order, except as otherwise specifically provided above.

2

V. OPT OUT PROCEDURES

3 5.1 Each Settlement Class Member wishing to exclude himself, herself or itself
4 from the Settlement Class must individually sign and timely mail a written Request for
Exclusion to the address designated by the Claims Administrator.

5 5.2 To be effective, a Request for Exclusion must be postmarked no later than 60
6 days after the Notice Date.

7 5.3 Within 7 days after the Opt Out Date, the Claims Administrator shall provide
8 the Settling Parties with a complete and final list of all Opt Outs who have timely and validly
9 excluded themselves from the Settlement Class and, upon request, copies of all completed
10 Requests for Exclusion. Class Counsel may file these materials with the Court, with any
11 Personal Information other than names and cities and states of residence redacted, no later than
12 5 court days prior to the Final Approval Hearing.

13 5.4 All persons who Opt Out of the Settlement Class shall not receive any benefits
14 of or be bound by the terms of this Settlement Agreement. All persons falling within the
15 definition of the Settlement Class who do not Opt Out shall be bound by the terms of this
16 Settlement Agreement and the Final Approval Order entered thereon.

17

VI. OBJECTION PROCEDURES

18 6.1 Each Settlement Class Member who does not file a timely Request for
19 Exclusion may file a notice of intent to object to the Settlement Agreement. All such notices
20 must be written and must include all of the following: (i) the objector's full name, address,
21 telephone number, and e-mail address (if any); (ii) information identifying the objector as a
22 Settlement Class Member, including proof that the objector is a member of the Settlement
23 Class; (iii) a clear and detailed written statement of the specific legal and factual bases for each
24 and every objection, accompanied by any legal support for the objection the objector believes
25 applicable; (iv) the identity of any counsel representing the objector; (v) a statement whether
26 the objector intends to appear at the Final Approval Hearing, either in person or through
27 counsel, and, if through counsel, identifying that counsel; (vi) a list of all persons who will be

1 called to testify at the final approval hearing in support of the objections; and (vii) the
2 objector's signature and the signature of the objector's duly authorized attorney or other duly
3 authorized representative.

4 6.2 To be timely, written notice of an objection in the appropriate form must be
5 mailed to the Claims Administrator postmarked no later than the Objection Deadline.

6 6.3 Any Settlement Class Member who fails to substantially comply with the
7 requirements in Section VI for objecting shall waive and forfeit any and all rights he or she
8 may have to object to the Settlement, unless he or she appears in-person to object at the Final
9 Approval Hearing, and shall be bound by all the terms of the Settlement Agreement and by all
10 proceedings, orders and judgments in the Litigation. The exclusive means for any challenge to
11 the Settlement Agreement shall be through the provisions of Section VI.

11 **VII. CLAIMS ADMINISTRATION**

12 7.1 The Claims Administrator shall administer and calculate the Settlement Claims
13 submitted by Settlement Class Members. Class Counsel and Creation's counsel shall
14 periodically be given reports as to both Settlement Claims and distribution, and have the right
15 to review and obtain supporting documentation and challenge such reports if they believe them
16 to be inaccurate or inadequate. The determination by the Claims Administrator and counsel
17 for the Settling Parties (as applicable) of the validity or invalidity of all Settlement Claims
18 shall be binding, subject to the Dispute Resolution Process set forth in this Section VII.

19 7.2 For each Settlement Claim submitted, the Claims Administrator, in its sole
20 discretion to be reasonably exercised, will determine whether: (1) the claimant is a Settlement
21 Class Member; (2) the claimant has provided all information required to complete the Claim
22 Form by the Claims Deadline, including but not limited to information required under ¶¶ 2.3
23 and 2.3.1; and (3) the information submitted for a Settlement Claim for an Extraordinary
24 Reimbursement Settlement Payment would lead a reasonable person to conclude that the
25 alleged expenses plausibly arose from the Security Incident (collectively, "Facially Valid").
26 The Claims Administrator may, at any time, request from the claimant, in writing, additional
27 information as the Claims Administrator may reasonably require in order to evaluate the

1 Settlement Claim.

2 7.2.1 Upon receipt of an incomplete or unsigned Claim Form or a Claim
3 Form that is not accompanied by sufficient documentation to determine whether the
4 Settlement Claim is Facialy Valid, the Claims Administrator shall request additional
5 information and give the claimant 30 days to cure the defect before rejecting the Settlement
6 Claim. Such requests shall be made within 30 days after the Claims Deadline. In the event of
7 unusual circumstances interfering with compliance during the 30-day period, the claimant may
8 request and, for good cause shown shall be given, a reasonable extension of the 30-day
9 deadline in which to comply; however, in no event shall the deadline be extended to later than
10 180 days from the Effective Date. If the defect is not cured, then the Settlement Claim will be
11 deemed invalid and there shall be no obligation to pay the Settlement Claim.

12 7.2.2 Following receipt of additional information requested by the Claims
13 Administrator pursuant to ¶ 7.2.1, the Claims Administrator shall have 30 days to accept, in
14 whole or lesser amount, or reject each Settlement Claim. If after review of the Settlement
15 Claim and all documentation submitted by the claimant, the Claims Administrator determines
16 that such a Settlement Claim is Facialy Valid, then the Settlement Claim shall be paid within
17 the time period provided by ¶ 7.4 to the extent that the Claims Administrator finds the
18 Settlement Claim to be valid. If the Settlement Claim remains invalid because the claimant
19 does not provide the requested information needed to complete the Claim Form and evaluate
20 the Settlement Claim, then the Claims Administrator may reject the Settlement Claim without
21 any further action apart from providing a notice of rejection of the Settlement Claim. If the
22 Settlement Claim is rejected for other reasons, it shall be referred to counsel for the Settling
23 Parties.

24 7.2.3 Settlement Class Members shall have 30 days from receipt of the offer
25 to accept or reject any offer of partial payment received from the Claims Administrator. If a
26 Settlement Class Member rejects an offer from the Claims Administrator, the Claims
27 Administrator shall have 15 days to reconsider its initial adjustment amount and make a final
determination. If the final determination is approved by the claimant, then the approved

1 amount shall be the total and final amount to be paid. If the final determination is not
2 approved by the claimant within 30 days, then the dispute will be submitted to counsel for the
3 Settling Parties within an additional 10 days.

4 7.2.4 Counsel for the Settling Parties shall have the power to deny a
5 Settlement Claim or approve a Settlement Claim in full or in part. If any dispute is submitted
6 to counsel for the Settling Parties, counsel for the Settling Parties shall make a final
7 determination of the dispute or request further supplementation of a Settlement Claim within
8 30 days. Counsel for the Settling Parties' determination shall be based on whether counsel for
9 the Settling Parties are persuaded that the claimed amounts are reasonably supported and were
10 more likely than not caused by the Security Incident. Counsel for the Settling Parties' decision
11 will be final and non-appealable. Any claimant referred to counsel for the Settling Parties for
12 resolution of a disputed claim shall reasonably cooperate with counsel for the Settling Parties,
13 including by either providing supplemental information as requested or, alternatively, signing
14 an authorization allowing counsel for the Settling Parties to verify the Settlement Claim
15 through third party sources, and failure to cooperate shall be grounds for denial of the
16 Settlement Claim in full. Counsel for the Settling Parties shall make a final decision within 30
days of receipt of all supplemental information requested.

17 7.3 The Claims Administrator shall adjust the payment amount of all Settlement
18 Payments as follows:

19 7.3.1 If the total dollar value of all Approved Claims at the payment rates set forth in
20 ¶¶ 2.2.1 and 2.2.2, is less than the amount remaining in the Settlement Fund after the Claims
21 Deadline has passed and after the Attorneys' Fees and Expenses Award and the Representative
22 Plaintiffs' Award have been paid in full out of the Settlement Fund, the payment amount for
23 all Approved Claims shall be increased *pro rata* among all Settlement Class Members who
24 submitted Approved Claims up to a maximum of twice the total amounts set forth in ¶¶ 2.2.1
25 and 2.2.2, notwithstanding the maximum amounts set forth in those paragraphs. By way of
26 example, the total Basic Settlement Payment can be increased up to a maximum of \$400.00,
27 and the Extraordinary Expense Settlement Payment can be increased up to a maximum of

1 \$20,000.00.

2 7.3.2 If the total dollar value of all Approved Claims at the payment rates set forth in
3 ¶¶ 2.2.1 and 2.2.2 exceeds the amount remaining in the Settlement Fund after the Claims
4 Deadline has passed and after the Attorneys' Fees and Expenses Award and the Representative
5 Plaintiffs' Award have been paid in full out of the Settlement Fund, the payment amount for
6 all Approved Claims shall be reduced *pro rata* among all Settlement Class Members who
7 submitted Approved Claims.

8 7.4 Creation will cause the Settlement Fund to be delivered to the Claims
9 Administrator within 15 business days following entry by the Court of the Preliminary
10 Approval Order. The Claims Administrator shall deposit the Settlement Fund in an interest
11 bearing account and any interest accrued shall be used to pay Approved Claims. No
12 distributions will be made without authorization from the parties.

13 7.5 The Claims Administrator will mail Settlement Payment checks or
14 electronically transfer funds for Approved Claims within the later of 90 days after the
15 Effective Date or 30 days after all disputed claims have been resolved. Settlement Payment
16 checks shall be valid for a period of 180 days from issuance, and shall state, in words or
17 substance, that the check must be cashed within 180 days, after which time it will become
18 void. In the event a settlement check becomes void, the Settlement Class Member to whom
19 that settlement check was made payable will forfeit the right to payment and will not be
20 entitled to have the check reissued or to any further distribution from the Settlement Fund or to
21 any further recourse against Creation, but the Settlement Agreement and Release will in all
22 other respects be fully enforceable against the Settlement Class Member. No later than 190
23 days from the issuance of the Settlement Payment checks, the Claims Administrator shall take
24 all steps necessary to stop payment on any Settlement Payment checks that remain uncashed.

25 7.6 If there is any balance remaining in the Settlement Fund Account 90 days after
26 the Claims Administrator completes the process for stopping payment on any Settlement
27 Payment checks that remain uncashed, the Claims Administrator shall donate the balance of
28 the Fund Account as a *cy pres* donation to Public Justice. The funds distributed pursuant to

the *cy pres* provision set forth in this Paragraph shall not be considered unclaimed property under the laws of California or any other state.

7.7 No Person shall have any claim against the Claims Administrator, Creation, Creation's counsel, Class Counsel, and/or the Representative Plaintiffs based on distributions of benefits to Settlement Class Members or to the *cy pres* recipient named herein, if applicable.

7.8 All Settlement Class Members who fail to timely submit a valid Settlement Claim for any benefits hereunder within the time frames set forth herein, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the Releases contained herein and the Final Approval Order.

VIII. RELEASES

8.1 Upon the Effective Date, each Settlement Class Member, including Representative Plaintiffs, whether or not they received a Settlement Payment, will be deemed by this Agreement and by operation of the Final Approval Order to have completely and unconditionally released, forever discharged and acquitted the Released Persons from any and all of the Released Claims, and Representative Plaintiffs will be deemed to have also released Unknown Claims.

8.2 The Settlement Agreement shall be the sole and exclusive remedy for any and all released claims of Settlement Class Members. Upon entry of the Final Approval Order, each member of the Settlement Class shall be barred from initiating, asserting, or prosecuting against either defendant any claim that are released by operation of the Settlement Agreement and the Final Approval Order.

8.3 Upon entry of the Final Approval Order, Defendant shall have fully, finally and forever released, relinquished and discharged as against Representative Plaintiffs all claims arising out of, relating to or in connection with the institution, prosecution, assertion, defense, settlement or resolution of the Litigation.

**IX. CLASS COUNSEL'S ATTORNEYS' FEES AND COSTS; AND
REPRESENTATIVE PLAINTIFFS' AWARDS.**

9.1 Class Counsel shall apply to the Court for an award of attorneys' fees, payable solely from the Settlement Fund, in an amount not to exceed thirty-three percent (33%) of the Settlement Fund. Class Counsel shall also apply to the Court for reimbursement of their reasonable costs incurred, also payable solely from the Settlement Fund. Class Counsel will apply to the Court for such approval and will serve Creation's Counsel with such application no later than 30 days prior to the Objection Deadline. Creation shall not object to Class Counsel's application for the Attorneys' Fees and Expenses Award.

9.2 Class Counsel will request from the Court a service award for Representative Plaintiffs in the amount of \$2,500.00 each, to be paid solely from the Settlement Fund. Creation agrees not to oppose Settlement Class Representatives' requests for service award payments to the extent they do not exceed these amounts.

9.3 The Claims Administrator shall pay the Attorneys' Fees and Expenses Award and Representative Plaintiffs' Award from the Settlement Fund to Chimicles Schwartz Kriner & Donaldson-Smith LLP ("Chimicles") within 20 days after the Court executes an order (or orders) awarding such Attorneys' Fees and Expenses Award and Representative Plaintiffs' Award. The Attorneys' Fees and Expenses Award will be allocated among Class Counsel by Chimicles following consultation with Class Counsel. In the event that the Effective Date does not occur, or the Final Approval Order or the order making the Attorneys' Fees and Expenses Award is reversed or modified, or the Settlement Agreement is cancelled or terminated or modified for any other reason, and in the event that the Attorneys' Fees and Expenses Award has been paid to any extent, then Class Counsel shall, within five (5) business days after receiving notice from Creation or from a court of appropriate jurisdiction, refund to the Settlement Fund, as appropriate, the amounts previously paid to Class Counsel, in an amount consistent with such reversal, modification, cancellation, or termination. Class Counsel, as a condition of receiving such fees and expenses, hereby agree that their respective law firms are each unconditionally obligated to make such refund of fees and expenses

received by their respective law firms, and are subject to the jurisdiction of the Court for the purpose of enforcing the provisions of this Section.

9.4 The finality or effectiveness of the Settlement Agreement shall not depend upon the Court awarding any particular Attorneys' Fees and Expenses Award or Representative Plaintiffs' Award. No order of the Court, or modification or reversal or appeal of any order of the Court concerning the amount(s) of any attorneys' fees, costs and expenses, and/or Representative Plaintiffs' Awards ordered by the Court to Class Counsel or Representative Plaintiffs shall affect whether the Judgment is final or constitute grounds for cancellation or termination of this Settlement Agreement.

X. CONDITIONS OF SETTLEMENT, CANCELLATION, OR TERMINATION.

10.1 This Agreement is subject to and conditioned upon the occurrence of all of the following events:

- (a) The Court has entered a Preliminary Approval Order as provided by ¶ 3.1;
 - (b) The Court has entered the Final Approval Order as provided by ¶ 3.4; and
 - (c) The Effective Date has occurred, as defined in ¶ 1.12.

10.2 If all of the conditions in ¶ 10.1 are not fully satisfied and the Effective Date does not occur, the Settlement Agreement shall, without notice, be automatically terminated unless Class Counsel and Creation's counsel mutually agree in writing to proceed with the Settlement Agreement.

10.3 In the event of termination, this Agreement shall have no further force or effect regarding the Settling Parties' rights, and the Settling Parties shall jointly request the Court to hold a scheduling conference for the purpose of establishing a new case schedule and trial date for the Litigation.

10.4 The Settling Parties agree to certification of the Settlement Class solely for purposes of this settlement, and their agreement to certification solely for settlement purposes here is without prejudice to any position asserted by the Settling Parties in any other

1 proceeding, case or action, as to which all of their rights are specifically preserved. If the
2 settlement set forth in this Settlement Agreement is not approved by the Court, or if the
3 Effective Date does not occur for any other reason, this Settlement Agreement, and the
4 certification of the Settlement Class provided for herein, will be vacated and the Litigation
5 shall proceed as though the Settlement Class had never been certified, without prejudice to any
6 Person's or Settling Party's position on the issue of class certification or any other issue, and
7 the Settlement Agreement and all documents, supporting materials, representations, statements
8 and proceedings relating to the Settlement shall not be offered or received into evidence, and
9 are not admissible into evidence, in the Litigation or any other action or proceeding.

10.5 Notwithstanding any provision of this Agreement, in the event this Agreement
11 is not approved by any court, or terminated for any reason, or the Settlement set forth in this
12 Agreement is declared null and void, or in the event that the Effective Date does not occur,
13 Settlement Class Members, Representative Plaintiffs, and Class Counsel shall not in any way
14 be responsible or liable for any expenses, Claims Administrator charges or expenses, taxes,
15 including costs of notice and administration associated with the Settlement or this Agreement,
and each Party shall bear its own attorneys' fees and costs.

16 **XI. MISCELLANEOUS PROVISIONS.**

11.1 The Settling Parties and their counsel agree to undertake their best efforts and
mutually cooperate to effectuate this Agreement and the terms of the proposed Settlement set
forth herein, including taking all steps and efforts contemplated by this Agreement, and any
other steps and efforts which may become necessary by order of the Court or otherwise. The
Settling Parties further agree to defend this Agreement against objections made to the
Settlement or the Final Approval Order at the Final Approval Hearing or in any appeal of the
Final Approval Order or in any collateral attack on this Agreement or Final Approval Order.

11.2 The Settling Parties intend this Agreement to be a final and complete resolution
of all disputes between them with respect to the Litigation. The Agreement compromises
claims that are contested and shall not be deemed an admission by any of the Parties as to the
merits of any claim or defense. The Settling Parties each agree that the settlement and this

Agreement were negotiated in good faith and at arm's-length by the Settling Parties, and reflects a Settlement that was reached voluntarily after consultation with competent legal counsel.

11.3 The Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest. Amendments and modifications may be made without additional notice to the Settlement Class Members unless such notice is required by the Court.

11.4 Except as otherwise provided, this Agreement contains the entire agreement between the Settling Parties, and supersedes any prior agreements or understandings between them. All terms of this Agreement are contractual and not mere recitals, and shall be construed as if drafted by all Settling Parties to this Agreement. The terms of this Agreement are and shall be binding upon each of the Settling Parties to this Agreement, their agents, attorneys, employees, successors and assigns, and upon all other Persons or entities claiming any interest in the subject matter hereof, including any Settlement Class Member.

11.5 This Agreement shall be subject to, governed by, construed, and enforced pursuant to the laws of California.

11.6 Any individual signing this Agreement on behalf of any Person represents and warrants that he or she has full authority to execute and enter into the terms and conditions of this Agreement on behalf of such Person.

11.7 The Settling Parties and each Settlement Class Member irrevocably submit to the exclusive jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of the Agreement and its exhibits, but for no other purpose.

11.8 All agreements made and orders entered during the course of Litigation relating to the confidentiality of information shall survive this Agreement, including but not limited to those relating to all information exchanged for purposes of mediation or under the auspices of California Evidence Code section 1152.

1 11.9 Any notice, instruction, application for Court approval or application for Court
2 orders sought in connection with this Agreement or other document to be given by any Party
3 to any other Party shall be in writing and delivered by email, if to Creation to the attention of
4 the Creation's counsel, or if to the Settlement Class to Class Counsel, or to other recipients as
5 the Court may specify.

6 11.10 This Agreement may be executed by the Settling Parties or their authorized
7 representatives in one or more counterparts, each of which shall be deemed an original but all
8 of which together shall constitute one and the same instrument. Scanned signatures or
9 signatures sent by email or facsimile shall be as effective as original signatures.

10 **IT IS SO AGREED.**

11 Dated: 1/14/2021



Rachele R. Byrd
Wolf Haldenstein Adler Freeman & Herz LLP
750 B Street, Suite 1820
San Diego, CA 92101

Class Counsel

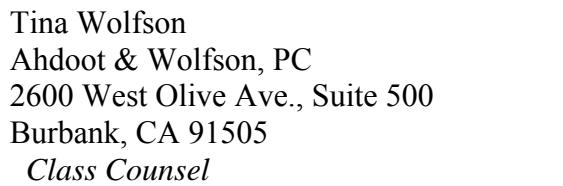
16 Dated: 1/14/2021



Benjamin F. Johns
Chimicles Schwartz Kriner & Donaldson-Smith LLP
One Haverford Centre
361 West Lancaster Avenue
Haverford, Pennsylvania 19041

Class Counsel

21 Dated: _____



Tina Wolfson
Ahdoot & Wolfson, PC
2600 West Olive Ave., Suite 500
Burbank, CA 91505

Class Counsel

26 **SIGNATURES CONTINUED ON FOLLOWING PAGE**

1 11.9 Any notice, instruction, application for Court approval or application for Court
2 orders sought in connection with this Agreement or other document to be given by any Party to
3 any other Party shall be in writing and delivered by email, if to Creation to the attention of the
4 Creation's counsel, or if to the Settlement Class to Class Counsel, or to other recipients as the
5 Court may specify.

6 11.10 This Agreement may be executed by the Settling Parties or their authorized
7 representatives in one or more counterparts, each of which shall be deemed an original but all
8 of which together shall constitute one and the same instrument. Scanned signatures or signatures
9 sent by email or facsimile shall be as effective as original signatures.

10 **IT IS SO AGREED.**

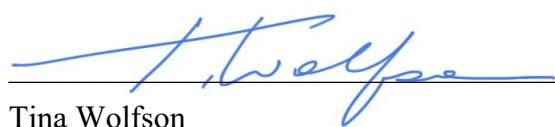
11 Dated: _____

12 Rachele R. Byrd
13 Wolf Haldenstein Adler Freeman & Herz LLP
14 750 B Street, Suite 1820
15 San Diego, CA 92101
16 *Class Counsel*

17 Dated: _____

18 Benjamin F. Johns
19 Chimicles Schwartz Kriner & Donaldson-Smith LLP
20 One Haverford Centre
21 361 West Lancaster Avenue
22 Haverford, Pennsylvania 19041
23 *Class Counsel*

24 Dated: January 14, 2021

25 
26 Tina Wolfson
27 Ahdoot & Wolfson, PC
28 2600 West Olive Ave., Suite 500
29 Burbank, CA 91505
30 *Class Counsel*

31 **SIGNATURES CONTINUED ON FOLLOWING PAGE**

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Dated: 4/15/21



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Ian Stewart
Wilson Elser Moskowitz Edelman & Dicker LLP
555 South Flower Street Suite 2900
Los Angeles, CA 90071
Attorney for Defendant, Creation Entertainment, Inc.

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5

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Dated: 4/15/21


Ed Rodriguez

President, *Creation Entertainment, Inc.*
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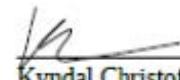
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Kyndal Christofferson

5 Date: January 14, 2021
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Natalie Gerace

5 Date: 01/15/2021
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7 Erin Ratelle
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9 Date: 1/14/2021
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EXHIBIT A

SETTLEMENT CLAIM FORM

This Claim Form should be filled out online or submitted by mail if you made a purchase using a credit or debit card from Creation Entertainment, Inc. (“Creation”) and your Personal Information was accessed and/or compromised by unauthorized individuals as a result of the data breach that was announced by Creation on March 19, 2019.

You may receive a payment if you properly and timely complete this Claim Form, the Settlement is approved, and you are found to be eligible for a payment.

The Settlement Notice describes your legal rights and options. You can obtain the Class Notice and further information about the Litigation, the Settlement Agreement, and your legal rights and options on the official Settlement website www.CreationSettlement.com or by calling 1-800-xxx-xxxx.

Your claim must be submitted online or postmarked by _____, 2021 to be considered for payment. You can submit your claim for a settlement award in two ways:

1. Online at www.CreationSettlement.com by following instructions on the “Submit a Claim” page.
2. By mail to the Claims Administrator at this address: [INSERT CLAIMS ADMINISTRATOR ADDRESS].

Only one Settlement Claim may be submitted per Settlement Class Member, and only one Settlement Claim may be submitted per credit or debit card used at Creation.

1. CLASS MEMBER INFORMATION (REQUIRED)

Name (First, MI, Last): _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____ Email (if any): _____

Required: Enclose a receipt, bank or credit card statement, or other proof of purchase showing you used your credit or debit card at Creation. (You may redact unrelated transactions).

[OR] If such documents are not available, complete all parts of this section:

(Check to indicate your agreement). I no longer have proof of my purchase, but I attest under penalty of perjury that I made a credit or debit card purchase from Creation:

Location and approximate date of purchase: _____

Last 4 digits of credit or debit card used: _____

(Check if card is no longer available). I attest under penalty of perjury that I no longer have the debit or credit card used and do not know the last 4 digits.

2. PAYMENT ELIGIBILITY INFORMATION (REQUIRED)

To prepare for this section of the Claim Form, please review the Settlement Notice and Sections 2.1 through 2.4 of the Settlement Agreement (available at www.CreationSettlement.com) for more information on the types of awards available and rules for receiving an award.

Settlement Class Members may receive only one of the following types of awards: (1) Basic Settlement Payment; or (2) Extraordinary Reimbursement Settlement Payment. Which type of award are you making a claim for (check one)?

- Basic Settlement Payment (go to Section 5)
- Extraordinary Reimbursement Settlement Payment (go to Section 3)

3. ADDITIONAL INFORMATION REQUIRED FROM SETTLEMENT CLASS MEMBERS SEEKING AN EXTRAORDINARY REIMBURSEMENT SETTLEMENT PAYMENT.

You must complete this Section 3 if you are seeking an Extraordinary Reimbursement Settlement Payment. Please provide as much information as possible.

Required: I attest under penalty of perjury that I experienced one or more fraudulent charges between February 1, 2018 and April 19, 2019 on a credit or debit card I used to make a purchase from Creation, which charges have not been reimbursed, and which I believe in good faith were more likely than not the result of the breach of Creation's computer systems that was publicly disclosed by Creation on March 19, 2019.

The total amount of unreimbursed fraudulent charges that I am claiming is \$ _____

Examples: Fraudulent charges that were made on your credit or debit card account and that were not reversed or repaid even though you reported them to your bank or credit card company.

Required: Attach a copy of statements that show the fraudulent charges and any correspondence showing that you reported them as unauthorized. (You may redact unrelated transactions). If you do not have any written correspondence reporting the charges, describe when you reported them and who you reported them to:

(Required). I have made good faith efforts to have these unauthorized charges reversed or repaid, including through my bank or credit card company, and have exhausted all available credit monitoring, identity theft insurance, or other applicable insurance policies, but have not been successful at having the charges reversed, have not received payment, and have no insurance coverage for these unauthorized charges.

(Check if applicable). I spent time dealing with these unauthorized charges and wish to be reimbursed for my time spent, up to a maximum of three (3) hours. I spent this much time (round to the nearest hour and check only one box):

- 1 Hour
- 2 Hours
- 3 Hours

Examples: You spent at least one full hour calling customer service lines, writing letters or emails, or on the internet trying to get unauthorized charges reversed or reimbursed. Please note that the time it takes

to fill out this Claim Form is not reimbursable and should not be included in the total number of hours claimed.

Required: If time was spent on the telephone or online, in the space below, describe what you did, or attach a copy of any letters or emails that you wrote. If the time was spent trying to get unauthorized charges reversed or reimbursed, describe what you did.

If you are also seeking reimbursement for Out-of-Pocket Expenses as part of your claim for an Extraordinary Reimbursement Settlement Payment, complete Section 4. Otherwise, go to Section 5.

4. ADDITIONAL INFORMATION REQUIRED FROM SETTLEMENT CLASS MEMBERS SEEKING REIMBURSEMENT FOR OUT-OF-POCKET EXPENSES IN CONNECTION WITH AN EXTRAORDINARY REIMBURSEMENT SETTLEMENT PAYMENT.

I attest under penalty of perjury that (a) I am making a claim for an Extraordinary Reimbursement Settlement Payment, and (b) I incurred the following Out-of-Pocket Expenses as a result of one or more unauthorized charges between February 1, 2018 and April 19, 2019 on a credit or debit card I used to make a purchase from Creation.

Check all that apply, stating the total amount you are claiming for each category and attaching documentation of the charges as described below. Round total amounts to the nearest dollar.

Unreimbursed payment card fees or bank fees

Total amount claimed for this category: \$ _____

Examples: Overdraft fees, over-limit fees, late fees, charges due to insufficient funds or interest, card reissuance fees.

Required: A copy of a bank or credit card statement or other proof of claimed fees or charges (you may redact unrelated transactions).

Cell, internet or text charges

Total amount claimed for this category: \$ _____

Examples: Long distance or cell phone charges (if charged by the minute), or data charges (if charged based on the amount of data used).

Required: A copy of the bill from your telephone company, cell phone company, or internet service provider showing the claimed charges.

Costs of obtaining credit reports or credit freezes

Total amount claimed for this category: \$ _____

Examples: The cost of purchasing a credit report or placing a credit freeze.

Required: A copy of a receipt of other proof of purchase for each credit report or credit freeze purchased or placed.

***The cost of purchasing credit monitoring services or identity theft insurance is not reimbursable under the Settlement and is not included in this category.*

Postage costs

Total amount claimed for this category: \$ _____

Examples: Postage for correspondence with your bank or credit card company about unauthorized charges. The cost of submitting this form is not included.

Required: A copy of any receipt or proof of purchase for all postage costs claimed showing date, amount and vendor.

5. PAYMENT PREFERENCE

Mark the box stating your preferred method of payment:

Payment via a Settlement Check - *If selecting this option, please double-check the address information at the top of this form is correct and current.*

Electronic Payment (e.g. Paypal or Venmo) - *If selecting this option, please double-check the email address provided at the top of this form is correct and current.*

Direct Deposit - *If selecting this option, please double-check the email address provided at the top of this form is correct and current.*

6. CERTIFICATION

I declare under penalty of perjury under the laws of the United States and the state where this Claim Form is signed that the information I have supplied in this Claim Form is true and correct to the best of my recollection, and that this form was executed on the date set forth below.

I understand that all information provided on this Claim Form is subject to verification and that I may be asked to provide supplemental information by the Claims Administrator or Claims Referee before my claim will be considered complete and valid.

Signature: _____

Print Name: _____

Date: _____

Once you've completed all applicable sections, please mail this Claim Form and all required supporting documentation to the address provided below, postmarked by ____, 2021.

[INSERT CLAIMS ADMINISTRATOR ADDRESS]

EXHIBIT B

YOU MAY BE ELIGIBLE FOR A PAYMENT FROM A CLASS ACTION SETTLEMENT IF YOU ARE A U.S. RESIDENT WHO MADE A PURCHASE FROM CREATION ENTERTAINMENT, INC. USING A CREDIT OR DEBIT CARD AND YOUR PERSONAL INFORMATION WAS ACCESSED AND/OR COMPROMISED BY UNAUTHORIZED INDIVDUALS AS PART OF A SECURITY INCIDENT

A proposed settlement has been given preliminary approval in a class action lawsuit against Creation Entertainment, Inc. (“Creation”) related to a data breach that affected Creation’s computer systems from approximately February 1, 2018 through October 10, 2018, and that was publicly disclosed by Creation on March 19, 2019 (the “Security Incident”). This lawsuit asserted claims against Creation arising from the Security Incident. Creation denies all of the claims and denies it did anything wrong.

WHO IS INCLUDED? The Settlement Class includes all U.S. residents who used a debit or credit card to make a purchase from Creation and whose Personal Information was accessed and/or compromised by unauthorized individuals as part of the Security Incident.

SETTLEMENT BENEFITS. The Settlement allows Settlement Class Members to make a claim for one of two types of Settlement Payments: (1) any Settlement Class Member may submit a claim for a Basic Settlement Payment of \$200 even if they did not experience any unauthorized charges; and (2) Settlement Class Members who experienced unauthorized charges on their credit or debit cards that were not reimbursed, and that the Settlement Class Member believes in good faith were more likely than not a result of the Security Incident, may submit claims for an Extraordinary Reimbursement Settlement Payment for reimbursement of up to \$10,000 for such charges, up to three hours of time spent dealing with such charges, and certain other out of pocket expenses. These payment amounts may be adjusted upward or downward depending on the number of Settlement Class Members who submit claims, as described in the Settlement Agreement.

CLAIM FORM. You must be a Settlement Class Member and file a valid Claim Form to receive a payment. To get a Claim Form, visit this website: www.CreationSettlement.com or call 1-XXX-XXX-XXXX. The deadline to submit a claim is [INSERT DATE].

OPTING OUT OR OBJECTING. You may request exclusion from the settlement if you do not wish to be legally bound by it, or you may object to the settlement if you are a Settlement Class Member and do not request exclusion. Requests to be excluded from the settlement are due: [INSERT DATE]. Objections to the settlement are due: [INSERT DATE]. On [INSERT DATE], the Court will hold a hearing on whether to approve the Settlement, Class Counsel’s request for attorneys’ fees of up to 33% of the Settlement Fund (or \$313,500), plus reasonable expenses not to exceed \$20,000, and a service award of \$2,500 for each of the three Representative Plaintiffs. You or your own lawyer may participate in the hearing at your own cost, but you do not have to.

THE COURT’S HEARING. The Court will hold a hearing in this case (*Christofferson, et al. v. Creation Entertainment, Inc.*, Case No. 19STCV11000) on _____, 2021 at ___ am/pm in Department 6 of the Superior Court of the State of California, County of Los Angeles, 312 N. Spring St., Los Angeles, California 90012. At the hearing, the Court will decide whether to approve the settlement, including the request for attorneys’ fees and costs, and Representative Plaintiffs’ service awards. You or your lawyer may appear at the hearing at your own expense and request to be heard.

For a full description of the proposed settlement, related Court documents, forms, and important dates please visit www.CreationSettlement.com or call 1-XXX-XXX-XXXX. **DO NOT CONTACT CREATION OR THE COURT ABOUT THIS SETTLEMENT.**

EXHIBIT C

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN THE COUNTY OF LOS ANGELES

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

Plaintiffs,

v.

CREATION ENTERTAINMENT, INC.,

Defendant.

Case No. 19STCV11000

**NOTICE OF PENDENCY OF CLASS ACTION,
PROPOSED SETTLEMENT AND HEARING**

***THIS IS A COURT-AUTHORIZED NOTICE OF A PROPOSED CLASS ACTION SETTLEMENT THAT
MAY AFFECT YOUR RIGHTS. IT IS NOT A NOTICE OF A LAWSUIT AGAINST YOU OR A
SOLICITATION FROM A LAWYER. PLEASE READ THIS NOTICE CAREFULLY.***

To: U.S. residents who made a purchase using a credit or debit card from Creation Entertainment, Inc. and your Personal Information was accessed and/or compromised by unauthorized individuals as part of a Security Incident.

A proposed Settlement has been reached in a class action lawsuit against Creation Entertainment, Inc. ("Creation"). The lawsuit asserted claims against Creation related to a data breach that affected Creation's computer systems from approximately February 1, 2018 through October 10, 2018 and was publicly disclosed by Creation on March 19, 2019 (the "Security Incident"). Creation denies all of the claims and denies that it did anything wrong.

The Settlement includes all U.S. residents who made a purchase using a credit or debit card from Creation and whose Personal Information was accessed and/or compromised by unauthorized individuals as part of the Security Incident ("Settlement Class Members").

The Settlement provides payments to Settlement Class Members who were potentially affected by the Security Incident. The amount paid will depend upon how many people submit valid claims.

If you are a Settlement Class Member, your options are:

SUBMIT A CLAIM FORM DEADLINE: _____	You must submit a valid claim form to receive a payment from this Settlement. The deadline to submit a claim form is [Insert Date].
DO NOTHING	You will receive no payment and will no longer be able to sue Creation over the claims resolved in the Settlement.
EXCLUDE YOURSELF DEADLINE: _____	Get out of the lawsuit. Get no payment. Keep your right to sue separately with your own lawyer. Exclusion instructions are provided in this notice. If you choose to exclude yourself, you must do so by [Insert Date].
OBJECT DEADLINE: _____	You may write to the Court to comment on or detail why you do not like the Settlement by following the instructions in this notice. If you choose to object, you must do so by [Insert Date].
GO TO A COURT HEARING	The Final Approval Hearing is on _____, 2021, at _:__.m. If you or your attorney go to the Hearing it will be at your own expense. You do not need to attend the hearing to receive payment.

The court must give final approval to the Settlement before it takes effect, but has not yet done so. No payments will be made until after the court gives final approval and any appeals are resolved.

Please review this notice carefully. You can learn more about the Settlement by visiting www.CreationSettlement.com or by calling 1-800-XXX-XXXX.

Further Information about this Notice and the Lawsuit

1. Why was this Notice issued?

You received this notice because you may be a Settlement Class Member able to receive payment from a proposed settlement of the class action lawsuit *Christofferson, et al., v. Creation Entertainment, Inc.*, Superior Court of the State of California, County of Los Angeles, Case No. 19STCV11000 (the “Lawsuit”). The Court overseeing the Lawsuit authorized this Notice to advise Settlement Class Members about the proposed Settlement that will affect their legal rights. The Notice explains certain legal rights and options you have in connection with that Settlement.

2. What is the Lawsuit about?

The Lawsuit is a proposed class action lawsuit brought on behalf U.S. residents whose Personal Information was accessed and/or compromised by unauthorized individuals as part of the Security Incident. The Security Incident resulted in the potential exposure of payment card data from customers who used their credit or debit cards to make purchases from Creation. The potentially-exposed information included names, addresses, email addresses and payment card information (including card numbers, expiration dates, and security codes).

The Lawsuit claims Creation is legally responsible for the Security Incident and asserts various legal claims, including negligence, breach of implied contract, violation of the California Data Breach Notification Act, violation of the California Unfair Competition Law, violation of the California Consumers Legal Remedies Act, violation of the Maryland Consumer Protection Act and unjust enrichment. Creation denies these claims and denies it did anything wrong.

3. Why is the Lawsuit a class action?

In a class action, one or more representative plaintiffs bring a lawsuit on behalf of others who have similar claims. Together, all of these people are the “class” and each individually is a “class member.” There are three Representative Plaintiffs in this case: Kyndal Christofferson, Natalie Gerace and Erin Ratelle. The class in this case is referred to in this Notice as the “Settlement Class.”

4. Why is there a Settlement?

The Representative Plaintiffs in the Lawsuit, through their attorneys, investigated the facts and law relating to the issues in the Lawsuit. The Representative Plaintiffs and Class Counsel believe that the Settlement is fair, reasonable, and adequate and will provide substantial benefits to the Class. The Court has not decided whether the Representative Plaintiffs’ claims or Creation’s defenses have any merit, and it will not do so if the proposed Settlement is approved. By agreeing to settle, both sides avoid the costs and risks of a trial, and people who submit valid claims will receive compensation. The Settlement does not mean that Creation did anything wrong or that the Representative Plaintiffs and the Class would or would not win their case if it were to go to trial.

Terms of the Proposed Settlement

5. Who is in the Settlement Class?

The Settlement Class is defined by the Court as all U.S. residents who made a purchase using a credit or debit card from Creation and whose Personal Information was accessed and/or compromised by unauthorized individuals as part of the Security Incident.

Certain people are excluded from the Settlement Class: (i) Creation and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this Settlement; (iv) the attorneys representing the Parties in the Litigation; (v) banks and other entities that issued payment cards which were utilized at Creation during the Security Incident; and (vi) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the criminal activity occurrence of the Security Incident or who pleads *nolo contendere* to any such charge.

6. What are the terms of the Settlement?

The proposed Settlement would create a Settlement Fund of \$950,000.00 funded by Creation that would be used to pay: (i) Settlement Class Members who submit valid claims; (ii) costs of Claims Administration; (iii) any attorney fees of up to 33% of the Settlement Fund (or \$313,500) and reasonable expenses of up to \$20,000 awarded by the Court to Class Counsel; and (iv) any service awards to the Representative Plaintiffs awarded by the Court. The Settlement also releases all claims of Settlement Class Members against Creation arising from or related to the Security Incident, as detailed in the Settlement Agreement.

7. What claims are Settlement Class Members giving up under the Settlement?

Settlement Class Members who do not validly exclude themselves from the Settlement will be bound by the Settlement Agreement and any final judgment entered by the Court and will give up their right to sue Creation for the claims being resolved by the Settlement. The claims that Settlement Class Members are releasing are described in Section 1.23 of the Settlement Agreement and the persons and entities being released from those claims are described in Section 1.24 of the Settlement Agreement. Section VIII of the Settlement Agreement explains when such releases will occur.

Payments to Settlement Class Members

8. What kind of payments can Settlement Class Members receive?

Settlement Class Members who submit valid claims and all required documentation may receive one of two types of Settlement Payments, to be paid from the Settlement Fund: (1) a Basic Settlement Payment; or (2) an Extraordinary Reimbursement Settlement Payment. Settlement Class Members may receive only one Settlement Payment. Depending on how many valid claims are submitted, the amount of each Settlement Payment may be adjusted upward or downward proportionally among Settlement Class Members submitting valid claims. Only one Settlement Claim may be submitted per Settlement Class Member, and only one Settlement Claim may be submitted per credit or debit card used to make a purchase from Creation.

9. What is a Basic Settlement Payment?

Every Settlement Class Member is eligible to receive a Basic Settlement Payment of up to \$200, regardless of whether he or she experienced any unauthorized charges on a credit or debit card used to make a purchase from Creation. Settlement Class Members seeking a Basic Settlement Payment must provide the information and documents required on the Claim Form. The amount paid as a Basic Settlement Payment is subject to upward or downward adjustment as described below in Question 11.

10. What is an Extraordinary Reimbursement Settlement Payment?

Settlement Class Members who, at anytime between February 1, 2018 and April 19, 2019, experienced unauthorized charges on their credit or debit cards that were not denied or reimbursed, which charges the Settlement Class Member believes in good faith were more likely than not caused by the Security Incident, are eligible to receive an Extraordinary Reimbursement Settlement Payment of up to \$10,000 as reimbursement for: (i) those unreimbursed, unauthorized charges, (ii) up to three hours of lost time spent dealing with unauthorized charges or the Security Incident, at a rate of \$20 per hour, and (iii) the following types of out of pocket expenses related to the Security Incident:

- unreimbursed payment card fees or unreimbursed bank fees incurred as a result of the Security Incident, including bank fees, card reissuance fees, overdraft fees, charges related to unavailability of funds, late fees, over-limit fees and unreimbursed fees

relating to an account being frozen or otherwise unavailable due to the Security Incident;

- cell, internet or text charges related to the Security Incident;
- costs or charges for obtaining credit reports or credit freezes as a result of the Security Incident; and
- postage costs incurred as a result of the Security Incident.

Claimants must exhaust all available credit monitoring insurance and identity theft insurance before seeking an Extraordinary Reimbursement Settlement Payment. Settlement Class Members seeking an Extraordinary Reimbursement Settlement Payment must provide the information and documents required on the Claim Form. The amount paid as an Extraordinary Reimbursement Settlement Payment is subject to upward or downward adjustment as described below in Question 11.

11. When and how will the amount of Settlement Payments be adjusted?

The amounts paid for all Basic Settlement Payments and Extraordinary Reimbursement Settlement Payments will be adjusted upward or downward from the amounts listed in Questions 9-10 above depending on how many Settlement Class Members submit valid claims.

If the total dollar value of all valid claims is less than the amount of money available in the Settlement Fund for payment of Settlement Class Member claims at the rates listed above in response to Questions 9-10, the amount of payment for Basic Settlement Payments and Extraordinary Reimbursement Settlement Payments will be adjusted upward proportionally among all valid claims, up to a maximum of twice the dollar amounts listed in Questions 9-10 (e.g., Basic Settlement Payments may be adjusted up to \$400, etc.)

If the total dollar value of all valid claims is more than the amount of money available in the Settlement Fund for payment of Settlement Class Member claims at the amounts listed above in response to Questions 9-10, the amount of payment for Basic Settlement Payments and Extraordinary Reimbursement Settlement Payments will be adjusted downward proportionally among all valid claims.

12. What happens after all claims are processed and there are funds remaining?

If there are any funds remaining after all valid claims are processed and the time to cash any payment checks has passed, those funds shall be distributed to Public Justice. No remaining funds will be returned to Creation.

Your Options as a Settlement Class Member

13. If I am a Settlement Class Member, what options do I have?

If you are a Settlement Class Member, you do not have to do anything to remain in the Settlement. However, if you wish to seek a Settlement Payment, you **must** complete and

submit a Claim Form postmarked or submitted online by [INSERT DATE]. You may obtain a Claim Form and/or submit it online at www.CreationSettlement.com.

If you do not want to give up your right to sue Creation about the Security Incident or the issues raised in this case, you must exclude yourself (or “opt out”) from the Settlement Class.

If you object to the settlement, you must remain a Settlement Class Member (*i.e.*, you may not also exclude yourself from the Settlement Class by opting out) and file a written objection in this case with the Claims Administrator at the address below.

14. *What happens if I do nothing?*

If you do nothing, you will get no Settlement Payment from this Settlement. Unless you exclude yourself, after the Settlement is granted final approval and the judgment becomes final, you will be bound by the judgment and you will never be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Creation involving the claims released by the Settlement.

15. *How do I submit a claim?*

You may complete the Claim Form online at www.CreationSettlement.com. You may also obtain a paper Claim Form by downloading it at www.CreationSettlement.com or by calling the Claims Administrator at [INSERT TOLL-FREE NUMBER]. If you choose to complete a paper Claim Form you may either submit the completed and signed Claim Form and any supporting materials electronically at www.CreationSettlement.com or mail them to: [INSERT CLAIMS MAILING ADDRESS].

The deadline to submit a Claim Form is [INSERT DATE].

16. *Who decides my Settlement claim and how do they do it?*

The Claims Administrator will initially decide whether a Claim Form is complete and valid and includes all required documentation. The Claims Administrator may require additional information from any claimant. Failure to timely provide all required information will invalidate a claim and it will not be paid. If a Claim Form is complete but the Claims Administrator denies the claim, the claimant will have an opportunity to have their claim reviewed by counsel for the Settling Parties.

17. *How do I exclude myself from the Settlement?*

You must make a signed written request that (i) says you wish to exclude yourself from the Settlement Class in this Lawsuit, and (ii) includes your name, address and phone number. You must deliver your request by [INSERT DATE] to this address:

[INSERT REQUEST FOR EXCLUSION MAILING ADDRESS]

The deadline to exclude yourself from the Settlement is [INSERT DATE].

18. If I exclude myself, can I receive any Settlement Payment from this Settlement?

No. If you exclude yourself, you will not be entitled to any Settlement Payment or any other benefits of the Settlement. However, you will also not be bound by any judgment in this Lawsuit.

19. If I do not exclude myself, can I sue Creation for the Security Incident later?

No. Unless you exclude yourself, you give up any right to sue Creation for the claims that this Settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you exclude yourself, do not submit a Claim Form requesting a payment.

20. How do I object to the settlement?

All Settlement Class Members who do not request exclusion from the Settlement Class have the right to object to the settlement or any part of it. If you want to object, your objection must be in writing and mailed to the Claims Administrator at [INSERT ADDRESS] and be postmarked no later than [INSERT DATE].

To be considered by the Court, your objection must list the name of this Lawsuit, *Christofferson, et al., v. Creation Entertainment, Inc.*, and the case number, Case No. 19STCV11000, and include all of the following information: (i) your name, address, phone number, and an email address (if you have one); (ii) a statement that you are a member of the Settlement Class and any proof of your membership (e.g., proof of purchase from Creation using a credit or debit card); (iii) a detailed statement of the specific legal and factual bases for all of your objections, along with any applicable legal support; (iv) the identity of any lawyer representing you; (v) whether you intend to appear at the final settlement approval hearing and the identity of any lawyer(s) who will attend that hearing with you or on your behalf; (vi) a list of anyone you plan to have testify at the final approval hearing in support of your objections; and (vii) your signature and the signature of your attorney or other authorized representative.

The deadline to object to the Settlement is [INSERT DATE].

Court Approval of the Settlement

21. How, when and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing to decide whether to approve the Settlement. That hearing is scheduled for [INSERT DATE and TIME] in Department 6 at the Superior Court of the State of California, County of Los Angeles located at 312 N. Spring Street, Los Angeles, CA 90012. At the Final Approval Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are timely objections, the Court will consider them and will hear from any class member who attends the final approval hearing and asks to speak regarding his or her objection. The Court will also rule on Class Counsel's request for attorneys'

fees and costs, and the request for service awards for the Representative Plaintiffs. After the hearing, the Court will decide whether to approve the Settlement.

It is possible the Court could reschedule the hearing to a different date or time without notice, so it is a good idea before the hearing to check <http://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil> to confirm the schedule if you wish to attend.

All persons entering any courthouse or courtroom must wear a face covering/mask over his or her nose and mouth at all times within the public areas of the courthouse or courtroom. Individuals who wear a face shield must ensure it covers both the nose and the mouth, wraps around the sides of a wearer's face and extend to below the chin with a cloth drape from the bottom of the face shield to below the neck. For up-to-date information on the Court's facial coverings and social distancing requirements, please visit: <http://www.lacourt.org/newsmedia/ui/HfySfy.aspx>.

22. Do I have to attend the hearing?

No. You do not need to attend the hearing unless wish to object in-person to the Settlement. It is not necessary to appear in person in order to make an objection; the Court will consider any written objections properly submitted according to the instructions in Question 20. You or your own lawyer are welcome to attend the hearing at your expense, but are not required to do so.

Please note that if you do not submit a written notice of intention to object to the Settlement, you may still appear at the Final Fairness Hearing and request to speak to the Court. Please see Question 21 above for facial coverings and social distancing requirements.

23. What happens if the Court approves the Settlement?

If the Court approves the Settlement and no appeal is taken, Creation will fund the Settlement Fund. The Claims Administrator will pay any Attorney Fees' and Costs Award, Representative Plaintiffs Award, and notice and administration costs from the Settlement Fund. Then, within the later of 90 days after the Effective Date or 30 days after all disputed claims have been resolved, the Claims Administrator will send Settlement Payments to Settlement Class Members who submitted timely and valid Settlement Claims.

If any appeal is taken, it is possible the Settlement could be disapproved on appeal.

24. What happens if the Court does not approve the Settlement?

If the Court does not approve the Settlement, no Settlement Fund will be created, there will be no Settlement Payments to Settlement Class Members, Class Counsel or the Representative Plaintiffs, and the case will proceed as if no Settlement had been attempted.

Lawyers for the Settlement Class and Creation

25. Who represents the Settlement Class?

The Court has appointed the following Class Counsel to represent the Settlement Class and Settlement Class Members in this Lawsuit:

Rachele R. Byrd
Brittany N. DeJong
Wolf Haldenstein Adler Freeman & Herz LLP
750 B Street, Suite 1820
San Diego, CA 92101
619-239-4599

Tina Wolfson
Theodore Maya
Ahdoot & Wolfson, PC
2600 West Olive Ave., Suite 500
Burbank, California 91505
310-474-9111

Benjamin F. Johns
Beena M. McDonald
Chimicles Schwartz Kriner & Donaldson-Smith LLP
One Haverford Centre
361 Lancaster Avenue
Haverford, PA 19041
610-642-850

Settlement Class Members will not be charged for the services of Class Counsel; Class Counsel will be paid out of the Settlement Fund, subject to Court approval. However, you may hire your own attorney at your own cost to advise you in this matter or represent you in making an objection or appearing at the Final Approval Hearing.

26. How will the lawyers for the Settlement Class be paid?

Class Counsel will request the Court's approval of an award for attorneys' fees of up to 33% of the Settlement Fund (or \$313,500), plus reasonable expenses of up to \$20,000, which shall be paid from the Settlement Fund. Class Counsel will also request approval of service awards of \$2,500 for each of the three Representative Plaintiffs, which shall also be paid from the Settlement Fund.

27. Who represents Creation in the Lawsuit?

Creation is represented by the following lawyers:

Ian A. Stewart

Nicole Aaronson
Wilson, Elser, Moskowitz, Edelman & Dicker LLP
555 Flower Street, Suite 2900
Los Angeles, CA 90071-2407
213-443-5100

For Further Information

28. What if I want further information or have questions?

If you think you may be a Class Member and would like more information about the lawsuit or the terms of the proposed Settlement, you may review the pleadings, records and other papers on file in this lawsuit, including the Court's Preliminary Approval Order and the Settlement Agreement, which may be inspected at the Clerk's Office of the Superior Court of California, County of Los Angeles, Spring Street Courthouse, 312 North Spring Street, Los Angeles, California, 90012. You must make an appointment with the Clerk's Office by calling 213-310-7000. All services – telephonic and in-person – will be provided in non-English speaking languages. Face masks and/or facial coverings are required and mandatory at all times to enter any courthouse or courtroom and must be worn covering the nose and mouth. This policy applies to attorneys, parties, witnesses, court staff, Judges, Commissioners, vendors and the general public. The only exceptions to this policy will be for a documented medical condition or excuse, or an ADA accommodation approved by the Court. If an exception is granted, admittance into the courthouse may be restricted to a specific time of the day. If necessary, the time allotted for any granted exception may require the individual to wait until later in the day or schedule an appointment for admittance. For up-to-date information on the Court's facial coverings and social distancing requirements, please visit: <http://www.lacourt.org/newsmedia/ui/HfySfy.aspx>.

You can also find further information about the Lawsuit and this Settlement on the settlement website at www.CreationSettlement.com or by calling [INSERT TOLL-FREE NUMBER].

_____ will act as the Claims Administrator for the Settlement. You can contact the Claims Administrator at:

[INSERT CONTACT INFO FOR CLAIMS ADMINISTRATOR]

DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR CREATION.

EXHIBIT D

**IMPORTANT NOTICE FROM THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

YOU MAY BE A CLASS MEMBER IN A PROPOSED CLASS ACTION SETTLEMENT IF YOU MADE A PURCHASE USING A CREDIT OR DEBIT CARD FROM CREATION ENTERTAINMENT, INC. AND YOUR PERSONAL INFORMATION WAS ACCESSED AND/OR COMPROMISED BY UNAUTHORIZED INDIVDUALS AS PART OF A SECURITY INCIDENT.

A proposed settlement has been given preliminary approval in a class action lawsuit against Creation Entertainment, Inc. ("Creation") related to a breach of Creation's computer systems from approximately February 1, 2018 through October 10, 2018 that was publicly disclosed by Creation on March 19, 2019, *Christofferson, et al., v. Creation Entertainment, Inc.*, Case No. 19STCV11000. Creation denies that it did anything wrong.

Subject to the terms of the Settlement Agreement and the Court's final approval, Creation will fund a \$950,000.00 Settlement Fund that will be used to pay (i) valid claims from Settlement Class Members, (ii) costs of Claims Administration; (iii) Class Counsel's attorneys' fees of up to 33% of the Settlement Fund (or \$313,500), expenses not to exceed \$20,000, and (iv) any service awards to the Representative Plaintiffs. Settlement Class Members can make a claim for one of two types of Settlement Payments from the Settlement Fund, depending on how they were affected by the Security Incident. **If you are a Settlement Class Member and you want to receive a Settlement Payment, you must complete and submit a Settlement Claim Form and any required supporting information. Settlement Claim Forms can be found and completed on this website: www.CreationSettlement.com. The deadline to submit Settlement Claim Forms is _____.**

Settlement Class Members can also request exclusion from the Settlement or object to it. Requests for exclusion are due by _____. Settlement Class Members who do not request exclusion can object to the Settlement. Objections are due by _____.

You can find the full Class Notice, along with a full description of the proposed Settlement, related Court documents, dates and forms, and additional information on how Settlement Class Members can exclude themselves from the Settlement or object to it, on this website: www.CreationSettlement.com.

The Court will hold a hearing in this case (*Christofferson, et al. v. Creation Entertainment, Inc.*, Case No. 19STCV11000) on _____, 2021 at _:_ am/pm in the Superior Court of the State of California, County of Los Angeles, 312 N. Spring St., Los Angeles, California 90012. At the hearing, the Court will decide whether to approve the Settlement, including the request for attorneys' fees and costs, and Representative Plaintiffs' service awards. You or your lawyer may appear at the hearing at your own expense and request to be heard.

EXHIBIT E

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

BENJAMIN F. JOHNS
bfj@chimicles.com
BEENA M. MCDONALD
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**CHIMICLES SCHWARTZ KRINER
& DONALDSON-SMITH LLP**
One Haverford Centre
361 West Lancaster Avenue
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

Counsel for Plaintiffs

[Additional counsel listed on signature page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN THE COUNTY OF LOS ANGELES

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

Plaintiffs,

V.

CREATION ENTERTAINMENT, INC.,

Defendant

Case No. 19STCV11000

[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT

(COMPLEX LITIGATION PROGRAM-CLASS ACTIONS)

Case Assigned for All purposes to
Judge Elihu M. Berle

DEPT.: 6

1 On _____, 2021, the Court entered an order granting preliminary approval (the
2 “Preliminary Approval Order”) to the January 15, 2021 First Amended Settlement Agreement and
3 Release (“Settlement Agreement”) between Plaintiffs Kyndal Christofferson, Natalie Gerace and
4 Erin Ratelle, individually and on behalf of the Settlement Class (as defined below) and Defendant
5 Creation Entertainment, Inc. (“Creation”).¹

6 Commencing on _____, pursuant to the notice requirements in the Settlement
7 Agreement and the Preliminary Approval Order, CPT Group (the “Claims Administrator”)
8 provided Notice to Settlement Class Members in compliance with Section IV of the Settlement
9 Agreement and the Notice Program, due process, and California Rules of Court, rule 3.769. The
10 notice:

- 11 (a) fully and accurately informed Settlement Class Members about the Litigation and the
12 existence and terms of the Settlement Agreement;
- 13 (b) advised Settlement Class Members of their right to request exclusion from the
14 Settlement and provided sufficient information so that Settlement Class Members were
15 able to decide whether to accept the benefits offered, opt out and pursue their own
remedies, or object to the proposed Settlement;
- 16 (c) provided procedures for Settlement Class Members to file written objections to the
proposed settlement, to appear at the Final Approval Hearing, and to state objections to the
17 proposed Settlement; and
- 18 (d) provided the time, date, and place of the Final Approval Hearing.

19 On _____, 2021, the Court held a Final Approval Hearing to determine whether the
20 proposed Settlement is fair, reasonable and adequate and whether judgment should be entered.
21 The Court reviewed (a) the Motion for Final Approval (the “Motion”) and all supporting
22 materials, including but not limited to the Settlement Agreement; (b) any objections filed with or
23 presented to the Court; and (c) the Parties’ responses to any objections. The Court also considered
24

25
26¹ Capitalized terms used in this Final Approval Order shall have the same meaning as
27 defined in the Settlement Agreement unless otherwise expressly stated.
28

1 the oral argument of counsel and any objectors who appeared. Based on this review and the
2 findings below, the Court finds good cause to grant the Motion.

3 **IT IS HEREBY ORDERED:**

4 1. The Court has jurisdiction over the subject matter of this Litigation, all claims
5 raised therein, and all Parties thereto, including the Settlement Class.

6 2. The Settlement Agreement is fair, reasonable, adequate and in the best interests of
7 Settlement Class Members. The Settlement Agreement was negotiated at arm's-length, in good
8 faith and without collusion, by capable and experienced counsel, with full knowledge of the facts,
9 the law, and the risks inherent in litigating the Litigation, and with the active involvement of the
10 Parties. Moreover, the Settlement Agreement confers substantial benefits on the Settlement Class
11 Members, is not contrary to the public interest, and will provide the Parties with repose from
12 litigation. The Parties faced significant risks, expense, and uncertainty from continued litigation
13 of this matter, which further supports the Court's conclusion that the Settlement is fair, reasonable,
14 adequate and in the best interests of the Settlement Class Members.

15 3. The Court grants final approval of the Settlement Agreement in full, including but
16 not limited to the releases therein and the procedures for distribution of the Settlement Fund. All
17 Settlement Class Members who have not excluded themselves from the Settlement Class are
18 bound by this Final Approval Order and Judgment ("Final Approval Order").

19 4. The Parties shall carry out their respective obligations under the Settlement
20 Agreement in accordance with its terms. The relief provided for in the Settlement Agreement
21 shall be made available to the various Settlement Class Members submitting valid Claim forms,
22 pursuant to the terms and conditions in the Settlement Agreement. The Settlement Agreement is
23 incorporated herein in its entirety as if fully set forth herein and shall have the same force and
24 effect of an order of this Court.

25 **OBJECTIONS AND REQUESTS FOR EXCLUSION**

26 5. _____ objections to the Settlement were submitted by Settlement Class Members.
27 The Court has considered all objections and finds that they do not warrant or support rejection or

1 non-approval of the Settlement. All objections are hereby overruled in all respects. All persons
2 who did not object to the Settlement in the manner set forth in the Settlement Agreement are
3 deemed to have waived any objections, including but not limited to by appeal, collateral attack, or
4 otherwise.

5 6. Attached hereto as **Exhibit A** is a list of persons who made valid and timely
6 requests to be excluded from the Settlement and the Settlement Class (the “Opt-Out Members”).
7 The Opt-Out Members are not bound by the Settlement Agreement and this Final Approval Order
8 and shall not be entitled to any of the benefits afforded to Settlement Class Members under the
9 Settlement Agreement.

CERTIFICATION OF THE SETTLEMENT CLASS

11 7. Solely for purposes of the Settlement Agreement and this Final Approval Order, the
12 Court hereby certifies the following Settlement Class:

13 all individuals residing in the United States who used a payment card to make a
14 purchase from Creation and whose Personal Information was accessed and/or
compromised by unauthorized individuals as part of the Security Incident.

15 8. The Court incorporates its preliminary conclusions in the Preliminary Approval
16 Order regarding the satisfaction of California Rules of Court, Rule 3.769. Because the Settlement
17 Class is certified solely for purposes of settlement, the Court need not address any issues of
18 manageability for litigation purposes.

19 9. The Court grants final approval to the appointment of Representative Plaintiffs
20 Kyndal Christofferson, Natalie Gerace and Erin Ratelle as the Class Representatives, and
21 concludes that they have fairly and adequately represented the Settlement Class and shall continue
22 to do so.

23 10. The Court grants final approval to the appointment of the law firms of Wolf
24 Haldenstein Adler Freeman & Herz LLP, Chimicles Schwartz Kriner & Donaldson-Smith LLP
25 and Ahdoot & Wolfson, PC as Class Counsel. Class Counsel have fairly and adequately
26 represented the Settlement Class and shall continue to do so.

NOTICE TO THE CLASS

2 11. The Court finds that the Notice Program, set forth in the Settlement Agreement and
3 effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under
4 the circumstances; (ii) was reasonably calculated to provide, and did provide, due and sufficient
5 notice to the Settlement Class regarding the existence and nature of the Litigation, certification of
6 the Settlement Class for settlement purposes only, the existence and terms of the Settlement
7 Agreement, and the rights of Settlement Class members to exclude themselves from the
8 Settlement Agreement, to object and appear at the Final Approval Hearing, and to receive benefits
9 under the Settlement Agreement; and (iii) satisfied the requirements of the California Code of
10 Civil Procedure, California Rules of Court, United States Constitution, and all other applicable
11 law.

ATTORNEYS' FEES AND COSTS, SERVICE AWARDS

13 12. The Court awards Class Counsel \$_____ in fees and reimbursement of
14 \$_____ in costs. The Court finds these amounts to be fair and reasonable. Payment
15 shall be made from the Settlement Fund pursuant to the procedures in paragraph 9.3 of the
16 Settlement Agreement.

17 13. The Court awards Representative Plaintiffs Kyndal Christofferson, Natalie Gerace
18 and Erin Ratelle \$2,500.00 each as a service award. The Court finds this amount is justified by
19 their service to the Settlement Class. Payment shall be made from the Settlement Fund pursuant
20 to the procedures in paragraph 9.3 of the Settlement Agreement.

RELEASE

22 14. Each Settlement Class Member, including Representative Plaintiffs, are: (1)
23 deemed to have completely and unconditionally released, forever discharged and acquitted
24 Creation and the Released Persons from all claims arising out of or asserted in the Litigation and
25 all Released Claims released under the Settlement Agreement; and (2) barred and permanently
26 enjoined from asserting, instituting, or prosecuting, either directly or indirectly, these claims. The
27 full terms of the release described in this paragraph are set forth in Paragraphs 1.23-1.24 and 8.1

of the Settlement Agreement and are specifically approved and incorporated herein by this reference (the “Release”). In addition, Representative Plaintiffs are deemed to have waived (i) the provisions of California Civil Code § 1542, which provides that a general release does not extend to claims that the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor, and (ii) any law of any state or territory of the United States that is similar, comparable, or equivalent to California Civil Code § 1542.

15. The Settlement Agreement and this Final Approval Order apply to all claims or causes of action settled under the Settlement Agreement, and binds Representative Plaintiffs and all Settlement Class Members who did not properly request exclusion. The Settlement Agreement and this Final Approval Order shall have maximum *res judicata*, collateral estoppel, and all other preclusive effect in any and all causes of action, claims for relief, suits, demands, petitions, or any other challenges or allegations that arise out of or relate to the subject matter of the Litigation and/or the Complaint.

OTHER PROVISIONS

16. The Settlement Fund, consisting of nine hundred fifty thousand dollars and no cents (\$950,000.00) shall be used to pay all Awards and payments to Settlement Class Members, costs of Claims Administration, the Attorneys' Fees and Expenses Award to Class Counsel, and the Representative Plaintiffs' Award.

17. If any money remains in the Settlement Fund after the payment of all Settlement Payments to Settlement Class Members, costs of Claims Administration, the Attorneys' Fees and Expenses Award to Class Counsel, and the Representative Plaintiffs' Award, the Court directs the Parties and the Claims Administrator to distribute all such remaining funds to the *cy pres* recipient named in Paragraph 7.6 of the Settlement Agreement. The Court finds that _____, as the *cy pres* recipient, will use the funds in a way that provides an indirect benefit to the Settlement Class Members consistent with the Settlement Class Members' claims asserted in the Litigation.

1 18. The Settlement Agreement and this Final Approval Order, and all documents,
2 supporting materials, representations, statements and proceedings relating to the Settlement, are
3 not, and shall not be construed as, used as, or deemed evidence of, any admission by or against
4 Creation of liability, fault, wrongdoing, or violation of any law, or of the validity or certifiability
5 for litigation purposes of the Settlement Class or any claims that were or could have been asserted
6 in the Litigation.

7 19. The Settlement Agreement and this Final Approval Order, and all documents,
8 supporting materials, representations, statements and proceedings relating to the Settlement shall
9 not be offered or received into evidence, and are not admissible into evidence, in any action or
10 proceeding, except that the Settlement Agreement and this Final Approval Order may be filed in
11 any action by Creation or the Settlement Class Members seeking to enforce the Settlement
12 Agreement or the Final Approval Order.

13 20. Consistent with Paragraph 10.2 of the Settlement Agreement, if the Effective Date
14 does not occur for any reason, the following will occur: (a) the Final Approval Order and
15 Judgment and all of their provisions, will be vacated, including, but not limited to the Attorneys'
16 Fees and Expenses Award and the Representative Plaintiffs' Award, and the Final Approval Order
17 will not waive, release or otherwise impact the Parties' rights or arguments in any respect; and
18 (b) the Litigation will revert to the status that existed before the Settlement Agreement's execution
19 date, and the Parties shall be restored to their respective positions in the Litigation as if the
20 Settlement Agreement had never been entered into. No term or draft of this Settlement Agreement
21 or any part of the Parties' settlement discussions, negotiations, or documentation will have any
22 effect or be admissible in evidence for any purpose in the Litigation.

23 21. Without affecting the finality of this Final Approval Order, the Court will retain
24 jurisdiction over this Litigation and the Parties with respect to the interpretation, implementation
25 and enforcement of the Settlement Agreement for all purposes.

26 | //

27 | //

1 **NOW, THEREFORE**, the Court hereby enters judgment in this matter pursuant to
2 California Rules of Court, rule 3.769(h).

3 **IT IS SO ORDERED:**

4
5 Dated: _____

6
7 THE HONORABLE ELIHU M. BERLE
8 JUDGE OF THE SUPERIOR COURT

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EXHIBIT F

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14
15 *Counsel for Plaintiffs*

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN THE COUNTY OF LOS ANGELES

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

20 Plaintiffs,

21 v.

22 CREATION ENTERTAINMENT, INC.,

23 Defendant.

24 Case No. 19STCV11000

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

26 (COMPLEX LITIGATION
PROGRAM-CLASS ACTIONS)

27 Case Assigned for All purposes to
Judge Elihu M. Berle

28 DEPT.: 6

This matter is before the Court on Plaintiffs' motion for preliminary approval of the proposed class action settlement. Plaintiffs, individually and on behalf of the proposed Settlement Class, and Defendant have entered into a First Amended Settlement Agreement and Release, dated January 15, 2021 ("Settlement Agreement") that, if approved, would settle the above-captioned litigation. Having considered the motion, the Settlement Agreement together with all exhibits and attachments thereto, the record in this matter, and the briefs and arguments of counsel, IT IS HEREBY ORDERED as follows:

1. Unless otherwise defined herein, all terms that are capitalized herein shall have the same meaning ascribed to those terms in the Settlement Agreement.

2. The Court has jurisdiction over this litigation, Representative Plaintiffs, Defendant, and Settlement Class Members, and any party to any agreement that is part of or related to the Settlement Agreement.

PRELIMINARY APPROVAL

3. The Court has reviewed the terms of the proposed Settlement Agreement, the exhibits and attachments thereto, Plaintiffs' motion papers and briefs, and the declaration of counsel and the Claims Administrator. Based on its review of these papers, the Court finds that the Settlement Agreement appears to be the result of serious, informed, non-collusive negotiations conducted with the assistance of Honorable Peter D. Lichtman (Ret.) of JAMS at a day-long mediation session on October 29, 2019, and further extensive negotiations by the Settling Parties over several subsequent months to finalize the terms of the Settlement Agreement. The Court further observes that the Settlement Agreement is the product of a formal exchange of fact discovery. The terms of the Settlement Agreement do not improperly grant preferential treatment to any individual or segment of the Settlement Class and fall within the range of possible approval as fair, reasonable, and adequate.

4. The Court therefore GRANTS preliminary approval of the Settlement Agreement and all of the terms and conditions contained therein.

PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS

5. Pursuant to California Code of Civil Procedure Section 382, the Court preliminarily certifies, for settlement purposes only, the Settlement Class defined in the Settlement Agreement as follows:

all individuals residing in the United States who used a debit or credit card to make a purchase from Creation and whose Personal Information was accessed and/or compromised by unauthorized individuals as part of the Security Incident.

6. For purposes of the Settlement, and only for those purposes, and subject to the terms of the Settlement Agreement, the Court preliminarily finds that the requirements of California Rules of Court, rule 3.769 and any other applicable laws appear to be satisfied, in that:

- a. The Settlement Class appears to be ascertainable from business records and/or from objective criteria;
 - b. The Settlement Class appears to be so numerous that joinder of all members would be impractical;
 - c. Plaintiffs have alleged one or more questions of fact and law that appear to be common to all Settlement Class Members;
 - d. Plaintiffs' claims appear to be typical of those of the other members of the Class;
 - e. Plaintiffs appear to be capable of fairly and adequately protecting the interests of the members of the Settlement Class, in that (i) Plaintiffs' interests appear to be consistent with those of the other Settlement Class Members, (ii) Plaintiffs' Counsel appears to be able and qualified to represent the Settlement Class, and (iii) Plaintiffs and Plaintiffs' Counsel appear to have fairly and adequately represented the Settlement Class Members in prosecuting this action and in negotiating and entering into the proposed Settlement; and
 - f. For settlement purposes, questions of law and/or fact common to members of the Settlement Class appear to predominate over any such questions.

affecting only individual Settlement Class Members, and a class action appears to be superior to all other available methods for the fair and efficient resolution of this action. In making these provisional findings for settlement purposes, the Court has considered, among other things, (i) the Settlement Class Members' interests in individually controlling the prosecution of separate actions, (ii) the impracticability or inefficiency of prosecuting separate actions, (iii) the extent and nature of any litigation concerning these claims already commenced, and (iv) the desirability of concentrating the litigation of the claims in a particular forum.

7. Pursuant to California Rules of Court, rule 3.769(c) and (g), the Court finds that the terms of the Settlement Agreement, are preliminary approved as (a) fair, reasonable, and adequate in light of the relevant factual, legal, practical and procedural considerations in this Litigation, (b) free of collusion to the detriment of Settlement Class Members, and (c) within the range of possible final judicial approval, subject to further consideration thereof at the Final Approval Hearing. Accordingly, the Settlement Agreement and the Settlement are sufficient to warrant notice thereof, as set forth below, and a full hearing on the Settlement.

8. The Court hereby appoints as Kyndal Christofferson, Natalie Gerace and Erin Ratelle as the Representative Plaintiffs of the Settlement Class.

9. The Court hereby appoints as Class Counsel Wolf Haldenstein Adler Freeman & Herz LLP, Chimicles Schwartz Kriner & Donaldson-Smith LLP and Ahdoot & Wolfson, PC.

NOTICE AND ADMINISTRATION

10. Pursuant to the Settlement Agreement, the Parties have designated CPT Group as the Claims Administrator. The Claims Administrator shall perform all the duties of the Claims Administrator set forth in the Settlement Agreement.

11. The Court finds that the Class Notice and Notice Program set forth in the Settlement Agreement satisfy the requirements of due process and California Rules of Court, rule 3.769 and provide the best notice practicable under the circumstances. The Class Notice and

Notice Program are reasonably calculated to apprise Settlement Class Members of the nature of this Litigation, the scope of the Settlement Class, the terms of the Settlement Agreement, the right of Settlement Class Members to object to the Settlement Agreement or exclude themselves from the Settlement Class and the process for doing so, and of the Final Approval Hearing. The Court therefore approves the Class Notice and Notice Program and directs the parties and the Claims Administrator to proceed with providing notice to Settlement Class Members pursuant to the terms of the Settlement Agreement and this Order.

12. The Claims Administrator shall commence the Notice Program within the time required by the Settlement Agreement.

13. The Court also approves the Claim Form.

EXCLUSION AND OBJECTIONS

14. Settlement Class Members who wish to opt out and exclude themselves from the Settlement Class may do so by notifying the Claims Administrator in writing, postmarked no later than 60 calendar days after the Notice Date. To be valid, each request for exclusion must be made in writing and: (a) state the Settlement Class Member's full name, address and telephone number; (b) contain the Settlement Class Member's personal and original signature or the original signature of a person authorized by law to act on the Settlement Class Member's behalf with respect to a claim or right such as those asserted in the Litigation, such as a trustee, guardian or person acting under a power of attorney; and (c) state unequivocally the Settlement Class Member's intent to be excluded from the Settlement. If a Settlement Class Member's Request for Exclusion includes persons who were co-signers or co-holders on the same payment card account, the Settlement Class Member's Request for Exclusion shall be deemed to be properly completed and executed as to that payment card only if all co-signers or co-holders elect to and validly opt out in accordance with the provisions of this Paragraph. All Requests for Exclusion must be submitted individually in connection with a Settlement Class Member, *i.e.*, one request is required for every Settlement Class Member seeking exclusion.

15. All Settlement Class Members who do not opt out and exclude themselves shall be bound by the terms of the Settlement Agreement upon entry of the Final Approval Order and Judgment.

16. Settlement Class Members who wish to object to the Settlement may do so by submitting a written objection to the Court in accordance with the procedures outlined in the Class Notice, postmarked no later than 60 calendar days after the Notice date. Any Settlement Class Member wishing to comment on or object to the Settlement Agreement shall mail the comment or objection to the Claims Administrator at *Kyndal Christofferson v. Creation Entertainment, Inc.*, Case No. 19STCV11000, c/o CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606. The written objection must contain: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class; (iii) a clear and detailed written statement of the specific legal and factual bases for each and every objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of any counsel representing the objector; (v) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying that counsel; (vi) a list of all persons who will be called to testify at the final approval hearing in support of the objections; and (vii) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative.

17. All Settlement Class Members who fail to substantially comply with the requirements for objecting shall waive and forfeit any and all rights he or she may have to object to the Settlement, unless he or she appears in-person to object at the Final Approval Hearing, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Litigation.

FINAL APPROVAL HEARING

18. The Court will hold a Final Approval Hearing on _____, 2021 at ___:___ am/pm in the Superior Court of the State of California, County of Los Angeles, 312 N. Spring St.,

1 Los Angeles, California 90012.

2 19. At the Final Approval Hearing, the Court will consider whether:
3 (a) the Settlement is fair, reasonable, and adequate; (b) the Settlement Class should be finally
4 certified; (c) a final judgment should be entered; (d) Class Counsel's motion for attorneys' fees
5 and costs should be granted; and (e) the service awards sought for Representative Plaintiffs should
6 be granted.

7 20. The Court reserves the right to continue the date of the Final Approval Hearing
8 without further notice to Settlement Class Members.

9 **DEADLINES & TERMINATION**

10 21. The following schedule is imposed with respect to the Settlement:

12 EVENT	13 DATE
13 Notice Date (the date on which the Class Notice to the Settlement 14 Class Members is substantially complete)	14 No later than 60 days 15 following the entry of the 16 Preliminary Approval 17 Order
15 Objection and Exclusion Deadlines (submission deadline for 16 objections and requests for exclusion)	16 60 days after the Notice 17 Date
17 Claims Deadline	18 90 days after the Notice 19 Date
18 Motion for Attorneys' Fees, Reimbursement of Expenses, and 19 Service Payments to be filed by Class Counsel	20 No later than 30 days prior 21 to the Objection and 22 Exclusion Deadline
20 Motion for Final Approval and Settlement Administrator to File 21 Declaration re Notice Program and Opt-outs and Objections	22 16 court days prior to the 23 Final Approval Hearing
21 Supplement in Support of Motions for Final Approval, Attorneys' 22 Fees and Expenses, and Service Payments to be filed by Class 23 Counsel	24 5 court days prior to Final 25 Fairness Hearing
22 Final Approval Hearing	26 After Notice is completed 27 and at least 25 days after 28 the Opt Out Date, at the convenience of the Court
23 Final Accounting	25 90 days after the Claims 26 Administrator completes stop payments on uncashed checks

1 22. All proceedings and deadlines in this matter, except those necessary to implement
2 this Order and the settlement, are hereby stayed and suspended until further order of the Court.

3 23. All Settlement Class Members who do not validly opt out and exclude themselves
4 are hereby enjoined from pursuing or prosecuting any of the Released Claims as set forth in the
5 Settlement Agreement until further order of the Court.

6 24. In the event that the Settlement Agreement is terminated pursuant to the terms of
7 the Settlement Agreement: (a) the Settlement Agreement and this Order shall become void, shall
8 have no further force or effect, and shall not be used in the Litigation or any other proceedings for
9 any purpose other than as may be necessary to enforce the terms of the Settlement Agreement that
10 survive termination; (b) this matter will revert to the status that existed before execution of the
11 Settlement Agreement; and (c) no term or draft of the Settlement Agreement or any part of the
12 Settling Parties' settlement discussions, negotiations or documentation (including any briefs filed
13 in support of preliminary or final approval of the settlement) shall (i) be admissible into evidence
14 for any purpose in this Litigation or in any other action or proceeding other than as may be
15 necessary to enforce the terms of the Settlement Agreement that survive termination, (ii) be
16 deemed an admission or concession by any Settling Party regarding the validity of any of the
17 Released Claims or the propriety of certifying any class against Defendant, or (iii) be deemed an
18 admission or concession by any Settling Party regarding the truth or falsity of any facts alleged in
19 the Litigation or the availability or lack of availability of any defense to the Released Claims.

20 **IT IS SO ORDERED:**

21
22 DATED: _____

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28 THE HONORABLE ELIHU M. BERLE
 JUDGE OF THE SUPERIOR COURT