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

MICHAEL CORONA, CHRISTINA
MATHIS, et al., individually and on behalf
of others similarly situated,

Plaintiffs,

vs.

SONY PICTURES ENTERTAINMENT,
INC.,

Defendant.

**CASE NO. 2:14-CV-09600-RGK-E
PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS SETTLEMENT**

Hearing Date: November 16, 2015

Time: 9:00 a.m.

Courtroom: 850

Judge: Hon. R. Gary Klausner

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I. Introduction

Plaintiffs in the above-captioned action respectfully request that the Court preliminarily approve a proposed Settlement reached with Defendant Sony Pictures Entertainment Inc. (“SPE”) that will fully resolve the claims in this case. The Settlement was reached through intensive arm’s-length negotiations with the assistance of a highly qualified mediator. The Settlement follows the Court’s partial denial of SPE’s motion to dismiss, briefing on class certification, and significant discovery, and was achieved five months before the scheduled trial date.

The proposed Settlement provides significant benefits to the proposed class members that is well-tailored to the nature of the harm alleged. First, SPE will establish a non-reversionary cash fund of \$2 million to reimburse Settlement Class Members, subject to certain per-person caps, for preventive measures they have taken to protect themselves from identity theft following the SPE Cyberattack at issue in this case.¹

Second, SPE will provide certain identity protection services through AllClear ID to all Settlement Class Members for two additional years. All Settlement Class Members will be automatically enrolled in AllClear Secure, which provides identity repair and restoration assistance. Additionally, all Settlement Class Members will be able to enroll, free of charge, in AllClear PRO, which includes, among other benefits, credit monitoring and \$1 million in identity theft insurance. The thousands of Settlement Class Members who already enrolled in the initial year of AllClear PRO provided by SPE will have their AllClear PRO coverage automatically extended for the two extra years. In all, these services provide millions of dollars in benefits to the Settlement Class Members. AllClear ID will also establish an SPE-specific toll-free telephone number for Settlement Class Members to contact AllClear ID for assistance.

Third, SPE will pay up to \$2.5 million (up to \$10,000 individually) to Settlement Class Members who experience unreimbursed losses from identity theft or misuse as a

¹ Capitalized terms not defined herein are given the meaning assigned to them in the Settlement Agreement.

1 direct result of the SPE Cyberattack.

2 SPE will also bear the costs of class notice and the other costs of the Settlement
3 Administrator, as set forth in the Agreement, as well as Class Counsel attorneys' fees,
4 expenses, and costs, not to exceed \$3,490,000, and any Service Awards, not to exceed
5 \$34,000 in the aggregate, all of which will be paid separate from the benefits provided for
6 the Settlement Class under the Settlement.

7 Plaintiffs respectfully request that the Court enter an Order (1) granting
8 preliminary approval of the proposed Settlement, (2) certifying the proposed Settlement
9 Class, (3) appointing Plaintiffs as representatives of the Settlement Class, (4) appointing
10 Interim Co-Lead Counsel as Class Counsel for the Settlement Class, (5) approving the
11 parties' proposed forms and method of notice, (6) appointing Garden City Group, LLC to
12 serve as the Settlement Administrator; (7) staying the Action pending final approval of
13 the Settlement; (8) staying and/or enjoining, pending final approval of the Settlement, any
14 actions brought by Settlement Class Members concerning a released claim; and (9)
15 scheduling a Final Approval Hearing to determine whether the proposed Settlement is
16 fair, reasonable, and adequate and should be finally approved.

17 **II. Procedural History**

18 **A. Plaintiffs' Claims and SPE's Motion to Dismiss**

19 On November 24, 2014, news sources began reporting that SPE's computer
20 systems had been subject to a cyberattack. Following the attack, the perpetrators released
21 stolen SPE data on the Internet, including the personal information of numerous current
22 and former SPE employees and other individuals. In December 2014 and January 2015,
23 ten former SPE employees filed seven cases in this Court asserting claims arising from
24 the SPE Cyberattack.² Counsel for Plaintiffs cooperatively organized a leadership
25 structure to combine their resources and decades of experience in managing complex

26
27 ² Four cases were filed in Los Angeles Superior Court by former SPE employees who
28 asserted similar claims (the "State Plaintiffs"). These cases were stayed pending
resolution of the federal cases. This proposed settlement, if approved, will also resolve
the State Plaintiffs' claims.

1 litigation and privacy issues to effectively and efficiently litigate this case. The Court
 2 appointed Keller Rohrbach L.L.P., Girard Gibbs LLP, and Lieff Cabraser Heimann &
 3 Bernstein, LLP to serve as Interim Co-Lead Class Counsel. ECF No. 45.³

4 After interviewing numerous current and former SPE employees, investigating the
 5 facts, and researching potential claims, Plaintiffs filed an Amended Class Action
 6 Complaint on behalf of a proposed class of all current and former SPE employees whose
 7 personal information was compromised in the SPE Cyberattack. Plaintiffs alleged that
 8 SPE failed to reasonably secure its employees' personal information, asserting statutory
 9 and common law claims. ECF No. 43. SPE moved to dismiss Plaintiffs' claims on
 10 March 23, 2015, arguing that Plaintiffs lacked Article III standing and had not stated any
 11 claim for relief. ECF No. 59. Plaintiffs opposed the motion, ECF No. 62, and SPE filed
 12 a reply, ECF No. 66. The Court granted in part and denied in part SPE's motion by
 13 Order dated June 15, 2015. The Court dismissed Plaintiffs' claims for breach of implied
 14 contract, violation of the California Customer Records Act, violation of Virginia Code
 15 § 18.2-186.6(B), violation of the Colorado Consumer Protection Act and the portion of
 16 Plaintiffs' negligence claim that related to the timeliness of SPE's provision of
 17 notification of the SPE Cyberattack. Plaintiffs' remaining claims for negligence,
 18 declaratory judgment, and alleged violations of the California Confidentiality of Medical
 19 Information Act and the California Unfair Competition Law survived. ECF No. 97.

20 **B. Discovery**

21 The parties engaged in extensive discovery, making them well-informed about the
 22 strengths and weaknesses of their respective positions, and providing them with the
 23 information they needed to negotiate the proposed Settlement. Among other things,
 24 Plaintiffs drafted and responded to several sets of written discovery, reviewed over
 25 55,400 pages of documents and 3,710 data spreadsheets produced by SPE, third parties,

27 ³ Other counsel of record include Carney Bates & Pulliam, PLLC, Capstone Law APC,
 28 Chimicles & Tikellis LLP, Gomez Trial Attorneys, Lite DePalma Greenberg, LLC,
 Rukin Hyland Doria & Tindall LLP and Ryan & Maniskas, LLP.

1 and experts, retained and worked with experts on liability, class certification, and
2 damages issues, and conducted and defended several depositions, including the
3 depositions of SPE's Rule 30(b)(6) corporate designee and two experts designated by
4 each side. The parties held frequent, often lengthy, meet and confer sessions to resolve
5 disputes about the scope and timing of discovery, and through those efforts were able to
6 resolve numerous disputes without requiring the Court's assistance. Plaintiffs engaged in
7 third party discovery as well, serving subpoenas on potential sources of information, and
8 conducted an extensive investigation and review of the files compromised in the SPE
9 Cyberattack that were posted on the Internet, including internal SPE documents.

10 **C. Class Certification**

11 Plaintiffs engaged two experts to assist with developing their claims and preparing
12 their motion for class certification — economist Henry Fishkind, Ph.D., and data breach
13 expert Larry Ponemon, Ph.D. Both experts prepared detailed reports that Plaintiffs filed
14 with their class certification motion on June 30, 2015. ECF Nos. 107, 109. SPE deposed
15 both experts. SPE opposed Plaintiffs' motion on August 11, 2015. ECF No. 112.
16 Plaintiffs reviewed the more than 4,100 pages of documents produced by SPE's two
17 experts and took their depositions. Plaintiffs lodged their reply on September 2, 2015.
18 The parties notified the Court of their proposed settlement the same day. ECF No. 134.

19 **III. Settlement Negotiations**

20 The parties commenced settlement negotiations in June 2015. On June 11, 2015,
21 the parties participated in a full-day private mediation session supervised by Professor
22 Eric Green of Resolutions, LLC. The parties made progress at that session, but did not
23 reach agreement. During the months following the June 11, 2015 session, the parties
24 continued to negotiate, with the assistance of the mediator, holding numerous telephonic
25 conferences. As a result of these efforts, the parties were able to reach an agreement in
26 principle on September 1, 2015. The parties did not discuss attorneys' fees, costs, and
27 expenses until they had reached an agreement in principle, subject to preparation and
28 execution of a written settlement agreement, on the substantive elements of the

1 settlement. Since reaching an agreement in principle, the parties have worked diligently
2 to craft the settlement papers, including the notice program, working closely with Garden
3 City Group, LLC, the parties' proposed Settlement Administrator.

4 **IV. Terms of the Proposed Settlement**

5 The Settlement terms are set forth in the written Settlement Agreement, which is
6 attached as Exhibit A to the Declaration of Cari Campen Laufenberg.

7 **A. The Settlement Class**

8 The proposed Settlement Class is defined as:

- 9 (1) All current and former SPE corporate and production employees, and
10 (2) those individuals who are not current or former SPE corporate or
11 production employees but (a) whose PII SPE has determined was disclosed
12 on the Internet as a result of the SPE Cyberattack; and (b) for whom SPE has
13 contact information sufficient to provide direct notice pursuant to the terms
14 of the Notice Program.⁴ Settlement Agreement, ¶ 47.

14 **B. The Settlement Benefits**

15 **1. Identity Protection Services from AllClear ID**

16 SPE will provide all Settlement Class Members with certain identity protection
17 services through AllClear ID, through December 31, 2017. Settlement Agreement, ¶ 68.
18 This represents a two-year extension of the single year of service that SPE provided
19 following the SPE Cyberattack. Specifically, under the Settlement, all Settlement Class
20 Members will be provided with AllClear Secure, free of charge, through December 31,
21 2017. AllClear Secure provides assistance to recover financial losses and restore stolen
22 identities. In addition, all Settlement Class Members may enroll, free of charge, in
23 AllClear PRO, for coverage through December 31, 2017. AllClear PRO provides
24 identity theft monitoring, including fraud detection, credit monitoring, alerts by phone,
25 lost wallet protection, detection and restoration services for identity theft associated with

26
27 ⁴ Category (2) of the proposed Settlement Class includes approximately 3,500
28 individuals. Pursuant to the Settlement Agreement, a complete list of these individuals
will be maintained by the Settlement Administrator, and each of these individuals will
receive direct notice of the Settlement. Settlement Agreement, ¶¶ 47, 53, 54, 70.2.1.

1 an enrollee's child, and identity theft insurance coverage of \$1 million. Enrollment in
2 AllClear PRO is user-friendly, and can be done online or via the telephone. The
3 proposed forms of notice provide clear instruction for how to enroll. Moreover, the
4 thousands of Settlement Class Members who already enrolled in AllClear PRO, for the
5 one year provided by SPE following the SPE Cyberattack, will have their coverage
6 automatically extended for two years; they will not need to re-enroll. AllClear ID will
7 also establish an SPE-specific telephone number that Settlement Class Members can use
8 to contact AllClear ID for assistance and to obtain information about coverage and
9 identity theft issues. All told, these AllClear services represent millions of dollars in
10 value to the Settlement Class.⁵

11 **2. Cash Payments**

12 Cash payments will be available to Settlement Class Members through two claims
13 processes.

14 Preventive Measures Claims: SPE will establish a \$2 million non-reversionary
15 fund to reimburse Settlement Class Members for unreimbursed expenses they incurred
16 and time they spent taking preventive measures to protect themselves from identity theft
17 resulting from the SPE Cyberattack (such as purchasing credit monitoring and identity
18 theft monitoring services, purchasing identity theft insurance, freezing or unfreezing their
19 credit, and obtaining credit reports). Settlement Agreement, ¶ 71. The claims process is
20 user-friendly. Settlement Class Members can submit claims online, via the Settlement
21 Website, or by mail, and they will have at least 90 days from the date notice is
22 disseminated to submit Preventive Measures Claims. Settlement Class Members who
23 submit valid claims with documentation will be eligible to recover up to \$1,000. Plan of
24 Allocation, ¶ 4. Settlement Class Members will also have the option to submit claims
25 without documentation, or claims that are for lost time exclusively, and be eligible to

26
27 ⁵ Outside of the Settlement, the current cost to enroll in AllClear PRO is \$14.95 per
28 month, meaning it would cost a normal consumer \$358.80 over two years for the
AllClear PRO service. See <https://www.allclearid.com/plans/pro-plan/>. AllClear Secure, which all Settlement Class Members will receive, provides significant value as well.

1 receive a flat payment amount, the default amount of which will be \$50, with the ultimate
2 amount depending on the number of valid claims submitted. *Id.* All payments will be
3 adjusted, on a *pro rata* basis, if the total reimbursement amounts for valid Preventive
4 Measures Claims exceed or fall below the \$2 million fund amount, up to a maximum of
5 \$1,500 for documented claims and \$500 for undocumented claims. *Id.* ¶ 2.⁶

6 Identity Theft/Misuse Claims: In addition, SPE has agreed to pay up to \$10,000
7 individually and up to \$2.5 million in total, to Settlement Class Members who experience
8 unreimbursed losses from identity theft or misuse as a direct result of the SPE
9 Cyberattack. Settlement Agreement, ¶ 70. This relief is intended to supplement the \$1
10 million insurance coverage that is provided under AllClear PRO. *Id.* ¶ 2. Accordingly,
11 to the extent that a loss would have been covered by AllClear PRO, a Settlement Class
12 Member who was not enrolled in AllClear PRO at the time of such loss cannot recover on
13 an Identity Theft/Misuse Claim. *Id.* ¶ 70.3. Settlement Class Members may receive
14 reimbursement of up to \$10,000 for out-of-pocket losses that are not recoverable through
15 the AllClear PRO insurance protection or otherwise reimbursed through the usual course
16 (*e.g.*, from their credit card company or bank). *Id.* ¶ 70. Settlement Class Members who
17 submit valid Identity Theft/Misuse Claims and meet the eligibility requirements
18 (including providing documentation of their losses), will be paid as claims are validated
19 by the Settlement Administrator, up to a maximum aggregate amount of \$2.5 million. *Id.*
20 ¶ 70. Different documentation requirements apply, depending upon whether Settlement
21 Class Members have been identified by SPE as having their PII disclosed on the Internet
22 as a result of the SPE Cyberattack. *Id.* ¶ 70.2. To the extent claims are denied, claimants

23
24 ⁶To the extent there are any residual funds, if economically practical, and subject to
25 agreement of the Parties, such funds will be distributed *pro rata* to Settlement Class
26 Members who have enrolled in AllClear PRO in connection with the SPE Cyberattack or
27 the Settlement. If such additional distribution is not economically practical given the
28 funds remaining, or if an additional distribution is made and there are funds remaining
after that, any residual funds will be distributed to a non-profit organization, to be agreed
upon by SPE and Class Counsel and approved by the Court, to be used to promote
education about how consumers can protect themselves from identity theft. *Id.*, ¶ 10.

1 will have the ability to cure defects identified by the Settlement Administrator. *Id.*
2 ¶ 70.6. Settlement Class Members will have until December 31, 2017 to submit Identity
3 Theft/Misuse Claims, provided that once SPE has paid \$2.5 million in the aggregate for
4 Identity Theft/Misuse Claims, no additional such claims will be accepted, and notice to
5 that effect will be posted on the Settlement Website. *Id.* ¶ 70.4. As with the Preventive
6 Measures Claims, Settlement Class Members will have the option to submit Identity
7 Theft/Misuse Claims online, via the Settlement Website, or by mail. *Id.* ¶ 70.2.

8 **3. Notice to the Class**

9 The Settlement provides for a comprehensive Notice Program that is well-designed
10 to give the Settlement Class notice of the Settlement and about their rights and options.
11 The parties worked closely with Garden City Group, LLC (the proposed Settlement
12 Administrator) to develop an effective Notice Program.

13 **a. Direct Notice**

14 Within 15 business days after preliminary approval, SPE will provide the
15 Settlement Administrator with a Class List that includes the last known mailing
16 addresses, to the extent they are reasonably available from SPE's electronic records, for
17 all Settlement Class Members. The Settlement Administrator will thereafter run all
18 mailing addresses through the National Change of Address database, and by no later than
19 60 days after preliminary approval (the "Notice Deadline") will mail direct notice, in
20 substantially the form attached as Exhibit 2 to the Settlement Agreement, to the
21 Settlement Class Members. Appropriate steps will be taken to find updated address
22 information, and to re-mail notices, for notices that are returned undeliverable.
23 Settlement Agreement, ¶¶ 59, 60.

24 **b. Publication Notice**

25 While the direct notice is expected to reach the substantial majority of the
26 Settlement Class, the proposed Notice Program also provides for publication notice, to be
27 published substantially in the form attached as Exhibit 3 to the Settlement, by no later
28 than the Notice Deadline, in People Magazine. Settlement Agreement, ¶ 61.

c. Settlement Website and Toll-Free Number

By no later than the Notice Deadline, the Settlement Administrator will establish a Settlement Website where Settlement Class Members can view the Notice, obtain additional information, review key case documents, and submit Preventive Measures Claims and Identity Theft/Misuse Claims electronically. The Settlement Website will be operational until at least December 31, 2017. *Id.*, ¶¶ 42, 62. The Settlement Administrator will also establish and maintain a toll-free number where Settlement Class Members can obtain additional information and request mailed claim forms. *Id.*, ¶ 53.

4. Opt-Out and Objection Procedures

Any person within the Settlement Class definition may exclude himself or herself from the Settlement Class by mailing a written request for exclusion to the Settlement Administrator, postmarked no later than 45 days after the Notice Deadline. *Id.*, ¶¶ 24, 55. Any Settlement Class Member who does not timely and validly exclude himself or herself from the Settlement Class may object to, or comment regarding, the Settlement Agreement, Class Counsel's fee, cost, and expense application, and/or the requests for Service Awards. To be considered, an objection or comment must be made in writing, must be sent to the Clerk of Court, Class Counsel, and SPE's Counsel (at the addresses identified in the notice), postmarked no later than 45 days after the Notice Deadline, and must include the information described in the Notice. *Id.*, ¶ 23, 57.

5. Payment of Administrative Costs

SPE will pay the costs associated with providing notice to the Settlement Class and the other costs of the Settlement Administrator, as set forth in the Agreement. Such costs will be paid by SPE separate from the relief provided for the Settlement Class. *Id.*, ¶ 49.

C. Attorneys' Fees, Costs, and Expenses

Class Counsel will request attorneys' fees, costs, and expenses in an amount not to exceed \$3,490,000.⁷ *Id.*, ¶ 78. Class Counsel will request that a portion of any fee, cost,

⁷ Class Counsel's fee, cost, and expense application, and the amounts that will be requested therein, will appropriately account for Class Counsel's commitments of time

1 and expense award be provided to the counsel for the plaintiffs in the State Court Cases
2 in recognition of their work and expenditures in the litigation. SPE will pay any
3 attorneys' fees, costs, and expenses awarded by the Court, not to exceed \$3,490,000,
4 separately from the relief for the Settlement Class Members, and thus the attorneys' fees,
5 costs, and expenses will not reduce the relief for the Settlement Class. *Id.*, ¶ 49. Plaintiffs
6 will file their motion for attorneys' fees, costs, and expenses no later than 21 days before
7 the deadline for Settlement Class Members to object and opt out. *Id.* ¶ 66.

8 **D. Service Awards**

9 Class Counsel will apply for service awards, not to exceed \$3,000 for each
10 Plaintiff, to compensate them for their commitment and effort on behalf of the Settlement
11 Class. *Id.* ¶ 79. Additionally, Class Counsel will ask the Court to award service awards,
12 not to exceed \$1,000, for each of the other individuals who also filed suit against SPE in
13 connection with the SPE Cyberattack, for their efforts in the litigation and commitment
14 on behalf of the Settlement Class. *Id.* Any service awards will be paid by SPE separate
15 from, and will therefore not reduce, the relief for the Settlement Class. *Id.* ¶ 49.

16 **E. Release**

17 In exchange for the benefits provided by the Settlement, Plaintiffs and the
18 Settlement Class Members will release SPE and its affiliates from any claims regarding
19 the issues in this case. Settlement Agreement, ¶¶ 72-77.

20 **V. The Court Should Certify the Settlement Class**

21 When a settlement is reached before class certification, "courts must peruse the
22 proposed compromise to ratify both the propriety of the certification and the fairness of
23 the settlement." *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). Several courts
24 have previously certified data breach cases for settlement class treatment. *See, e.g., In re*
25 *Sony Gaming Networks & Customer Data Sec. Breach Litig.*, 2014 WL 7800046, at *2

26
27 and resources in this litigation, the results achieved for the Settlement Class, the risks that
28 Class Counsel assumed in prosecuting this litigation, the complexity of the issues
involved, and applicable law.

(S.D. Cal. July 10, 2014); *Johnasson-Dohrmann v. Cbr Systems, Inc.*, 2013 WL 3864341, at *3 (S.D. Cal. July 24, 2013); *In re LinkedIn User Privacy Litig.*, 2015 WL 5440975, at *3-6 (N.D. Cal. Sept. 15, 2015); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1051-60 (S.D. Tex. 2012); *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, 2009 WL 5184352, at *1-7 (W.D. Ky. Dec. 22, 2009). Certification of the proposed Settlement Class is appropriate because the requirements of Federal Rule of Civil Procedure 23(a) and 23(b)(3) are satisfied.

A. The Settlement Class Satisfies the Requirements of Rule 23(a)

1. Numerosity

Numerosity is satisfied “if ‘the class is so large that joinder of all members is impracticable.’” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998) (quoting Fed. R. Civ. P. 23(a)(1)). Courts recognize that a “class of at least forty members presumptively satisfies the numerosity requirement.” *Nguyen v. Radiant Pharm. Corp.*, 287 F.R.D. 563, 569 (C.D. Cal. 2012). The Settlement Class includes several thousand individuals,⁸ satisfying numerosity.

2. Commonality

Rule 23 (a)(2) requires that there be “questions of law or fact common to the class.” The commonality requirement has “‘been construed permissively’ and ‘[a]ll questions of fact and law need not be common to satisfy the rule.’” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 981 (9th Cir. 2011) (alteration in original) (quoting *Hanlon*, 150 F.3d at 1019). “[A]ll that Rule 23(a)(2) requires is ‘a single significant question of law or fact.’” *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 957 (9th Cir. 2013) (citation omitted). This case raises common factual questions, including what efforts SPE took to protect Settlement Class Members’ personal information and whether those efforts were sufficient. The commonality requirement is thus satisfied. *See Heartland*, 851 F. Supp. 2d at 1053-54; *Countrywide*, 2009 WL 5184352, at *3.

⁸ SPE has informed Class Counsel that it estimates that there are approximately 435,000 persons in the Settlement Class.

1 **3. Typicality**

2 Rule 23(a)(3) requires that “the claims or defenses of the representative parties [be]
3 typical of the claims or defenses of the class.” Like commonality, the typicality
4 requirement is construed permissively “and requires only that the representative’s claims
5 are ‘reasonably co-extensive with those of absent class members; they need not be
6 substantially identical.’” *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2009)
7 (quoting *Hanlon*, 150 F.3d at 1020). “The purpose of the typicality requirement is to
8 assure that the interest of the named representatives aligns with the interests of the class.”
9 *Wolin v. Jaguar Land Rover N. Am.*, 617 F.3d 1168, 1175 (9th Cir. 2010) (internal
10 quotations omitted). Plaintiffs’ claims are typical of the claims of the proposed
11 Settlement Class because their personal information was compromised as a result of the
12 SPE Cyberattack. Plaintiffs and Settlement Class Members were subject to the same
13 conduct and have the same interest in pursuing their claims against SPE. *See*
14 *Countrywide*, 2009 WL 5184352, at *3 (finding typicality satisfied where the plaintiffs
15 and class members “had their private information compromised, and their claims arise
16 from the same course of uniform conduct”).

17 **4. Adequacy**

18 The adequacy requirement is satisfied when the class representatives will “fairly
19 and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). To make this
20 determination, “courts must resolve two questions: ‘(1) do the named plaintiffs and their
21 counsel have any conflicts of interest with other class members and (2) will the named
22 plaintiffs and their counsel prosecute the action vigorously on behalf of the class?’”
23 *Ellis*, 657 F.3d at 985 (quoting *Hanlon*, 150 F.3d at 1020). Plaintiffs’ interests are
24 aligned with the interests of Settlement Class members because their claims all arise from
25 the same cyberattack. Moreover, Plaintiffs have demonstrated a commitment to
26 vigorously prosecute this case on behalf of the Settlement Class, and have retained
27 counsel experienced in litigating privacy claims and class actions.

B. The Settlement Class Satisfies the Requirements of Rule 23(b)(3)

Rule 23(b)(3) requires that “questions of law or fact common to class members predominate over any questions affecting only individual members.” The predominance requirement “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 594 (1997). The predominance inquiry is relaxed in the settlement context because, if the proposed Settlement Agreement is approved, there will be no need for a trial, and thus manageability of the class for trial need not be considered. *See id.* at 620 (noting that where a court is “[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems”).

Rule 23(b)(3) also looks at whether class treatment is “superior to other available methods for fairly and efficiently adjudicating the controversy.” Here, class treatment is superior because settlement on a class basis will promote greater efficiency than individual prosecution of the claims. *See Wolin*, 617 F.3d at 1175-76.

C. The Court Should Appoint Class Counsel

In evaluating the appointment of class counsel, courts must consider (i) counsel’s work in identifying or investigating claims; (ii) counsel’s experience in handling the types of claims asserted; (iii) counsel’s knowledge of the applicable law; and (iv) the resources counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A). The Court previously appointed Keller Rohrbach, Girard Gibbs, and Lieff Cabraser to serve as Interim Co-Lead Class Counsel. ECF No. 45. Since then, the three firms have worked cooperatively and efficiently to litigate this case, including coordinating and organizing the efforts of all counsel who have worked on the case. The work they have performed includes: (1) investigating the SPE Cyberattack, researching and evaluating legal claims, and filing an amended complaint; (2) opposing SPE’s motion to dismiss; (3) propounding three sets of document requests and two sets of interrogatories; (4) reviewing over 55,400 pages of responsive documents and 3,710 spreadsheets

1 produced by SPE, third parties, and experts; (5) responding to SPE's requests for
2 production and interrogatories; (6) conducting extensive meet and confer sessions
3 regarding discovery issues; (7) working with experts and preparing expert reports; (8)
4 taking depositions of SPE's Rule 30(b)(6) witness and experts; (9) moving for class
5 certification; (10) participating in mediation; (11) negotiating the proposed settlement and
6 the settlement papers; and (12) drafting this motion for preliminary approval.

7 The three proposed Class Counsel firms have decades of experience in successfully
8 prosecuting class actions and other complex litigation, including in consumer, employee,
9 data breach, and other privacy class actions throughout the country.⁹ The firms have
10 demonstrated their commitment to devoting the resources necessary to represent
11 Settlement Class Members, and they will continue to manage the case efficiently and
12 work hard on obtaining settlement approval, and, if approved, implementation of the
13 Settlement. Plaintiffs therefore request that the Court appoint Girard Gibbs, Keller
14 Rohrbach, and Lieff Cabraser as Class Counsel for the Settlement Class.

15 **VI. The Court Should Preliminarily Approve the Settlement**

16 In the Ninth Circuit, "there is an overriding public interest in settling and quieting
17 litigation ... particularly ... in class action suits." *Van Bronkhorst v. Safeco Corp.*, 529
18 F.2d 943, 950 (9th Cir. 1976); *see also Churchill Village, L.L.C. v. Gen. Elec. Co.*, 361
19 F.3d 566, 576 (9th Cir. 2004). Courts recognize that as a matter of sound policy,
20 settlements of disputed claims are encouraged and a settlement approval hearing should
21 not "reach any ultimate conclusions on the contested issues of fact and law which
22 underlie the merits of the dispute." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 964 (9th
23 Cir. 2009) (internal quotes and citation omitted).

24 **A. Standard for Preliminary Settlement Approval**

25 Proposed class action settlements require Court approval. Fed. R. Civ. P. 23(e).

27 ⁹ See Declarations of Interim Co-Lead Counsel in Support of of Unopposed Motion and
28 Unopposed Motion for Consolidation and Appointment of Interim Co-Lead Class
Counsel (ECF No. 32, 31-2, 31-3).

1 The Court's primary role is to ensure "the agreement is not the product of fraud or
2 overreaching by, or collusion between, the negotiating parties." *Officers for Justice v.*
3 *Civil Serv. Comm'n. of City & Cnty of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).
4 Courts use a "two-step process in which the Court first determines whether a proposed
5 class action settlement deserves preliminary approval and then, after notice is given to
6 class members, whether final approval is warranted." *Nat. Rural Telecomms. Coop. v.*
7 *DirecTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004). "At the preliminary approval stage,
8 a court determines whether a proposed settlement is 'within the range of possible
9 approval' and whether or not notice should be sent to class members." *Carter v.*
10 *Anderson Merchs., LP*, 2010 WL 1946784, at *4 (C.D. Cal. May 11, 2010).

11 Preliminary settlement approval is appropriate where the proposed settlement
12 (1) "appears to be the product of serious, informed, non-collusive negotiations," (2) "has
13 no obvious deficiencies," (3) "does not improperly grant preferential treatment to class
14 representatives or segments of the class," and (4) "falls with the range of possible
15 approval." *Eddings v. Health Net, Inc.*, 2013 WL 169895, at *2 (C.D. Cal. Jan. 16,
16 2013) (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal.
17 2007)); Rubenstein, *Newberg on Class Actions* § 13:10 (5th ed. 2015) ("The general rule
18 is that a court will grant preliminary approval where the proposed settlement 'is neither
19 illegal nor collusive and is within the range of possible approval.'").

20 If the Court grants preliminary approval, the parties will provide Settlement Class
21 Members with notice of the proposed settlement. Settlement Class Members will then
22 have an opportunity to comment on the Settlement, both in writing and in person at the
23 fairness hearing. *See Newberg* § 13:10. The Court will then determine whether the
24 Settlement is fair, adequate and reasonable, and thus warrants final approval, by applying
25 the multifactor analysis outlined by the Ninth Circuit. *See Staton*, 327 F.3d at 959
26 (factors the district court must consider include "the strength of plaintiffs' case; the risk,
27 expense, complexity, and likely duration of further litigation; the risk of maintaining class
28 action status throughout the trial; the amount offered in settlement; the extent of

discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.” (citation omitted)).

1. The Settlement Is the Product of Serious, Informed and Non-Collusive Negotiations

The proposed Settlement here is the result of hard-fought, arm’s-length negotiations between experienced counsel. After Plaintiffs filed their amended complaint, the parties engaged in adversarial motion practice and substantial discovery, which allowed the parties to comprehensively evaluate the strengths and weaknesses of the case and engage in well-informed settlement discussions. Courts recognize that “[t]he involvement of experienced class action counsel and the fact that the settlement agreement was reached in arm’s length negotiations, after relevant discovery had taken place create a presumption that the agreement is fair.” *Linney v. Cellular Alaska P’ship*, 1997 WL 450064, at *5 (N.D. Cal. Jul. 18, 1997) (citations omitted); *see also In re Am. Apparel, Inc. S’holder Litig.*, 2014 WL 10212865, at *8 (C.D. Cal. July 28, 2014).

The settlement negotiations here were also supervised by an experienced, respected mediator, Eric Green of Resolutions, LLC, who presided over a formal mediation session and over numerous follow up discussions over the subsequent months. The participation of an experienced mediator lends further support for the fairness of the process and settlement. *See Carter v. Anderson Merchs., LP*, 2010 WL 144067, at *6 (C.D. Cal. Jan. 7, 2010) (“The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.” (citation omitted)). In addition to their extensive investigation and discovery, Class Counsel also had the benefit of the Court’s ruling on SPE’s motion to dismiss, which further informed their negotiations. Moreover, the parties did not discuss attorneys’ fees, costs, and expenses until after reaching an agreement in principle on the benefits for the Settlement Class, subject to preparation and execution of a written settlement agreement. Class Counsel, who have decades of experience litigating and settling complex class actions, view this settlement as fair and in

1 the best interests of the Settlement Class. *See DirecTV*, 221 F.R.D. at 528 (“Great weight
2 is accorded to the recommendation of counsel, who are most closely acquainted with the
3 facts of the underlying litigation.” (internal quotations and citations omitted)).

4 **2. The Settlement Does Not Grant Preferential Treatment to**
5 **Plaintiffs or Segments of the Settlement Class**

6 The proposed Settlement does not grant preferential treatment to the Plaintiffs or to
7 any segment of the Settlement Class. All Settlement Class Members are entitled to
8 submit claims under both claims processes, with the availability of funds tied to their
9 respective harm. Moreover, all Settlement Class Members will receive two years of
10 AllClear Secure coverage, access to the SPE-specific AllClear hotline, and will be able to
11 enroll, free of charge, in AllClear PRO coverage through December 2017. Moreover,
12 while service awards will be requested for Plaintiffs and other individuals who filed suit
13 against SPE in connection with the SPE Cyberattack, such awards are commonly
14 awarded in class actions, are well-justified under the circumstances here, and are modest
15 in amount in light of their commitment in the litigation.

16 **3. The Settlement Is Within the Range of Possible Approval**

17 To determine whether a settlement falls within the range of possible approval,
18 courts “consider plaintiffs’ expected recovery balanced against the value of the settlement
19 offer.” *Tableware*, 484 F. Supp. 2d at 1080. The proposed Settlement here will provide
20 valuable monetary and other benefits for Settlement Class Members that they may not be
21 able to recover through continued litigation. The payments that valid claimants will
22 receive, pursuant to the claims processes, will be appropriately tied to their alleged harm,
23 resulting in between \$2 million and \$4.5 million in cash payments by SPE. Moreover, all
24 Class Members will enjoy two years of valuable identity protection services from
25 AllClear ID, a benefit that is directly tied to both the theory of harm in this case and to
26 the proposed model for measuring damages provided by Plaintiffs’ damages expert in
27 connection with Plaintiffs’ class certification motion. The extension of these services to
28 the Settlement Class represents millions of dollars in value for the Settlement Class.

1 The result achieved for the Settlement Class is strong, particularly given the
2 significant risks of ongoing litigation. While Plaintiffs are confident in the merits of their
3 case, continued litigation presents significant risks to the Settlement Class. Liability and
4 damages remain hotly disputed. Even if Plaintiffs were to overcome all of the pre-trial
5 risks that remain, they would still need to prevail at trial and, if successful at trial, on an
6 inevitable appeal. *See W. Publ'g*, 563 F.3d at 966; *Nat. Rural Telecomms.*, 221 F.R.D. at
7 526 (“The Court shall consider the vagaries of litigation and compare the significance of
8 immediate recovery by way of the compromise to the mere possibility of relief in the
9 future, after protracted and expensive litigation.” (citation omitted)).

10 The Settlement not only allows the Settlement Class to avoid the risks of continued
11 litigation, but it provides them with something else that could not be achieved through
12 litigation—prompt relief. Proceeding to trial could add years to the resolution of this
13 case, given the legal and factual issues raised and likelihood of appeals.

14 The proposed Settlement also compares favorably to settlements in other data
15 breach cases. *See McCabe v. Six Continents Hotels, Inc.*, 2015 WL 3990915, at *10
16 (N.D. Cal. June 30, 2015) (finding a settlement fair “in light of other approved
17 settlements within a similar range”). In *Sony Gaming Networks*, the court approved a
18 settlement that resolved data breach claims for approximately 77 million class members
19 by providing benefits depending on the type of user, including reimbursements for out-
20 of-pocket expenses related to identity theft attributable to the data breach as well as
21 payments for virtual credits, a free PlayStation game, PlayStation 3 theme, and one
22 month of a PlayStation Plus subscription. No. 11-md-2258, ECF No. 211 (S.D. Cal. May
23 4, 2015). In *Countrywide*, the court approved a settlement that provided up to \$1.5
24 million to pay out-of-pocket costs related to the data breach, up to \$5 million to pay
25 losses related to identity theft, and two years of credit monitoring services to resolve data
26 breach claims for approximately 2.4 million customers. 2010 WL 3341200, at *2-8
27 (W.D. Ky. Aug. 23, 2010). Similarly, in *Pinter v. D.A. Davidson, Inc.*, the court
28 approved a settlement that provided a \$1 million fund to reimburse class members for

1 losses resulting from the data breach and two years of credit monitoring. No. 1:09-cv-
2 00059-RFC, ECF No. 52 (D. Mont. Nov. 23, 2009).

3 **VII. The Court Should Approve the Notice Program and Direct That Notice Be**
4 **Disseminated to the Settlement Class**

5 The Settlement includes a robust, multi-pronged Notice Program that is well-
6 designed to provide notice to the Settlement Class about the Settlement and their rights
7 and options. The Notice Program fully complies with due process and Rule 23. Rule
8 23(c)(2)(B) requires “the best notice that is practicable under the circumstances,
9 including individual notice to all members who can be identified through reasonable
10 effort.” The notice must concisely and clearly state in plain, easily understood language:
11 the nature of the action; the definition of the class certified; the class claims, issues, or
12 defenses; that a class member may enter an appearance through an attorney if the member
13 so desires; that the court will exclude from the class any member who requests exclusion;
14 the time and manner for requesting exclusion; and the binding effect of a class judgment
15 on class members under Rule 23(c)(3).

16 The proposed notices here include all of the required information. Settlement
17 Agreement, Exs. 2-4. Moreover, the Settlement Agreement provides for direct mail
18 notice, using the most updated information available for Settlement Class Members,¹⁰ and
19 also provides for additional notice by publication in People Magazine. Moreover,
20 appropriate steps will be taken to locate updated address information and re-mail notices
21 that are returned undeliverable. Settlement Agreement, ¶¶ 59, 60. Further, the
22 Settlement Administrator will establish and maintain a Settlement Website where
23 Settlement Class Members can obtain additional information, view important case
24 documents, and submit claims electronically, as well as an informational toll-free
25 telephone number. *Id.*, ¶¶ 42, 53. The Notice Program here constitutes the best notice
26
27

28 ¹⁰ SPE has informed Class Counsel that it estimates it has a mailing address for
approximately 95% of the Settlement Class Members.

practicable under the circumstances, and the Court should direct that notice be disseminated to the Settlement Class pursuant to such program.

VIII. The Court Should Set a Schedule for Final Approval.

The parties propose the following schedule for Final Approval and related deadlines:

Event	Proposed Date
Notice Deadline	60 days after entry of Preliminary Approval Order
Deadline for: (1) Class Counsel to file their motion for attorneys' fees and costs and service awards; and (2) the parties to file motions for final settlement approval.	21 days prior to the Objection Deadline
Objection Deadline	45 days after Notice Deadline
Opt-Out Deadline	45 days after Notice Deadline
Claim Deadline for Preventive Measures Claims	90 days after Notice Deadline
Deadline for Class Counsel and the Parties to file any responses to objections and any replies in support of final settlement approval and/or Class Counsel's motion for attorneys' fees and costs.	14 days before Final Approval Hearing
Final Approval Hearing	_____ [no sooner than 120 days after entry of Preliminary Approval Order]

Further, in order to conserve judicial and other resources and protect the parties' interests, the parties request that, pending Final Approval, the Court stay this Action and enjoin any actions brought by Settlement Class Members concerning a Released Claim.

IX. CONCLUSION

Plaintiffs respectfully request that the Court grant preliminary approval of the proposed settlement and enter their proposed order.

Dated: October 19, 2015

Respectfully submitted,

By: /s/ Cari Campen Laufenberg

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Additional Plaintiffs' Counsel

CERTIFICATE OF SERVICE

I, Cari Campen Laufenberg, hereby certify that on October 19, 2015, I electronically filed **Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Preliminary Approval of Class Settlement** with the Clerk of the United States District Court for the Central District of California using the CM/ECF system, which shall send electronic notification to all counsel of record.

/s/ Cari Campen Laufenberg
Cari Campen Laufenberg