

1 Matthew J. Preusch (SBN 298144)  
2 mpreusch@kellerrohrback.com  
3 **KELLER ROHRBACK L.L.P.**  
4 1129 State Street, Suite 8  
5 Santa Barbara, CA 93101  
6 T: (805) 456-1496  
7 F: (805) 456-1497

6 Lynn Lincoln Sarko (*Admitted pro hac vice*)  
7 lsarko@kellerrohrback.com  
8 **KELLER ROHRBACK L.L.P.**  
9 1201 Third Avenue, Suite 3200  
10 Seattle, WA 98101  
11 T: (206) 623-1900  
12 F: (206) 623-3384

11 Daniel C. Girard (SBN 114826)  
12 dcg@girardgibbs.com  
13 **GIRARD GIBBS LLP**  
14 601 California Street, 14th Floor  
15 San Francisco, CA 94108  
16 T: (415) 981-4800  
17 F: (415) 981-4846

Michael W. Sobol (SBN 194857)  
msobol@lchb.com  
**LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP**  
275 Battery Street, 29th Floor  
San Francisco, CA 94111-3339  
T: (415) 956-1000  
F: (415) 956-1008

16 *Class Counsel*

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

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

23 Plaintiffs,

24 vs.

25 SONY PICTURES  
26 ENTERTAINMENT, INC.,

27 Defendant.  
28

**CASE NO. 2:14-CV-09600-RGK-E**

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
ATTORNEYS' FEES, COSTS AND  
SERVICE AWARDS**

Hearing Date: April 6, 2016  
Time: 10:00 a.m.  
Courtroom: 850  
Judge: Hon. R. Gary Klausner

**TABLE OF CONTENTS**

1

2 I. INTRODUCTION..... 1

3 II. SUMMARY OF CLASS COUNSEL’S WORK IN THIS LITIGATION ..... 2

4 A. Case Investigation and Factual Research..... 2

5 B. Pleadings and Motion Practice ..... 3

6 C. Discovery..... 4

7 D. Class Certification Discovery and Briefing, Expert Work, and

8 Continuing Discovery ..... 5

9 E. Mediation and Settlement Negotiations..... 6

10 III. ARGUMENT ..... 7

11 A. Class Counsel’s Fee Request Is Reasonable and Appropriate Under

12 the Circumstances..... 7

13 1. Class Counsel Obtained an Excellent Result..... 8

14 2. The Fee Was Negotiated and Agreed Upon at Arms’ Length by

15 Skilled and Experienced Counsel. .... 11

16 3. Application of the Lodestar Method Supports the

17 Reasonableness of the Fee. .... 12

18 a. The Time Class Counsel Devoted to This Case Was

19 Appropriately Spent in Light of the Favorable Result and

20 the Litigation Risks..... 13

21 b. Class Counsel’s Hourly Rates Are Reasonable and Have

22 Been Repeatedly Approved by Courts. .... 14

23 c. The Requested Fee Represents a Negative Multiplier. .... 15

24 B. Class Counsel’s Out-of-Pocket Litigation Expenses Were Reasonably

25 Incurred in Furtherance of the Prosecution of the Claims, and Should

26 Be Awarded. .... 17

27 C. The Requested Service Awards Are Reasonable and Should Be

28 Approved. .... 18

IV. CONCLUSION..... 19

**TABLE OF AUTHORITIES**

**Federal Cases**

*Blum v. Stenson*  
465 U.S. 886 (1994) ..... 16

*Chun-Hoon v. McKee Foods Corp.*  
716 F. Supp. 2d 848 (N.D. Cal. 2010) ..... 19

*Clapper v. Amnesty International USA*  
133 S. Ct. 1138 (2013) ..... 15

*Covillo v. Specialtys Cafe*  
2014 WL 954516 (N.D. Cal. Mar. 6, 2014) ..... 22

*Cunningham v. County of Los Angeles*  
879 F.2d 481 (9th Cir. 1988)..... 13

*Fischel v. Equitable Life Assurance Soc’y of U.S.*  
307 F.3d 997 (9th Cir. 2002)..... 18

*Glaberson v. Comcast Corp.*  
2015 WL 5582251 (E.D. Pa. Sept. 22, 2015) ..... 17

*Graham v. DaimlerChrysler Corp.*  
34 Cal. 4th 553, 101 P.3d 140, 21 Cal. Rptr. 3d 331 (Cal. 2004)..... 9, 11

*Guam Soc’y of Obstetricians & Gynecologists v. Ada*  
100 F.3d 691 (9th Cir. 1996)..... 14

*Hanlon v. Chrysler Corp.*  
150 F.3d 1011 (9th Cir. 1998)..... 13, 18

*Harris v. Marhoefer*  
24 F.3d 16 (9th Cir. 1994) ..... 13

*Henderson v. J.M. Smucker Co.*  
2013 WL 3146774 (C.D. Cal. June 19, 2013) ..... 9

*Hensley v. Eckerhart*  
461 U.S. 424 (1983) ..... 11, 13

1 *In re Adobe Systems, Inc. Privacy Litig.*  
 2 66 F. Supp. 3d 1197 (N.D. Cal. 2014) .....16  
 3 *In re Apple Computer, Inc. Derivative Litig.*  
 4 2008 WL 4820784 (N.D. Cal. Nov. 5, 2008) .....12  
 5 *In re Bluetooth Headset Prods. Liab. Litig.*,  
 6 654 F.3d 935, 947 (9th Cir. 2011) .....12  
 7 *In re Countrywide Fin. Corp. Customer Data Security Breach Litig.*  
 8 2010 WL 3341200 (W.D. Ky. Aug. 23, 2010) .....14  
 9 *In re First Capital Holdings Corp. Fin. Prods. Sec. Litig.*  
 10 1992 WL 226321 (C.D. Cal. June 10, 1992) .....12  
 11 *In re High-Tech Employee Antitrust Litig.*  
 12 2015 WL 5158730 (N.D. Cal. Sept. 2, 2015) .....17  
 13 *In re Media Vision Tech. Sec. Litig.*  
 14 913 F. Supp. 1362 (N.D. Cal. 1996) .....20  
 15 *In re Polaroid*  
 16 2007 WL 2116398 (S.D.N.Y. July 19, 2007) .....17  
 17 *In re Toys R Us FACTA Litig.*  
 18 295 F.R.D. 438 (C.D. Cal. 2014)..... 13, 20, 22  
 19 *In re WorldCom, Inc. ERISA Litig.*  
 20 2004 WL 2338151 (S.D.N.Y. Oct. 18, 2004) .....17  
 21 *Kerr v. Screen Extras Guild, Inc.*  
 22 526 F.2d 67 (9th Cir. 1975) .....18  
 23 *Ketchum v. Moses*  
 24 24 Cal.4th 1122, 17 P.3d 735, 104 Cal. Rptr. 2d 377 (Cal. 2001) .....18  
 25 *Lonardo v. Travelers Indem. Co.*  
 26 706 F. Supp. 2d 766 (N.D. Ohio 2010) .....17  
 27 *Mangold v. California Public Utilities Commission*  
 28 67 F.3d 1470 (9th Cir. 1995)..... 9

1 *Maria P. v. Riles*  
 2 43 Cal. 3d 1281, 240 Cal. Rptr. 872, 743 P.2d 932 (Cal. 1987)..... 11  
 3 *Parkinson v. Hyundai Motor America*  
 4 796 F. Supp. 2d 1160 (C.D. Cal. 2010) ..... 16  
 5 *Paul, Johnson, Alston & Hunt v. Graulity*  
 6 886 F.2d 268 (9th Cir. 1989)..... 13  
 7 *Pelletz v. Weyerhaeuser Co.*  
 8 592 F. Supp. 2d 1322 (W.D. Wash. 2009) ..... 17, 18  
 9 *Rodriguez v. W. Publishing Corp.*  
 10 563 F.3d 948 (9th Cir. 2009)..... 21  
 11 *Sadowska v. Volkswagen Group of America, Inc.*  
 12 2013 WL 9600948 (C.D. Cal. Sept. 25, 2013) ..... 8, 12, 18  
 13 *Serrano v. Unruh*  
 14 32 Cal. 3d, 652 P.2d 985, 186 Cal. Rptr. 754 (Cal. 1982) ..... 8, 9  
 15 *Staton v. Boeing Co.*  
 16 327 F.3d 938 (9th Cir. 2003)..... 8  
 17 *Vandervort v. Balboa Capital Corp.*  
 18 8 F. Supp. 3d 1200 (C.D. Cal. 2014) ..... 21  
 19 *Vizcaino*, 290 F.3d ..... 19  
 20 *Wash. Pub. Power*, 19 F.3d ..... 19  
 21 *Wehlage v. Evergreen at Arvin LLC*  
 22 2012 WL 4755371 (N.D. Cal. Oct. 4, 2012) ..... 17  
 23 *Wing v. Asarco Inc.*  
 24 114 F.3d 986 (9th Cir. 1997)..... 18  
 25 *Winterrowd v. American General Annuity Insurance Co.*  
 26 556 F.3d 815 (9th Cir. 2009)..... 14  
 27 **Rules**  
 28 Fed. R. Civ. P. 23..... 7

1 Fed. R. Civ. P. 30.....4, 12

2 **Statutes**

3 Cal. Civ. Proc. Code § 1021.5 .....7, 8

4 **Other Authorities**

5 Theodore Eisenberg & Geoffrey P. Miller, *Attorneys’ Fees and Expenses in*  
6 *Class Action Settlements: 1993-2008*, 7 J. EMPIR. L. STUD. 248, at p. 24 (2010) .....15

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **I. INTRODUCTION**

2 Plaintiffs respectfully file this motion for attorneys’ fees, reimbursement of  
3 litigation expenses, and service awards pursuant to the Settlement<sup>1</sup> among Plaintiffs and  
4 Sony Pictures Entertainment, Inc. (“SPE”). Class Counsel<sup>2</sup> seek a total fee and expense  
5 award of \$3,490,000, which SPE has agreed to pay in addition to, and separate from,  
6 the benefits provided to the Settlement Class pursuant to the Settlement. This amount is  
7 fair and reasonable based upon the strong relief Class Counsel has achieved for the  
8 Settlement Class, the complex nature of the issues involved and substantial effort  
9 required to obtain such relief, and the contingent nature of their representation. The  
10 reasonableness of the requested fee is also evidenced by the fact that it represents a  
11 negative multiplier on the time Class Counsel has expended. Class Counsel have  
12 already dedicated 7,257.0 hours—a total “lodestar” value of \$3,696,311.75—to the  
13 investigation, discovery process, motions practice, and successful settlement  
14 negotiations in this case, with more work still required in connection with obtaining  
15 final settlement approval and, should final approval be granted, implementation of the  
16 Settlement. *See* Joint Decl. ¶ 74.

17 The Settlement obtained by Class Counsel provides immediate and significant  
18 relief to the Settlement Class. SPE will (1) establish a non-reversionary cash fund of \$2  
19 million to reimburse Settlement Class Members for their money and time spent on  
20 preventive measures to protect themselves from identity theft and misuse resulting from  
21 the SPE Cyberattack; (2) pay up to \$2.5 million in the aggregate in cash to Settlement  
22 Class Members who have sustained unreimbursed losses, through December 31, 2017,

---

23  
24 <sup>1</sup> Unless defined herein, capitalized terms have the same meaning ascribed to them in  
25 the Modified Settlement Agreement and Release (“Settlement”), a complete copy of  
26 which is attached as Exhibit A to the Joint Declaration of Cari Campen Laufenberg,  
27 Roger N. Heller, and Daniel C. Girard (“Joint Declaration” or “Joint Decl.”), filed  
28 herewith.

<sup>2</sup> “Class Counsel” are Keller Rohrback L.L.P. (“Keller Rohrback”), Girard Gibbs LLP  
 (“Girard Gibbs”), and Lief Cabraser Heimann & Bernstein, LLP (“Lief Cabraser” or  
 “LCHB”).

1 from identity theft or misuse as a direct result of the SPE Cyberattack; and (3) provide  
2 identity theft protection services, free of charge to Settlement Class Members, through  
3 December 31, 2017, including AllClear Secure service for all Settlement Class  
4 Members and the ability for all Settlement Class Members to enroll in AllClear PRO  
5 (for Settlement Class Members who reside in the United States or have a United States  
6 Social Security Number) and/or IDT911 (for Settlement Class Members who reside  
7 outside of the United States) for additional benefits like credit monitoring and a \$1  
8 million identity theft insurance policy.

9 Class Counsel further request, and SPE does not oppose, awards of \$3,000 to  
10 each of the eight Plaintiffs (as class representatives) and \$1,000 to each of the nine  
11 Additional Plaintiffs who filed complaints in this Court and state court, in recognition  
12 of their service and the risk they undertook in bringing these claims. Like the fee and  
13 expense award, these service awards will not affect the Settlement Class relief.

## 14 **II. SUMMARY OF CLASS COUNSEL'S WORK IN THIS LITIGATION**

15 Prosecuting this case to a successful result required substantial commitments of  
16 time and resources from Class Counsel, and assistance for certain tasks by other  
17 plaintiffs' counsel firms.

### 18 **A. Case Investigation and Factual Research**

19 Class Counsel began work on this case in November 2014, when the SPE  
20 Cyberattack was publicly reported. Joint Decl. ¶ 7. Soon thereafter, Class Counsel  
21 began to hear from current and former SPE employees who had provided personally  
22 identifiable information—such as Social Security numbers, birthdates, and bank  
23 account information—to SPE during the course of their employment. Joint Decl. ¶ 9.  
24 The Class Counsel firms, alone, communicated with more than 150 current and former  
25 SPE employees, studied the information SPE had provided regarding the SPE  
26 Cyberattack, and analyzed evidence of the misuse of the personally identifiable  
27 information at issue, including its open disclosure on the Internet. Joint Decl. ¶¶ 8-9.  
28 These investigatory efforts continued throughout the litigation, with Class Counsel also



1 regularly answering questions from Settlement Class Members and informing them of  
 2 case developments. Joint Decl. ¶ 9. The ongoing communications gave Class Counsel  
 3 insight into the concerns of the Settlement Class and the remedial measures needed. *Id.*

4 **B. Pleadings and Motion Practice**

5 During December 2014 and January 2015, seven federal class actions regarding  
 6 the SPE Cyberattack were filed in this Court, with an additional four cases filed in state  
 7 court. Joint Decl. ¶¶ 10; 3 n.1. Recognizing that the controversy implicated complex  
 8 and novel privacy issues—in part because a state actor, North Korea, reportedly  
 9 perpetuated the attack in retaliation for the release of the motion picture “The  
 10 Interview”—Class Counsel conferred with one another and with other plaintiffs’  
 11 counsel to organize a leadership structure and to pool resources to litigate the cases  
 12 effectively and efficiently. Joint Decl. ¶ 12. Following the status conference on  
 13 February 17, 2015 (ECF Nos. 34, 41), Class Counsel worked diligently to draft the  
 14 Amended Class Action Complaint, a process that involved vetting and choosing  
 15 plaintiffs, framing appropriate factual allegations, and evaluating and drafting causes of  
 16 action. Joint Decl. ¶ 15. On March 2, 2015, Class Counsel filed an amended complaint  
 17 that asserted several statutory and common law causes of action.<sup>3</sup> ECF No. 43; Joint  
 18 Decl. ¶¶ 16-17.

19 On March 23, 2015, SPE moved to dismiss for lack of Article III standing and for  
 20 failure to state a claim upon which relief could be granted. ECF No. 59; Joint Decl.  
 21 ¶ 48. Preparation of the brief in opposition required Class Counsel to research and draft  
 22 arguments concerning data protection statutes in three states, California’s medical  
 23 confidentiality statute, and interpretations of the law of Article III standing in data  
 24 breach cases. Joint Decl. ¶ 48. On June 15, 2015, the Court upheld Plaintiffs’ claims in  
 25 part. ECF No. 97; Joint Decl. ¶ 49.

---

26  
 27 <sup>3</sup> Rather than consolidating the lawsuits filed in this forum, and in view of plaintiffs’  
 28 counsel’s self-organization, the Court directed the filing of an amended complaint in the  
 first-filed case, with the related federal cases to thereafter be voluntarily dismissed.  
 ECF No. 41; Joint Decl. ¶¶ 14, 18.

1           **C. Discovery**

2           The extensive discovery conducted by Class Counsel laid much of the  
3 groundwork for settlement negotiations. Discovery was hard fought. From the outset,  
4 the Parties held opposing views on many discovery issues, such as the terms of the  
5 protective order, the scope of document preservation, and the scope of discovery. Joint  
6 Decl. ¶ 29. Class Counsel were able to overcome these obstacles to obtain wide-  
7 ranging information about the SPE Cyberattack and its consequences.

8           Class Counsel propounded three sets of requests for production of documents  
9 related to, among other topics, SPE's data security policies, practices, audits, and  
10 assessments; the personally identifiable information that was compromised and  
11 disclosed on the Internet in connection with the SPE Cyberattack; SPE's knowledge of  
12 and response to the Cyberattack; SPE's insurance policies for data security liability; and  
13 identification of the Class Members. Joint Decl. ¶ 31. Class Counsel also propounded  
14 two sets of interrogatories regarding issues such as the number of employees whose  
15 personally identifiable information was disclosed on the Internet; the computer servers  
16 on which employee personally identifiable information is stored; SPE's information  
17 security department; SPE's data security audits and assessments; and past data breaches  
18 at SPE. *Id.*

19           The Parties held numerous meet and confer sessions, and exchanged numerous  
20 emails and letters, regarding disputes about the timing and proper scope of discovery.  
21 Joint Decl. ¶ 29. SPE ultimately produced over 47,900 pages of documents and 3,635  
22 spreadsheets containing the publicly disclosed personally identifiable information,  
23 Plaintiffs' personnel files, and various insurance policies. Joint Decl. ¶ 32. Class  
24 Counsel carefully reviewed and analyzed these documents.

25           Class Counsel also spent considerable time responding to SPE's discovery  
26 requests, working with Plaintiffs to provide detailed responses to 68 interrogatories and  
27 39 document requests. Joint Decl. ¶ 35. In all, Plaintiffs produced over 1,360 pages of  
28 documents and 80 spreadsheets in response to SPE's document requests. *Id.*

1           **D. Class Certification Discovery and Briefing, Expert Work, and**  
2           **Continuing Discovery**

3           While discovery was ongoing, Class Counsel diligently prepared for class  
4 certification briefing and trial. Class Counsel deposed SPE’s Rule 30(b)(6) corporate  
5 designee regarding multiple topics. Joint Decl. ¶ 33. Additionally, Class Counsel  
6 defended the depositions of the eight named Plaintiffs in five different cities throughout  
7 the country. Joint Decl. ¶ 36. Plaintiffs, who took time off work to sit for these  
8 depositions, testified to numerous issues, including about their employment with SPE  
9 and the claimed effects of the SPE Cyberattack, such as identity theft incidents. *Id.*

10           All the while, Class Counsel continued to confer with SPE’s counsel, exchanging  
11 emails and letters to negotiate search terms and custodians for the production of  
12 relevant documents as well as a supplemental protective order. Joint Decl. ¶ 29.  
13 Further, Class Counsel identified third parties likely to possess information and  
14 documents regarding the SPE Cyberattack and the foreseeability of a Cyberattack.  
15 Class Counsel served subpoenas on eight third parties. Joint Decl. ¶ 44.

16           Plaintiffs moved for class certification on June 30, 2015. ECF Nos. 107, 109;  
17 Joint Decl. ¶ 52. Class Counsel worked closely with Plaintiffs’ two experts—the data  
18 security and privacy expert Dr. Larry Ponemon, Ph.D., and economist Dr. Henry  
19 Fishkind, Ph.D.—who produced expert reports supporting class certification. Joint  
20 Decl. ¶¶ 39-40. Class Counsel engaged these two experts and paid for their services  
21 after researching and vetting more than 35 similar experts. Joint Decl. ¶ 38. Class  
22 Counsel defended their two experts’ depositions. Joint Decl. ¶ 42. In opposing class  
23 certification, SPE submitted reports from its two retained experts, Dr. John H. Johnson  
24 IV and Dr. Michael A. Turner, Ph.D. Joint Decl. ¶ 40. Class Counsel examined SPE’s  
25 expert reports, reviewed over 4,130 pages of documents that SPE’s experts produced,  
26 and deposed both of SPE’s experts. Joint Decl. ¶¶ 41-42. Plaintiffs’ experts then  
27 prepared rebuttal reports, with assistance from Class Counsel, and Class Counsel  
28 researched and drafted a reply class certification brief, which was lodged, along with  
the rebuttal expert reports, on September 2, 2015. Joint Decl. ¶ 40.

1 Class Counsel also engaged in third party discovery, and served subpoenas for  
2 production of documents on eight third parties identified as being likely to possess  
3 information and documents regarding the SPE Cyberattack and the foreseeability of a  
4 data breach, including Kevin Mandia of FireEye, Tommy Stiansen of Norse, and  
5 Feinman of Identity Finder, LLC. Joint Decl. ¶ 44. Class Counsel also conducted an  
6 extensive investigation and review of the internal SPE documents files compromised in  
7 the SPE Cyberattack that were posted on the Internet following the SPE Cyberattack,  
8 including internal SPE documents. Joint Decl. ¶ 45. This investigation and review  
9 encompassed thousands of pages of documents posted on WikiLeaks.org and other data  
10 sources. *Id.* Class Counsel reviewed more than 3,490 pages of documents and more  
11 than 75 spreadsheets from third parties. Joint Decl. ¶ 46.

12 **E. Mediation and Settlement Negotiations**

13 The Parties began exploring settlement in June 2015. Joint Decl. ¶ 56. They  
14 agreed to mediate with Professor Eric Green of Resolutions, LLC, an experienced  
15 mediator who has helped resolve thousands of complex cases. Joint Decl. ¶ 57. Class  
16 Counsel prepared a confidential mediation brief setting forth Plaintiffs' litigation  
17 positions and a candid assessment of the risks associated with bringing this case to trial  
18 and prevailing at trial and in any appeal. *Id.*

19 After a pre-mediation meeting, the Parties participated in an in-person mediation  
20 session before Professor Green on June 11, 2015. Joint Decl. ¶ 58. Although the  
21 Parties made some progress in that all-day session, they were unable to reach  
22 agreement. *Id.* There followed continuing (and frequent) settlement negotiations in  
23 June, July, and August 2015, during which time the Parties, assisted by Professor  
24 Green, participated in multiple telephonic conferences and exchanged settlement  
25 proposals and counterproposals. Joint Decl. ¶ 59. On September 1, 2015, the Parties  
26 finally reached an agreement in principle, subject to preparation and execution of a  
27 written settlement agreement, on the substantive elements of the settlement. *Id.* Class  
28 Counsel then worked hard on negotiating and drafting the contents of the written

1 settlement agreement and the various exhibits thereto, including the forms of notice,  
2 plan of allocation, and claim forms. Joint Decl. ¶ 61.

3 After the Parties had reached agreement on principal settlement terms, the Parties  
4 negotiated an agreement governing Class Counsel’s application for fees, costs, and  
5 expenses. Joint Decl. ¶ 66. The Parties agreed, subject to this Court’s approval, that  
6 Class Counsel would apply for, and SPE would agree to pay, attorneys’ fees, costs, and  
7 expenses of up to \$3,490,000. *Id.* This payment will not reduce the benefits to the  
8 Settlement Class, and is to be distributed by Class Counsel pursuant to the Settlement  
9 among the plaintiffs’ counsel firms, including to counsel for the plaintiffs in the state  
10 cases, to whom Class Counsel will allocate up to \$244,000 of the amount awarded.<sup>4</sup> *Id.*

11 Most recently, Class Counsel prepared the motion for preliminary settlement  
12 approval and finalized the Class notices and worked with SPE regarding the identity  
13 theft protection services benefiting the Settlement Class. Joint Decl. ¶ 65. While the  
14 time records that form the basis for the lodestar calculation end on January 15, 2016,  
15 Class Counsel expect to spend substantial additional time in this case, including in  
16 obtaining final approval of the Settlement, communicating with Settlement Class  
17 Members who have questions, and overseeing settlement implementation and  
18 coordinating with the Settlement Administrator up until December 31, 2017, the last  
19 day for Settlement Class Members to claim Settlement benefits, and potentially beyond  
20 this date if need be. Joint Decl. ¶ 71.

21 **III. ARGUMENT**

22 **A. Class Counsel’s Fee Request Is Reasonable and Appropriate Under the**  
23 **Circumstances**

24 Class Counsel respectfully request that the Court award \$3,490,000 as  
25 “reasonable attorney’s fees and nontaxable costs that are authorized by law or by the  
26 parties’ agreement.” Fed. R. Civ. P. 23(h). SPE has agreed to pay this award, which  
27 will not affect the benefits for the Class. *See* Settlement Agreement, ¶ 78. The

---

28 <sup>4</sup> If approved, the Settlement here will dispose of the four state cases.

1 requested fee is “‘fundamentally fair, adequate, and reasonable.’” *Staton v. Boeing Co.*,  
2 327 F.3d 938, 963 (9th Cir. 2003) (quoting Fed. R. Civ. P. 23(e)).

3 Because SPE has agreed to pay a fee award up to the amount requested here, “the  
4 court need not inquire into the reasonableness . . . even at the high end with precisely  
5 the same level of scrutiny as when the fee amount is litigated.” *Staton*, 327 F.3d at 966.  
6 The Court’s role is instead “to ensure that the Parties’ agreement on fees and expenses  
7 is reasonable and does not reflect a collusive settlement placing the interests of counsel  
8 above the interests of the Class.” *Sadowska v. Volkswagen Group of America, Inc.*, No.  
9 CV 11-00665-BRO (AGRx), 2013 WL 9600948, at \*8 (C.D. Cal. Sept. 25, 2013).

10 This Court may also approve the requested award pursuant to California’s  
11 “private attorney general” statute. *See* Cal. Civ. Proc. Code § 1021.5 (providing for an  
12 award of attorneys’ fees “to a successful party against one or more opposing parties in  
13 any action which has resulted in the enforcement of an important right affecting the  
14 public interest if . . . a significant benefit, whether pecuniary or nonpecuniary, has been  
15 conferred on the general public or a large class of persons”); *Serrano v. Unruh*, 32 Cal.  
16 3d 621, 632, 652 P.2d 985, 186 Cal. Rptr. 754 (Cal. 1982) (explaining that such an  
17 award advances “the policy of encouraging private actions to vindicate important rights  
18 affecting the public interest”).<sup>5</sup>

19 **1. Class Counsel Obtained an Excellent Result**

20 The Settlement before the Court provides strong relief for the Settlement Class  
21 that is well-tailored to the harm alleged and substantially accomplishes the goals of this  
22 case. Current and former SPE employees and certain other individuals affected by the  
23

---

24 <sup>5</sup> The Legislature enacted the private attorney general statute so that the costs of  
25 enforcing important rights in the public interest would be shifted from private plaintiffs  
26 to defendants in various circumstances. *See* Cal. Civ. Proc. Code § 1021.5; *see also*  
27 *Serrano*, 32 Cal. 3d at 632-33 (holding that “absent facts rendering the award unjust,  
28 parties who qualify for a fee should recover for all hours reasonably spent, including  
those on fee-related matters.”). To the extent that claims settled here arise under  
California law, California law governs the accompanying award of fees. *See Mangold*  
*v. California Public Utilities Commission*, 67 F.3d 1470, 1478 (9th Cir. 1995).

1 SPE Cyberattack will not only be compensated for their out-of-pocket losses; they will  
2 also receive identity protection services through December 31, 2017 to protect them  
3 from identity theft going forward. There is no question that the efforts of Class Counsel  
4 were “a substantial causal factor” in bringing about this relief. *Henderson v. J.M.*  
5 *Smucker Co.*, No. CV 10-4524-GHK, 2013 WL 3146774, at \*4 (C.D. Cal. June 19,  
6 2013) (quoting *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 577, 101 P.3d 140,  
7 21 Cal. Rptr. 3d 331 (Cal. 2004)).

8 The results accomplished here compare favorably to the relief in other data  
9 breach settlements. Under the Settlement, the approximately 435,000 Settlement Class  
10 Members will all be enrolled, free of charge through December 31, 2017, in AllClear  
11 Secure service, which provides identity repair and restoration assistance. Moreover, all  
12 Settlement Class Members will be able to enroll, free of charge, in AllClear PRO (for  
13 Settlement Class Members who reside in the United States or have a United States  
14 Social Security Number) or IDT911 (for Settlement Class Members who reside outside  
15 of the United States) services through December 31, 2017 AllClear PRO and IDT911  
16 provide additional benefits, including \$1 million in identity theft insurance, fraud  
17 detection, lost wallet protection, and detection and restoration services for identity theft  
18 associated with an enrollee’s child, as well as, for the vast majority of Settlement Class  
19 Members, credit monitoring and identity theft monitoring services. The thousands of  
20 Settlement Class Members residing in the United States who already enrolled in the  
21 initial year of AllClear PRO provided by SPE following the SPE Cyberattack will have  
22 their coverage automatically extended through December 31, 2017. In all, these  
23 identity protection services provide millions of dollars in benefits to the Settlement  
24 Class Members.<sup>6</sup> Dedicated toll-free telephone numbers have also been established for  
25 Settlement Class Members to contact AllClear and IDT911 for assistance.

26  
27  
28 <sup>6</sup> For example, the current cost for a consumer to enroll in AllClear PRO is \$14.95 per  
month, meaning it would cost a normal consumer \$358.80 over two years for the  
AllClearPRO service. See <https://www.allclearid.com/plans/pro-plan/>. IDT911 provides

1 The Settlement will also provide Settlement Class Members with \$2 million to  
2 reimburse the costs of preventive measures (and time expended) as a result of the SPE  
3 Cyberattack, and “backstop” relief of up to \$2.5 million in the aggregate for future  
4 losses from identity theft or misuse resulting from the SPE Cyberattack. The *Veterans*  
5 *Affairs* data breach case, by contrast, involved the theft of approximately 26.5 million  
6 military veterans’ names, birthdates, and Social Security numbers. See Memorandum  
7 1-2, *In re Dep’t of Veterans Affairs (VA) Data Theft Litig.*, No. 06-0506 (D.D.C. Sept.  
8 11, 2009), ECF No. 77. The court in that case approved a settlement that created a \$20  
9 million common fund to reimburse class members for out-of-pocket losses and to pay  
10 attorneys’ fees and costs—but which did not make available identity theft protection  
11 nor any recourse for those who might be subjected to identify theft or fraud in the  
12 future. *Id.* The Settlement here also compares favorably to the class settlement  
13 approved in the *In re Michael Stores Pin Pad Litigation*, which provided thousands of  
14 class members with only one year of free credit monitoring—two years for class  
15 members with out-of-pocket losses—and a \$600,000 common fund that, if exhausted,  
16 would increase by up to \$200,000. Class Action Settlement Agreement 16-19, No.  
17 1:11-cv-03350 (N.D. Ill. Dec. 13, 2012), ECF No. 82-1; Order Granting Final Approval  
18 of Settlement (N.D. Ill. Apr. 17, 2013), ECF No. 107.

19 In this case, moreover, Class Counsel’s successful enforcement of privacy rights  
20 came in an uncertain legal landscape and notwithstanding SPE’s denial of liability.  
21 Class Counsel’s efforts confer a benefit upon the public at large because they helped  
22 advance the case law and because the Settlement should provide a useful model for  
23 future data breach settlements while motivating businesses that keep sensitive personal  
24 information to implement adequate data security protocols and practices. These  
25 circumstances further support the requested award. See *Graham*, 34 Cal. 4th at 565  
26 (stating that “the fundamental objective of the [private attorney general] doctrine is to  
27

28 substantially comparable value, and AllClear Secure, which all Settlement Class  
Members will receive, provides significant value as well.



1 encourage suits enforcing important public policies by providing substantial attorney  
2 fees to successful litigants in such cases.’’ (quoting *Maria P. v. Riles*, 43 Cal. 3d 1281,  
3 1288-89, 240 Cal. Rptr. 872, 743 P.2d 932 (Cal. 1987)).

4 **2. The Fee Was Negotiated and Agreed Upon at Arms’ Length by**  
5 **Skilled and Experienced Counsel**

6 “Ideally, of course, litigants will settle the amount of a fee.” *Hensley v.*  
7 *Eckerhart*, 461 U.S. 424, 437 (1983). Thus, a court “should refrain from substituting its  
8 own value for a properly bargained-for agreement.” *In re Apple Computer, Inc.*  
9 *Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 WL 4820784, at \*3-4 (N.D. Cal. Nov.  
10 5, 2008) (awarding attorneys’ fees based on “the terms of the settlement”). Courts  
11 therefore apply lessened scrutiny to fee agreements “negotiated at arm’s length with  
12 sophisticated defendants by the attorneys . . . intimately familiar with the case” and  
13 where the fee “neither detracts from nor diminishes the payments and benefits that will  
14 flow to Plaintiffs themselves.” *In re First Capital Holdings Corp. Fin. Prods. Sec.*  
15 *Litig.*, MDL No. 901, 1992 WL 226321, at \*4 (C.D. Cal. June 10, 1992) (approving  
16 agreed-upon fee of \$8 million); *accord Sadowska*, 2013 WL 9600948, at \*8.

17 These circumstances characterize the situation here, and there is no basis to upset  
18 the Parties’ negotiated fee agreement. The Parties here did not reach an agreement on  
19 settlement until after extensive discovery had been conducted, SPE’s motion to dismiss  
20 was litigated and decided, and Plaintiffs’ motion for class certification was fully  
21 briefed. In fact, the settlement in this case was reached approximately five months  
22 before the trial was scheduled to commence. These proceedings ensured that both  
23 Parties were fully apprised of the strengths and weaknesses of their respective positions.  
24 And it was only after reaching an agreement on the substantive terms of a settlement  
25 that the Parties negotiated the fee. Joint Decl. ¶ 66; *cf. Sadowska*, 2013 WL 9600948,  
26 at \*8. Further demonstrating that the agreed-upon fee is fair and the product of good-  
27 faith negotiations, its payment will have no bearing on the relief for the Settlement  
28 Class Members. Settlement Agreement, ¶ 78; *see In re Bluetooth Headset Prods. Liab.*  
*Litig.*, 654 F.3d 935, 947 (9th Cir. 2011).

1                   **3.    Application of the Lodestar Method Supports the Reasonableness**  
2                   **of the Fee**

3                   The “lodestar” method and the “percentage of the fund” method are the two  
4 primary methods courts employ to determine a reasonable attorneys’ fee in connection  
5 with a class action settlement. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th  
6 Cir. 1998). While courts often rely on the percentage method where a settlement  
7 creates a common fund, they rely on the lodestar method where—as here—the fees are  
8 being paid separately from the class relief and the value of that relief is uncertain. *Id.*;  
9 *see also In re Toys R Us FACTA Litig.*, 295 F.R.D. 438, 460 (C.D. Cal. 2014).

10                  “Only in rare or exceptional cases will an attorney’s reasonable expenditure of  
11 time on a case not be commensurate with the fees to which he is entitled.” *Cunningham*  
12 *v. County of Los Angeles*, 879 F.2d 481, 488 (9th Cir. 1988) (emphasis omitted). Class  
13 Counsel’s lodestar is calculated by multiplying the number of hours reasonably  
14 expended on the litigation by a reasonable hourly rate. *Hensley*, 461 U.S. at 433; *Paul,*  
15 *Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 272 (9th Cir. 1989). As this figure  
16 approximates the market value of the legal services, it “presumptively provides an  
17 accurate measure of reasonable attorney’s fees.” *In re Toys R Us FACTA Litig.*, 295  
18 F.R.D. at 460 (quoting *Harris v. Marhoefer*, 24 F.3d 16, 18 (9th Cir. 1994)); *see also*  
19 *Guam Soc’y of Obstetricians & Gynecologists v. Ada*, 100 F.3d 691, 696 (9th Cir.  
20 1996).

21                  The accompanying Joint Declaration made by Class Counsel sets forth the hours  
22 worked and the billing rates used to calculate the lodestar. *See Winterrowd v. American*  
23 *General Annuity Insurance Co.*, 556 F.3d 815, 827 (9th Cir. 2009) (“Testimony of an  
24 attorney as to the number of hours worked on a particular case is sufficient evidence to  
25 support an award of attorney fees, even in the absence of detailed time records.”)  
26 (internal quotations omitted). Class Counsel and their professional staffs spent 7,257.0  
27  
28

1 hours working on this case, for a lodestar of \$3,696,311.75, as of January 15, 2016.<sup>7</sup>  
2 Joint Decl. ¶ 74.

3 a. **The Time Class Counsel Devoted to This Case Was**  
4 **Appropriately Spent in Light of the Favorable Result and**  
5 **the Litigation Risks.**

6 Class Counsel's efforts were necessary to achieving the Settlement and required  
7 similar hours to those expended by class counsel in other data breach cases. *See, e.g.,*  
8 *In re Countrywide Fin. Corp. Customer Data Security Breach Litig.*, No. 3:08-md-  
9 01998-TBR, 2010 WL 3341200, at \*10 (W.D. Ky. Aug. 23, 2010) (11,453 hours in  
10 case that settled about one year after filing of complaint); Mem. of Points and  
11 Authorities in Support of Pls.' Mot. for Final Approval of Class Action Settlement and  
12 Award of Attorneys' Fees, Costs, and Expenses 23-25, *In re Sony Gaming Networks &*  
13 *Customer Data Security Breach Litig.*, No. 3:11-md-02258-AJB-MDD (S.D. Cal. Apr.  
14 30, 2015) (5,580 hours where class certification had not been briefed), ECF No. 204-1.  
15 As discussed above, among other things, Class Counsel: (1) interviewed more than 150  
16 current and former SPE employees; (2) researched and drafted the consolidated  
17 complaint; (3) opposed SPE's motion to dismiss; (4) served and reviewed extensive  
18 discovery; (5) prepared for and defended eight named Plaintiff depositions; (6) located,  
19 retained, and worked with experts who produced reports and sat for deposition; (7)  
20 deposed SPE's experts and Rule 30(b)(6) designee; (8) prepared a motion for class  
21 certification and reply papers in support thereof; (9) carried out an investigation to  
22 locate and review thousands of pages of documents posted on the Internet following the  
23 SPE Cyberattack; (10) prepared for and participated in a full-day mediation session;  
24 (11) negotiated the terms of the Settlement over a three-month period with SPE's

---

25 <sup>7</sup> The amounts included in Exhibit B to the Joint Declaration do not include the additional  
26 time incurred by the other plaintiffs' counsel (i.e., the non-lead firms), who reported to  
27 Class Counsel that they have spent a collective 1,272.6 additional hours working on this  
28 matter for a total reported lodestar, for those non-lead firms, of \$689,061.50. While  
Class Counsel have not included this additional time for purposes of the lodestar analysis,  
plaintiffs' counsel will be paid from any attorneys' fees awarded by this Court.

1 counsel; (12) worked extensively on drafting the formal settlement agreement and the  
2 notices, claim forms, and other exhibits thereto; and (13) have worked closely, and  
3 continue to work closely, with the Settlement Administrator to implement the notice  
4 program and claims processes.

5 Class Counsel assumed considerable risk in taking this matter on a contingent  
6 basis. Although the SPE Cyberattack was widely publicized, the viability of the  
7 underlying claims was uncertain. For example, when the complaints were filed, there  
8 was disagreement among federal courts as to whether “*Clapper v. Amnesty*  
9 *International USA* [133 S. Ct. 1138 (2013)] expressly rejected ‘[a]llegations of possible  
10 future injury’ as a basis for Article III standing” in data breach cases—a position  
11 defendants had successfully advanced elsewhere. *In re Adobe Systems, Inc. Privacy*  
12 *Litig.*, 66 F. Supp. 3d 1197, 1212 (N.D. Cal. 2014) (alteration in original) (citing cases).  
13 The standing issue, and other difficult issues implicated by these claims,<sup>8</sup> required Class  
14 Counsel to research and devise litigation strategies to move the case through class  
15 certification to trial. In the face of such risks, Class Counsel prosecuted this case on a  
16 purely contingent basis, foregoing other work in the process.

17 It was also important to secure relief for this Settlement Class sooner rather than  
18 later. SPE’s initial offer of identity theft protection services offered through AllClear  
19 ID was for only one year. Because of the sensitive nature of the compromised  
20 personally identifiable information, it was important to provide extended coverage to  
21 Settlement Class Members.

22 **b. Class Counsel’s Hourly Rates Are Reasonable and Have**  
23 **Been Repeatedly Approved by Courts**

24 Class Counsel’s hourly rates “are in line with those prevailing in the community  
25 for similar services by lawyers of reasonably comparable skill, experience and  
26

---

27 <sup>8</sup> As another example, there was considerable uncertainty and disagreement regarding  
28 the proof necessary to recover under the California Confidentiality of Medical  
Information Act.

1 reputation.” *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1994).<sup>9</sup> As such, Class  
2 Counsel’s rates have been repeatedly evaluated and approved as reasonable by federal  
3 courts in this Circuit and elsewhere. *See, e.g., Parkinson v. Hyundai Motor America*,  
4 796 F. Supp. 2d 1160, 1172-73 (C.D. Cal. 2010) (approving Girard Gibbs’ rates); Order  
5 Granting Plaintiffs’ Motion for Approval of Attorney Fees 1, *In re Adobe Systems Inc.*  
6 *Privacy Litig.*, No. 5:13-cv-05226-LHK (N.D. Cal. Aug. 13, 2015), ECF No. 107  
7 (same); *In re High-Tech Employee Antitrust Litig.*, No. 5:11-cv-02509-LHK, 2015 WL  
8 5158730, at \*9 (N.D. Cal. Sept. 2, 2015) (approving Girard Gibbs’ and LCHB’s rates);  
9 *Wehlage v. Evergreen at Arvin LLC*, No. 4:10-cv-05839-CW, 2012 WL 4755371, at \*2  
10 (N.D. Cal. Oct. 4, 2012) (approving LCHB’s rates); *Lonardo v. Travelers Indem. Co.*,  
11 706 F. Supp. 2d 766, 793-94 (N.D. Ohio 2010) (same); *Glaberson v. Comcast Corp.*,  
12 No. CV 03-6604, 2015 WL 5582251, at \*15 (E.D. Pa. Sept. 22, 2015) (approving  
13 LCHB’s and Keller Rohrback’s rates); *Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d  
14 1322, 1328 (W.D. Wash. 2009) (same); *In re Polaroid*, No. 03 CIV. 8335 (WHP), 2007  
15 WL 2116398, at \*3 (S.D.N.Y. July 19, 2007) (approving Keller Rohrback’s rates); *In re*  
16 *WorldCom, Inc. ERISA Litig.*, No. 02 CIV. 4816 (DLC), 2004 WL 2338151, at \*8  
17 (S.D.N.Y. Oct. 18, 2004) (same).

18 **c. The Requested Fee Represents a Negative Multiplier**

19 For the purpose of awarding class counsel a reasonable fee, the lodestar may be  
20 adjusted in light of the (1) results obtained, (2) novelty and complexity of the questions  
21 presented, (3) skill exhibited by counsel, (4) preclusion of other legal work as a result of  
22 counsel’s acceptance and prosecution of the case, and (5) risk of nonpayment. *Hanlon*,  
23 150 F.3d at 1029; *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975);  
24 *Ketchum v. Moses*, 24 Cal.4th 1122, 1132, 17 P.3d 735, 104 Cal. Rptr. 2d 377 (Cal.  
25

---

26 <sup>9</sup> Class Counsel base their rates upon the experience and skill of the attorney or  
27 paralegal performing the work. Class Counsel set rates through periodic review of the  
28 rates charged by other law firms involved in similar complex litigation, and, among  
other sources, survey results published by trade periodicals such as the National Law  
Journal.

1 2001). Still, “although a court can adjust the lodestar upward or downward based on  
2 certain factors, adjustments are the exception rather than the rule.” *Fischel v. Equitable*  
3 *Life Assurance Soc’y of U.S.*, 307 F.3d 997, 1007 (9th Cir. 2002) (internal quotations  
4 omitted).

5 The award sought here—after subtracting Class Counsel’s reasonably incurred  
6 litigation costs—reflects a modest *negative* adjustment on the documented lodestar.  
7 And this negative multiplier exists prior to Class Counsel fulfilling their considerable  
8 remaining obligations to the Settlement Class. Even at present, the negative multiplier  
9 falls below the range of multipliers awarded in similar class action cases that involved  
10 complex, novel issues and high-caliber defense counsel. *See, e.g., Sadowska*, 2013 WL  
11 9600948, at \*9 (approving negotiated fee representing a 1.37 multiplier); *Pelletz*, 592 F.  
12 Supp. 2d at 1328 (approving 1.82 multiplier where “the demanding nature of this action  
13 precluded Class Counsel from accepting other potentially profitable work.”); *Wing v.*  
14 *Asarco Inc.*, 114 F.3d 986, 988-89 (9th Cir. 1997) (approving 2.0 multiplier in part  
15 because of “the quality of the [defendant’s] opposition”); *see also* Theodore Eisenberg  
16 & Geoffrey P. Miller, *Attorneys’ Fees and Expenses in Class Action Settlements: 1993-*  
17 *2008*, 7 J. EMPIR. L. STUD. 248, at p. 24 (2010) (finding that, in the Ninth Circuit, the  
18 mean multiplier for attorneys’ fees awarded in connection with class settlements is  
19 1.54).<sup>10</sup>

20 The contingent nature of the fee, alone, would quite arguably justify a *positive*  
21 multiplier in this case, even though Class Counsel do not seek that. *See In re*  
22 *Washington Public Power Supply System Secs. Litig.*, 19 F.3d 1291, 1299 (9th Cir.  
23 1994) (“Contingent fees that may far exceed the market value of the services if rendered  
24 on a non-contingent basis are accepted in the legal profession as a legitimate way of  
25 assuring competent representation for plaintiffs who could not afford to pay on an  
26 hourly basis regardless whether they win or lose.”); *Vizcaino v. Microsoft Corp.*, 290  
27

---

28 <sup>10</sup> Available at: [http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1066&context=clsops\\_papers](http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1066&context=clsops_papers).

1 F.3d 1043, 1051 (9th Cir. 2002) (courts reward successful class counsel in contingency  
2 case “by paying them a premium over their normal hourly rates”). The fact that Class  
3 Counsel assumed representation here on a purely contingent basis strongly supports the  
4 reasonableness of the amount requested. That is particularly so given the complex and  
5 novel nature of the issues involved in this case and the corresponding risks that Class  
6 Counsel might receive nothing for their efforts.

7 The negative multiplier here confirms the fairness of the requested fee award.  
8 *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 854 (N.D. Cal. 2010) (“This  
9 resulting multiplier of less than one, (sometimes called a negative multiplier) suggests  
10 that the negotiated fee award is a reasonable and fair valuation of the services rendered  
11 to the class by class counsel.”).

12 **B. Class Counsel’s Out-of-Pocket Litigation Expenses Were Reasonably**  
13 **Incurred in Furtherance of the Prosecution of the Claims, and Should**  
14 **Be Awarded**

15 The Settlement terms and settled precedent further support Class Counsel’s  
16 entitlement to recovery of out-of-pocket costs reasonably incurred in investigating,  
17 prosecuting, and settling these claims. *See, e.g., In re Media Vision Tech. Sec. Litig.*,  
18 913 F. Supp. 1362, 1366 (N.D. Cal. 1996). The requested \$3,490,000 total award  
19 amount here *includes* reimbursement of the expenses that Class Counsel advanced for  
20 the benefit of the Settlement Class (*i.e.*, Class Counsel are not asking for separate  
21 reimbursement of costs on top of the \$3,490,000.00 amount). *See* Settlement  
22 Agreement, ¶ 78. As of January 15, 2016, Class Counsel had incurred \$295,544.96 in  
23 unreimbursed costs in connection with investigating the claims, engaging a mediator,  
24 retaining experts, obtaining deposition transcripts, travel, legal research, postage, and  
25 other customary litigation expenses.<sup>11</sup> Joint Decl. ¶ 83. As detailed in the  
26 accompanying Joint Declaration made by Class Counsel, these costs were reasonably  
27

28 <sup>11</sup> This amount does not include additional costs that other Plaintiffs’ counsel have  
incurred in this litigation.

1 incurred in furtherance of the investigation, prosecution, and settlement of the action  
2 and should be reimbursed. *See In re Toys R Us FACTA Litig.*, 295 F.R.D. at 469.

3 **C. The Requested Service Awards Are Reasonable and Should Be**  
4 **Approved**

5 Finally, Class Counsel seek, and SPE does not oppose, service awards in the  
6 amount of \$3,000 for each of the eight named Plaintiffs here and \$1,000 for each of the  
7 nine Additional Plaintiffs who filed suit against SPE. If approved, SPE will pay these  
8 awards separately; they will not affect Settlement Class Members' recovery. Settlement  
9 Agreement, ¶ 79.

10 Service or “[i]ncentive awards are fairly typical in class action cases.” *Rodriguez*  
11 *v. W. Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (emphasis omitted). Such  
12 awards are “intended to compensate class representatives for work done on behalf of the  
13 class, to make up for financial or reputational risk undertaken in bringing the action,  
14 and, sometimes, to recognize their willingness to act as a private attorney general.” *Id.*  
15 at 958-59.

16 The requested amounts are well justified under the circumstances. The eight  
17 named Plaintiffs and the Additional Plaintiffs subjected themselves to public attention  
18 by suing SPE. They sought to vindicate their own rights and those of the Settlement  
19 Class despite the possibility of negative consequences their participation might have on  
20 their future job prospects in the entertainment industry. As set forth in their  
21 accompanying declarations, the eight named Plaintiffs also actively participated in the  
22 prosecution of this case by regularly communicating and working with Class Counsel—  
23 including to respond to SPE's 68 interrogatories and 39 document requests seeking  
24 detailed and sensitive information—and by taking time away from work to testify at  
25 depositions.

26 If anything, the requested service awards are below average, and given Plaintiffs'  
27 efforts they are justified. *See, e.g., Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d  
28 1200, 1208 (C.D. Cal. 2014) (\$10,000); *In re Toys R Us FACTA Litig.*, 295 F.R.D. at  
470 (\$5,000); *Covillo v. Specialty's Cafe*, No. C-11-00594 DMR, 2014 WL 954516, at



\*8 (N.D. Cal. Mar. 6, 2014) (holding that “a \$5,000 incentive award is presumptively reasonable”).

**IV. CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court: (a) award Class Counsel attorneys’ fees, costs, and expenses in the total amount of \$3,490,000, with such amount to be paid by SPE and distributed pursuant to paragraphs 80 and 81 of the Settlement; and (b) grant service awards in the amounts of \$3,000 for each of the eight named Plaintiffs and \$1,000 for each of the nine Additional Plaintiffs, with such amounts to be paid by SPE as set forth in the Settlement Agreement.

Dated: February 17, 2016                      Respectfully submitted,

**KELLER ROHRBACK LLP**

By: /s/ Lynn Lincoln Sarko  
Lynn Lincoln Sarko (*admitted pro hac vice*)  
lsarko@kellerrohrback.com  
Gretchen Freeman Cappio (*admitted pro hac vice*)  
gcappio@kellerrohrback.com  
Cari Campen Laufenberg (*admitted pro hac vice*)  
claufenberg@kellerrohrback.com  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101  
Telephone: (206) 623-1900  
Facsimile: (206) 623-3384

Matthew J. Preusch  
mpreusch@kellerrohrback.com  
1129 State Street, Suite 8  
Santa Barbara, CA 93101  
Telephone: (805) 456-1496  
Facsimile: (805) 456-1497

**GIRARD GIBBS LLP**

Daniel C. Girard

1 dcg@girardgibbs.com  
2 Amanda M. Steiner  
3 as@girardgibbs.com  
4 Linh G. Vuong  
5 lgv@girardgibbs.com  
6 601 California Street, 14th Floor  
7 San Francisco, CA 94108  
8 Telephone: (415) 981-4800  
9 Facsimile: (415) 981-4846

10 **LIEFF CABRASER HEIMANN &**  
11 **BERNSTEIN, LLP**

12 Michael W. Sobol  
13 msobol@lchb.com  
14 Roger N. Heller  
15 rheller@lchb.com  
16 275 Battery Street, 29th Floor  
17 San Francisco, CA 94111-3339  
18 Telephone: (415) 956-1000  
19 Facsimile: (415) 956-1008

20 Nicholas Diamand  
21 ndiamand@lchb.com  
22 250 Hudson Street, 8th Floor  
23 New York, NY10013-1413  
24 Telephone: (212) 355-9500  
25 Facsimile: (212) 355-9592

26 *Class Counsel*

27 Hank Bates  
28 hbates@cbplaw.com  
Allen Carney  
acarney@cbplaw.com  
David Slade  
dslade@cbplaw.com  
**CARNEY BATES & PULLIAM, PLLC**  
11311 Arcade Drive  
Little Rock, AR 72212

1 Telephone: (501) 312-8500  
2 Facsimile: (501) 312-8505

3 Raúl Pérez  
4 Raul.Perez@Capstonelawyers.com  
5 Jordan L. Lurie  
6 Jordan.Lurie@capstonelawyers.com  
7 Robert Friedl  
8 Robert.Friedl@capstonelawyers.com  
9 Tarek H. Zohdy  
10 Tarek.Zohdy@capstonelawyers.com  
11 Cody R. Padgett  
12 Cody.Padgett@capstonelawyers.com  
13 **CAPSTONE LAW APC**  
14 1840 Century Park East, Suite 450  
15 Los Angeles, CA 90067  
16 Telephone: (310) 556-4811  
17 Facsimile: (310) 943-0396

18 John H. Gomez  
19 john@gomeztrialattorneys.com  
20 John P. Fiske  
21 jfiske@gomeztrialattorneys.com  
22 Deborah Dixon  
23 ddixon@gomeztrialattorneys.com  
24 **GOMEZ TRIAL ATTORNEYS**  
25 655 West Broadway, Suite 1700  
26 San Diego, CA 92101  
27 Telephone: (619) 237-3490  
28 Facsimile: (619) 237-3496

Joseph G. Sauder  
jgs@chimicles.com  
Matthew D. Schelkopf  
mds@chimicles.com  
Benjamin F. Johns  
bfj@chimicles.com  
Joseph B. Kenney  
jbk@chimicles.com  
**CHIMICLES & TIKELLIS LLP**

1 One Haverford Centre  
2 361 West Lancaster Avenue  
3 Haverford, PA 19041  
4 Telephone: (610) 642-8500  
5 Facsimile: (610) 649-3633

6 Richard A. Maniskas  
7 rmaniskas@rmclasslaw.com  
8 **RYAN & MANISKAS, LLP**  
9 995 Old Eagle School Road, Suite 311  
10 Wayne, PA 19087  
11 Telephone: (484) 588-5516  
12 Facsimile: (484) 450-2582

13 Steven M. Tindall  
14 stindall@rhdtlaw.com  
15 Valerie Bender  
16 vbrender@rhdtlaw.com  
17 **RUKIN HYLAND DORIA & TINDALL LLP**  
18 100 Pine Street, Suite 2150  
19 San Francisco, CA 94111  
20 Telephone: (415) 421-1800  
21 Facsimile: (415) 421-1700

22 Katrina Carroll  
23 kcarroll@litedepalma.com  
24 Kyle A. Shamberg  
25 kshamberg@litedepalma.com  
26 **LITE DEPALMA GREENBERG, LLC**  
27 211 W. Wacker Drive, Suite 500  
28 Chicago, IL 60613  
Telephone: (312) 750-1265  
Facsimile: (312) 212-5919

*Additional Plaintiffs Counsel*