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16 *Class Counsel*

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

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

23 Plaintiffs,

24 vs.

25 SONY PICTURES ENTERTAINMENT
26 INC.,

27 Defendant.

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

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

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1 **I. INTRODUCTION**

2 The Court previously granted preliminary approval of the proposed Modified
3 Settlement Agreement and Release (hereinafter, “Settlement”)¹ reached by Plaintiffs and
4 Sony Pictures Entertainment, Inc. (“SPE”) (collectively, the “Parties”) in this case. See
5 ECF No. 151 (Preliminary Approval Order). Notice has now been disseminated to the
6 Settlement Class² pursuant to the Notice Program set forth in the Settlement. By this
7 motion, Plaintiffs respectfully request that the Court conduct a final review of the
8 Settlement and approve the Settlement as fair, reasonable, and adequate.

9 The Settlement is the product of intensive arm’s-length negotiations with the
10 assistance of a highly qualified mediator; follows the Court’s partial denial of SPE’s
11 motion to dismiss, full briefing on class certification, and significant discovery; and was
12 achieved five months before the scheduled trial date. The Settlement provides significant
13 benefits to the Settlement Class Members that are well-tailored to the nature of the harm
14 alleged.

15 *First*, SPE will establish a non-reversionary cash fund of \$2 million to reimburse
16 Settlement Class Members for preventive measures they have taken to protect themselves
17 from identity theft as a result of the SPE Cyberattack.

18 *Second*, SPE will provide identity protection services for two additional years,
19 through December 2017. All Settlement Class Members will be automatically enrolled
20 for free in AllClear Secure, which provides identity repair and restoration assistance.
21 Additionally, all Settlement Class Members may enroll, free of charge, in AllClear PRO
22 (for Settlement Class Members who reside in the United States or have a United States
23 Social Security Number) or IDT911 (for Settlement Class Members who reside outside
24 the United States), which provide additional benefits, including \$1 million in identity
25 theft insurance, fraud detection, lost wallet protection, and detection and restoration

26 _____
27 ¹ A complete copy of the Modified Settlement Agreement and Release (the “Settlement”)
28 is attached as Exhibit A to the Joint Declaration of Cari Campen Laufenberg, Roger N.
Heller, and Daniel C. Girard (“Joint Decl.”), filed herewith.

² Capitalized terms have the meaning provided in the Settlement.

1 services for identity theft associated with an enrollee's child, as well as, for the vast
2 majority of Settlement Class Members, credit monitoring and identity theft monitoring
3 services. The thousands of Settlement Class Members residing in the United States who
4 already enrolled in the initial year of AllClear PRO provided by SPE following the SPE
5 Cyberattack will have their coverage automatically extended through December 2017. In
6 all, these identity protection services provide millions of dollars in benefits to the
7 Settlement Class Members. Dedicated toll-free telephone numbers have also been
8 established for Settlement Class Members to contact AllClear and IDT911 for assistance.

9 *Third*, SPE will pay up to \$2.5 million in the aggregate to compensate Settlement
10 Class Members who experience losses due to identity theft or misuse as a direct result of
11 the SPE Cyberattack that are not reimbursed through the insurance provided by AllClear
12 PRO or IDT911 or through other normal courses (*e.g.*, by their credit card companies).

13 The Settlement also provides for a robust Notice Program that included direct
14 mailed notice to Settlement Class Members, publication notice, and a Settlement
15 Website.³

16 SPE is bearing the costs of the Notice Program and the other costs of the
17 Settlement Administrator, as well as any court-awarded attorneys' fees, costs, and
18 expenses for Class Counsel and any plaintiff service awards, all of which will be paid
19 separately from the benefits provided for the Settlement Class.

20 While the objection and opt-out deadline is still three weeks away, the reaction
21 from the Settlement Class thus far has been positive. As of February 17, 2016, only nine
22 class members have opted out of the Settlement, and zero objections have been
23 submitted.⁴

24
25 ³ See generally Declaration of Lori L. Castaneda Regarding Mailed Notice, Publication
26 Notice, and Notice on the Settlement Website ("Castaneda Decl."), filed herewith;
27 Supplemental Declaration of Lori L. Castaneda ("Supp. Castaneda Decl."), filed
herewith.

28 ⁴ Supp. Castaneda Decl., ¶¶ 12, 13. The postmark deadline for Settlement Class
Members to opt out or object is March 9, 2016. Updated numbers of opt-outs, objections,

1 Plaintiffs respectfully submit that the Settlement satisfies the standards for final
2 settlement approval, and request that the Court grant final approval.

3 **II. RELEVANT BACKGROUND**

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

5 In December 2014 and January 2015, shortly after news broke about the SPE
6 Cyberattack, ten former SPE employees filed seven cases in this Court.⁵ Joint Decl. ¶¶ 7,
7 10; 3 n.1. Counsel for Plaintiffs cooperatively organized a leadership structure to
8 combine their resources and decades of experience in managing complex litigation and
9 privacy issues to effectively and efficiently litigate this matter. Joint Decl. ¶ 12. The
10 Court appointed Keller Rohrback L.L.P., Girard Gibbs LLP, and Lieff Cabraser Heimann
11 & Bernstein, LLP to serve as Interim Co-Lead Class Counsel.⁶ ECF No. 45; Joint Decl.
12 ¶ 20.

13 After interviewing numerous current and former SPE employees, investigating the
14 facts, and researching potential claims, Plaintiffs filed an Amended Class Action
15 Complaint. ECF No. 43; Joint Decl. ¶¶ 9, 15, 16. SPE moved to dismiss Plaintiffs'
16 claims on March 23, 2015. ECF No. 59; Joint Decl. ¶ 48. Plaintiffs opposed the motion,
17 ECF No. 62, and SPE filed a reply, ECF No. 66; Joint Decl. ¶ 48. The Court granted in
18 part and denied in part SPE's motion by Order dated June 15, 2015. ECF No. 97; Joint
19 Decl. ¶ 49.

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22
23 and claims will be provided to the Court in advance of the April 6, 2016 Final Approval
24 Hearing.

25 ⁵ Four additional cases were filed in Los Angeles Superior Court by former SPE
26 employees who asserted similar claims (the "State Plaintiffs"). Joint Decl. ¶ 3 n.1. These
27 cases were stayed pending resolution of the federal cases. This proposed Settlement, if
28 approved, will also resolve the State Plaintiffs' claims.

⁶ Other counsel of record include Carney Bates & Pulliam, PLLC, Capstone Law APC,
Chimicles & Tikellis LLP, Gomez Trial Attorneys, Lite DePalma Greenberg, LLC,
Rukin Hyland Doria & Tindall LLP and Ryan & Maniskas, LLP.

1 **B. Discovery and Plaintiffs' Continuing Investigation**

2 The Parties engaged in extensive discovery, making them well-informed about the
3 strengths and weaknesses of their respective positions, and providing them with the
4 information they needed to negotiate the proposed Settlement. Among other things,
5 Plaintiffs drafted and responded to several sets of written discovery, reviewed over
6 55,500 pages of documents and 3,710 data spreadsheets produced by SPE, third parties,
7 and experts, retained and worked with experts on liability, class certification, and
8 damages issues, and conducted and defended several depositions, including the
9 depositions of SPE's Rule 30(b)(6) corporate designee and two experts designated by
10 each side. Joint Decl. ¶¶ 22-43. The Parties held frequent, often lengthy, meet and
11 confer sessions to resolve discovery disputes, and through those efforts were able to
12 resolve numerous disputes without requiring the Court's assistance. Joint Decl. ¶ 29.
13 Plaintiffs engaged in third party discovery, serving subpoenas on potential sources of
14 information, and conducted an extensive investigation and review of the files
15 compromised in the SPE Cyberattack that were posted on the Internet, including internal
16 SPE documents. Joint Decl. ¶¶ 44-46.

17 **C. Class Certification**

18 Plaintiffs engaged two experts to assist with developing their claims and preparing
19 their motion for class certification—economist Henry Fishkind, Ph.D., and data breach
20 expert Larry Ponemon, Ph.D. Joint Decl. ¶ 38. Both experts prepared detailed reports
21 that Plaintiffs filed with their class certification motion on June 30, 2015. ECF Nos. 107,
22 109; Joint Decl. ¶ 39. SPE deposed both experts. Joint Decl. ¶ 42. SPE opposed
23 Plaintiffs' motion on August 11, 2015. ECF No. 112, 133; Joint Decl. ¶ 40. Plaintiffs
24 reviewed the more than 4,130 pages of documents produced by SPE's two experts and
25 took their depositions. Joint Decl. ¶¶ 41-42. Plaintiffs lodged their reply brief on
26 September 2, 2015. Joint Decl. ¶ 40. The Parties notified the Court of their proposed
27 settlement the same day. ECF No. 134; Joint Decl. ¶ 60.

1 **D. Settlement Negotiations**

2 The Parties commenced settlement negotiations in June 2015. Joint Decl. ¶ 56.
3 On June 11, 2015, the Parties participated in a full-day mediation session supervised by
4 Professor Eric Green of Resolutions, LLC. Joint Decl. ¶ 58. The Parties made progress
5 at that session, but did not reach agreement. *Id.* For months following the June 11, 2015
6 session, the Parties continued to negotiate with the assistance of the mediator, and held
7 numerous telephonic conferences. Joint Decl. ¶ 59. As a result of these efforts, on
8 September 1, 2015, the Parties were able to reach an agreement in principle, subject to
9 preparation and execution of a written settlement agreement, on the substantive elements
10 of the settlement. *Id.* The Parties did not discuss attorneys' fees, costs, or expenses until
11 they had reached an agreement in principle on the substantive elements of the settlement.
12 Joint Decl. ¶ 66. After reaching an agreement in principle, and so notifying the Court, the
13 Parties worked diligently to craft the settlement papers, including a notice program and
14 claims processes, working closely with the Settlement Administrator. Joint Decl. ¶ 61.
15 On October 19, 2015, Plaintiffs filed a Motion for Preliminary Approval, together with an
16 executed Settlement Agreement and exhibits. *Id.*

17 **E. Modified Settlement Agreement and the Preliminary Approval Order**

18 On November 13, 2015, the Parties moved for leave to file a slightly modified
19 version of the settlement agreement, which the Court granted on November 20, 2015.
20 ECF Nos. 149, 150; Joint Decl. ¶ 65. The modifications did not change the substance of
21 the Settlement at all, but rather were intended to ensure that the Settlement Class
22 definition was clear. *Id.* On November 24, 2015, the Court entered an Order granting
23 preliminary approval of the Settlement (as modified), certifying the Settlement Class for
24 settlement purposes, and appointing the three Interim Co-Lead Class Counsel firms as
25 Class Counsel for the Settlement Class. ECF No. 151; Joint Decl. ¶ 68.

26 **III. THE SETTLEMENT**

27 **A. The Settlement Class**

28 The Settlement Class is defined as:

1 (1) All current and former corporate and production employees of SPE and
2 its subsidiaries as of November 24, 2014, and (2) those individuals who
3 were not current or former corporate or production employees of SPE or its
4 subsidiaries as of November 24, 2014 but: (a) whose PII SPE has determined
5 was disclosed on the Internet as a result of the SPE Cyberattack; and (b) for
6 whom SPE has contact information sufficient to provide direct notice
7 pursuant to the terms of the Notice Program.⁷

8 Settlement, ¶ 47.

9 **B. The Settlement Benefits**

10 **1. Identity Protection Services**

11 SPE will provide all Settlement Class Members with identity protection services
12 through December 31, 2017. Settlement, § IX; ECF No. 155. This represents a two-year
13 extension of the single year of service that SPE provided following the SPE Cyberattack.

14 Specifically, under the Settlement, all Settlement Class Members will have their
15 AllClear Secure coverage extended, free of charge, through December 31, 2017.
16 AllClear Secure provides assistance to recover financial losses and restore stolen
17 identities.

18 In addition, all Settlement Class Members may enroll, free of charge, in AllClear
19 PRO or IDT911, for coverage through December 31, 2017. AllClear PRO is available
20 for Settlement Class Members who reside in the United States or have a U.S. Social
21 Security Number, which includes the vast majority of the Settlement Class. IDT911 is
22 available for any Settlement Class Members who currently reside outside of the United
23 States.⁸ AllClear PRO provides, among other benefits, identity theft insurance coverage
24 of \$1 million, identity theft monitoring, fraud detection, credit monitoring, lost wallet
25 protection, and detection and restoration services for identity theft associated with an
26 enrollee's child. Similarly, IDT911 will provide enrollees with identity theft insurance

27 ⁷ Category (2) of the proposed Settlement Class includes approximately 3,500
28 individuals. Pursuant to the Settlement, a complete list of these individuals is being
maintained by the Settlement Administrator. Settlement, ¶ 47 n.3.

⁸ Less than 8 percent of the Settlement Class Members currently reside outside of the
United States. ECF No. 155.

1 coverage of \$1 million, fraud detection, lost wallet protection, and detection and
2 restoration services for identity theft associated with an enrollee's child. IDT911 will
3 also provide identity theft monitoring to enrollees residing in Canada, the United
4 Kingdom, and other countries outside of the European Union and, to the extent such
5 identity theft monitoring service is available in their country of residence, the European
6 Union. IDT911 will also provide credit monitoring for enrollees residing in Canada and
7 the United Kingdom, which is where the substantial majority (approximately 90 percent)
8 of the non-U.S. resident Settlement Class Members currently reside. ECF No. 155.

9 Enrollment in AllClear PRO and IDT911 is user-friendly. The notices mailed to
10 Settlement Class Members and the Settlement Website provide clear instructions for how
11 to enroll.⁹ Moreover, the thousands of Settlement Class Members residing in the United
12 States who were already enrolled in the AllClear PRO service offered by SPE following
13 the SPE Cyberattack, will have their coverage automatically extended through December
14 2017; they will not need to re-enroll.

15 Dedicated telephone numbers for both AllClear ID and IDT911 have been
16 established, which Settlement Class Members can call for assistance and to obtain
17 information about coverage and identity theft issues. All told, these identity protection
18 services represent millions of dollars in value to the Settlement Class.¹⁰

19 **2. Cash Payments**

20 Cash payments will be available to Settlement Class Members through two claims
21 processes:

22 Preventive Measures Claims: SPE will establish a \$2 million non-reversionary
23 fund to reimburse Settlement Class Members for unreimbursed expenses they incurred
24

25 ⁹ See Castaneda Decl., ¶ 8, Exs. A-E.

26 ¹⁰ For example, the current cost for a consumer to enroll in AllClear PRO is \$14.95 per
27 month, meaning it would cost a normal consumer \$358.80 over two years for the
28 AllClearPRO service. See <https://www.allclearid.com/plans/pro-plan/>. IDT911 provides
substantially comparable value, and AllClear Secure, which all Settlement Class
Members will receive, provides significant value as well.

1 and time they spent taking preventive measures to protect themselves from identity theft
2 resulting from the SPE Cyberattack (such as purchasing credit monitoring and identity
3 theft monitoring services, purchasing identity theft insurance, freezing or unfreezing their
4 credit, and obtaining credit reports). Settlement, ¶ 71. The claims process is user-
5 friendly. Settlement Class Members can submit claims online, via the Settlement
6 Website, or by mail, and they will have until April 23, 2016 (*i.e.*, 90 days after the Notice
7 Deadline) to submit Preventive Measures Claims. Settlement Class Members who
8 submit valid claims with documentation will be eligible to recover up to \$1,000.
9 Settlement, Ex. 5 (“Plan of Allocation”), ¶ 4. Settlement Class Members will also have
10 the option to submit claims without documentation, or claims that are for lost time
11 exclusively, and be eligible to receive a payment, the default amount of which will be
12 \$50, with the ultimate amount depending on the number of valid claims submitted. All
13 payments will be adjusted, on a *pro rata* basis, if the total reimbursement amounts for
14 valid Preventive Measures Claims exceed or fall below the \$2 million fund amount, up to
15 a maximum of \$1,500 for documented claims and \$500 for undocumented claims. Plan
16 of Allocation, ¶ 8.¹¹

17 Identity Theft/Misuse Claims: In addition, SPE has agreed to pay up to \$10,000
18 individually and up to \$2.5 million in total, to Settlement Class Members who experience
19 actual unreimbursed losses from identity theft or misuse as a direct result of the SPE
20 Cyberattack. Settlement, ¶ 70. This relief is intended to supplement the \$1 million
21
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23

24 ¹¹ To the extent there are any residual funds, subject to agreement of the Parties, if
25 economically feasible and practical such funds will be distributed *pro rata* to Settlement
26 Class Members who have enrolled in AllClear PRO or IDT 911 in connection with the
27 SPE Cyberattack or the Settlement. If such additional distribution is not economically
28 feasible and practical given the funds remaining, or if an additional distribution is made
and there are funds remaining after that, any residual funds will be distributed to the
Identity Theft Resource Center to promote education about how consumers can protect
themselves from identity theft. Plan of Allocation, ¶ 10.

1 insurance coverage that is provided by AllClear PRO and IDT911.¹² Settlement Class
2 Members may receive reimbursement of up to \$10,000 for such out-of-pocket losses that
3 are not recoverable through the AllClear PRO/IDT911 insurance protection or otherwise
4 reimbursed through the usual course (*e.g.*, from their credit card company or bank). *Id.*
5 ¶ 70. Settlement Class Members who submit valid Identity Theft/Misuse Claims and
6 meet the eligibility requirements (including providing documentation of their losses), will
7 be paid as claims are validated by the Settlement Administrator, up to a maximum
8 aggregate amount of \$2.5 million. *Id.* ¶ 70. Different documentation requirements apply,
9 depending upon whether Settlement Class Members have been identified by SPE as
10 having their PII disclosed on the Internet as a result of the SPE Cyberattack. *Id.* ¶ 70.2.
11 To the extent claims are denied, claimants will have the ability to cure defects in their
12 submissions identified by the Settlement Administrator. *Id.* ¶ 70.6. Settlement Class
13 Members will have until December 31, 2017 to submit Identity Theft/Misuse Claims,
14 provided that once SPE has paid \$2.5 million in the aggregate for Identity Theft/Misuse
15 Claims, no additional such claims will be accepted, and notice to that effect will be
16 posted on the Settlement Website. *Id.* ¶ 70.4. As with the Preventive Measures Claims,
17 Settlement Class Members will have the option to submit Identity Theft/Misuse Claims
18 online, via the Settlement Website, or by mail. *Id.* ¶ 70.2.

19 **C. Opt-Out and Objection Procedures**

20 Any person within the Settlement Class definition may exclude himself or herself
21 from the Settlement Class by mailing a written request for exclusion to the Settlement
22 Administrator, at the mailing address indicated in the notice. Settlement, ¶¶ 24, 55. Any
23 Settlement Class Member who does not timely and validly exclude himself or herself
24 from the Settlement Class may object to, or comment regarding, the Settlement, Class
25 Counsel's fee, cost, and expense application, and/or the requests for service awards. To
26

27 ¹² Accordingly, to the extent that a loss would have been covered by AllClear PRO or
28 IDT911, as applicable, a Settlement Class Member who was not enrolled at the time of
such loss cannot recover on an Identity Theft/Misuse Claim. Settlement, ¶ 70.3.

1 be considered, an objection or comment must be made in writing, must be sent to the
2 Clerk of Court, Class Counsel, and SPE's Counsel (at the addresses identified in the long-
3 form notice), and must include the information described in the long-form notice. *Id.*, ¶
4 57. The postmark deadline to mail requests for exclusions or objections is March 9,
5 2016, 45 days after the Notice Deadline. *Id.*, ¶¶ 23-24.

6 **D. Payment of Administrative Costs**

7 SPE will pay the costs associated with the Notice Program and the other costs of
8 the Settlement Administrator, as set forth in the Settlement. Joint Decl. ¶ 66. Such costs
9 will be paid by SPE separate from the relief provided for the Settlement Class.
10 Settlement, ¶ 49; Joint Decl. ¶ 66.

11 **E. Attorneys' Fees, Costs, and Expenses; Service Awards**

12 Class Counsel are filing concurrently an application for an award of attorneys'
13 fees, costs, and expenses in the total amount of \$3,490,000. Class Counsel intend to
14 allocate a portion of any award (up to \$244,000) to the counsel for the plaintiffs in the
15 State Court Cases in recognition of their work and expenditures in the litigation. The
16 attorneys' fees, costs, and expenses awarded by the Court, up to \$3,490,000, will be paid
17 separately by SPE, in addition to the relief for the Settlement Class. Settlement, ¶ 49.

18 Class Counsel are also asking the Court to approve service awards, in the amount
19 of \$3,000 for each of the eight Plaintiffs and \$1,000 for each of the other individuals who
20 filed suit against SPE in connection with the SPE Cyberattack (for a total of \$33,000 in
21 total requested service awards), to compensate them for their efforts in pursuing this
22 litigation. Any service awards, up to a total of \$33,000, will be paid by SPE separately
23 from, and will therefore not reduce, the relief for the Settlement Class. *Id.*, ¶ 49; Joint
24 Decl. ¶ 66.

25 **F. Release**

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

1 **IV. NOTICE HAS BEEN DISSEMINATED TO THE CLASS CONSISTENT**
2 **WITH THE COURT-APPROVED NOTICE PROGRAM**

3 The Notice Program provided for in the Settlement has been, and is being,
4 implemented. *See generally* Castaneda Decl.; Supp. Castaneda Decl. The Notice
5 Program included direct mailed notice to the Settlement Class Members, publication
6 notice, and the establishment of a Settlement Website. The Notice Program is robust and
7 well-tailored to ensure the best notice practicable under the circumstances.

8 **A. Direct Notice**

9 SPE's records were used to provide direct mailed notice to Settlement Class
10 Members. SPE provided the Settlement Administrator with a Class List including the last
11 known mailing addresses—to the extent they were reasonably available from SPE's
12 electronic records—for all Settlement Class Members. The Settlement Administrator
13 then ran the addresses through the National Change of Address database, and mailed
14 direct notice to the Settlement Class Members at the addresses as updated.¹³ The
15 Settlement Administrator is taking appropriate steps to find updated address information
16 and to re-mail notices that are returned undeliverable. Castaneda Decl., ¶ 9.

17 **B. Publication Notice**

18 While the direct mailed notice is expected to reach the substantial majority of the
19 Settlement Class, notice was also provided via publication notice in the January 25, 2016
20 edition of *People Magazine* (which was on sale January 15, 2016). Castaneda Decl., ¶
21 10, Ex. F.

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24
25 ¹³ The direct mail notices were mailed on January 22, 2016. Castaneda Decl., ¶ 8.
26 Following the initial mailing, it was determined that, due to an error in the data, 423
27 Settlement Class Members were inadvertently not included in the initial mailing, and so
28 notices for those individuals were promptly mailed. Supp. Castaneda Decl., ¶¶ 2-4, 6. It
was also determined that, due to an error in the same data, certain Settlement Class
Members were sent notices that included an incorrect first name, and so corrected notices
with an explanation were promptly re-mailed to those individuals. *Id.*, ¶¶ 2-4, 7.

1 **C. Settlement Website and Toll-Free Number**

2 The Settlement Administrator also timely established a Settlement Website, where
3 Settlement Class Members can view a long-form notice, obtain additional information,
4 review important case documents, and submit Preventive Measures Claims and Identity
5 Theft/Misuse Claims electronically. Castaneda Decl., ¶ 11. The Settlement
6 Administrator also timely established toll-free telephone numbers for Settlement Class
7 Members to obtain additional information and request mailed claim forms. *Id.*, ¶ 12.¹⁴

8 **V. THE RESPONSE FROM THE CLASS THUS FAR HAS BEEN POSITIVE**

9 While the March 9, 2016 objection and opt-out deadline is still three weeks away,
10 the reaction from the Settlement Class thus far has been positive. As of February 17,
11 2016, only nine Settlement Class Members have opted out, and no objections have been
12 submitted.¹⁵

13 **VI. THE COURT SHOULD GRANT FINAL APPROVAL OF THE**
14 **SETTLEMENT**

15 **A. The Class Action Settlement Approval Process**

16 Judicial proceedings under Federal Rule of Civil Procedure 23 have established a
17 defined three-step procedure for approval of class action settlements:

- 18 (1) Certification of a settlement class and preliminary approval of the proposed
19 settlement after submission to the Court of a written motion for preliminary approval;
20 (2) Dissemination of notice of the proposed settlement to the class; and
21 (3) A final settlement approval hearing, in connection with which evidence and
22 argument concerning the fairness, adequacy, and reasonableness of the settlement are
23 presented.

24
25 ¹⁴ The Settlement Website, toll-free numbers, mailed notices, and long-form notice on the
26 Settlement Website all include information about the AllClear and IDT911 services
27 available to Settlement Class Members, how to enroll, and which of the services are
28 available to them.

¹⁵ Supp. Castaneda Decl., ¶¶ 12-13. Updated numbers of opt-outs, objections, and claims
will be provided to the Court in advance of the April 6, 2016 Final Approval Hearing.

1 See Manual for Complex Litigation, Fourth, §§ 21.63 *et seq.* (2004). The first two steps
2 in the process have been completed. By this motion, Plaintiffs respectfully request that
3 the Court take the third and final step in the settlement approval process by granting final
4 approval of the Settlement.

5 **B. The Settlement is Fair, Reasonable, and Adequate**

6 The law favors the compromise and settlement of class action suits. *See, e.g.,*
7 *Churchill Village, LLC v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004); *Officers for*
8 *Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982) (“[V]oluntary
9 conciliation and settlement are the preferred means of dispute resolution. This is
10 especially true in complex class action litigation.”).

11 In weighing final approval of a class settlement, the Court’s role is to determine
12 whether the Settlement, taken as a whole, is fair, adequate, and reasonable. *Staton v.*
13 *Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d
14 1011, 1026 (9th Cir. 1998)). The Ninth Circuit has established a list of factors to
15 consider when assessing whether a proposed settlement is fair, reasonable and adequate:
16 (1) the strength of the plaintiffs’ case; (2) the risk, expense, complexity, and likely
17 duration of further litigation; (3) the risk of maintaining class action status throughout the
18 trial; (4) the benefits offered in the settlement; (5) the extent of discovery completed and
19 the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of
20 a governmental participant; and (8) the reaction of the class members to the proposed
21 settlement. *Churchill Village*, 361 F.3d at 575; *Hanlon*, 150 F.3d at 1026. Application of
22 these factors firmly supports the conclusion that the Settlement here is fundamentally
23 fair, reasonable, and adequate, and should be finally approved.

24 **1. The Strength of Plaintiffs’ Case and the Risk, Expense,**
25 **Complexity, and Likely Duration of Further Litigation**

26 The Settlement appropriately balances the costs, risks, and likely delay of further
27 litigation, on the one hand, against the benefits provided, on the other hand. *See* 4 Alba
28 Conte & Herbert B. Newberg on Class Actions § 11:50 (4th ed. 2002) (“In most

1 situations, unless the settlement is clearly inadequate, its acceptance and approval are
2 preferable to lengthy and expensive litigation with uncertain results.”).

3 While Plaintiffs are confident in the merits of their remaining claims, continued
4 litigation presents significant risks to the Settlement Class. Liability remains hotly
5 disputed. Data breach cases present particular challenges in terms of establishing liability
6 given, among other things, the complex nature of data security issues and the
7 corresponding need for expert analysis. Those challenges are amplified in this case given
8 the apparently sophisticated nature of the cyberattack at issue and the possible
9 involvement of the North Korean government. Damages are disputed as well, and the
10 Court’s ruling on SPE’s motion to dismiss restricts to some degree the types of harm for
11 which Plaintiffs would be able to seek compensation for their claims. *See* ECF No. 97 at
12 4. Litigating this case to trial would be both expensive and risky. Even if Plaintiffs were
13 to overcome all of the pre-trial risks that remain, they would still need to prevail at trial
14 and, if successful at trial, prevail on an inevitable appeal which could take several years.
15 The Settlement, by contrast, provides prompt relief for Settlement Class Members. *See*
16 *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 966 (9th Cir. 2009); *National Rural*
17 *Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004)
18 (“The Court shall consider the vagaries of litigation and compare the significance of
19 immediate recovery by way of the compromise to the mere possibility of relief in the
20 future, after protracted and expensive litigation.” (citation omitted)). Prompt relief is
21 particularly important here given the value of providing Settlement Class Members with
22 continued identity protection and insurance coverage.

23 **2. The Risk of Maintaining Class Action Status Throughout the**
24 **Trial**

25 SPE disputes that a class trial in this case would be manageable, as its opposition
26 to Plaintiffs’ class certification motion shows. While Plaintiffs believe their arguments
27 for certifying a litigation class are strong, obtaining and maintaining class action status
28 throughout the trial is always a challenge, and is far from guaranteed, particularly in a
complex case like this one.

1 **3. The Benefits Offered in the Settlement**

2 The monetary and other valuable benefits provided by the Settlement are
3 comprehensive and well-tailored to the claims and alleged harm. The cash payments that
4 valid claimants will receive, through the claims processes, will be appropriately tied to
5 their alleged harm, resulting in \$2 million to \$4.5 million in monetary payments by SPE.
6 Settlement Class Members will be able to recover for actual money and time spent
7 protecting themselves following the SPE Cyberattack, and the Settlement provides an
8 additional source of funds should the insurance made available through AllClear PRO
9 and IDT911 prove insufficient to cover any actual identity theft losses resulting from the
10 SPE Cyberattack.¹⁶

11 Moreover, all Settlement Class Members will have access to valuable identity
12 protection services from AllClear/IDT911 through December 2017 (including \$1 million
13 in identity theft loss insurance coverage and other valuable services), a benefit that is
14 directly tied to both the theory of harm in this case and to the proposed model for
15 measuring damages provided by Plaintiffs’ damages expert in connection with Plaintiffs’
16 class certification motion. The provision of these services to the Settlement Class
17 represents millions of dollars in value for the Settlement Class. All Settlement Class
18 Members will receive AllClear Secure service, and all are eligible to enroll in AllClear
19 PRO and/or the IDT911 service.¹⁷

20
21
22 ¹⁶ The deadline for Settlement Class Members to submit Preventive Measures Claims is
23 April 23, 2016. The deadline for Settlement Class Members to submit Identity
24 Theft/Misuse Claims is December 31, 2017. As of February 17, 2016, there have been
25 1,452 Preventive Measures Claims and 25 Identity Theft/Misuse Claims submitted.
Supp. Castaneda Decl., ¶¶ 10-11. Updated claim information will be provided to the
Court in advance of the Final Approval Hearing.

26 ¹⁷ The deadline for Settlement Class Members to enroll in AllClear PRO and IDT911 is
27 May 23, 2016. AllClear and IDT911 report that, as of February 16, 2016, more than
28 17,000 Settlement Class Members have already enrolled. This figure includes those
Settlement Class Members residing the United States who enrolled in AllClear PRO
previously and whose service is being automatically extended as a result of the

1 In all, the Settlement provides benefits that, at least in some respects, likely go
2 beyond what the Settlement Class Members could have achieved through continued
3 litigation. Moreover, the proposed Settlement compares favorably to settlements in other
4 data breach cases. *See, e.g., McCabe v. Six Continents Hotels, Inc.*, 2015 WL 3990915,
5 at *10 (N.D. Cal. June 30, 2015) (finding a settlement fair “in light of other approved
6 settlements within a similar range”). In *Countrywide*, for example, the court approved a
7 settlement that provided up to \$1.5 million to pay out-of-pocket costs related to the data
8 breach, up to \$5 million to pay losses related to identity theft, and two years of credit
9 monitoring services to resolve data breach claims for approximately 2.4 million
10 customers. *In re Countrywide Financial Corp. Customer Data Sec. Breach Litig.*, 2010
11 WL 3341200, at *2-8 (W.D. Ky. Aug. 23, 2010). Similarly, in *Pinter v. D.A. Davidson,*
12 *Inc.*, the court approved a settlement that provided a \$1 million fund to reimburse class
13 members for losses resulting from the data breach and two years of credit monitoring.
14 No. 1:09-cv-00059-RFC, ECF No. 52 (D. Mont. Nov. 23, 2009).

15 Further, the Settlement here provides for the payment of Class Counsel’s
16 attorneys’ fees, costs, and expenses on top of the benefits for the Settlement Class. By
17 contrast, if the case were litigated to trial, most or all of Class Counsel’s fees would likely
18 come out of whatever class damages were recovered, which would reduce the actual
19 payments to the Settlement Class Members accordingly.

20 **4. The Extent of Discovery and the Stage of Proceedings**

21 For this factor, courts look to whether the parties have sufficient information to
22 make an informed decision with respect to the settlement. *See In re Mego Fin. Corp. Sec.*
23 *Litig.*, 213 F.3d 454, 459 (9th Cir. 2000). The Settlement is informed by Plaintiffs’
24 extensive investigation and formal discovery regarding the legal and factual issues in this
25 case. Moreover, the Settlement was reached approximately five months before the
26 scheduled trial date, following substantial litigation that included a litigated motion to
27

28 Settlement. Updated enrollment numbers will be provided to the Court in advance of the
Final Approval Hearing.

1 dismiss, full briefing on class certification, the exchange of expert reports in connection
2 with the class certification motion, and expert depositions. In negotiating the Settlement,
3 the parties were informed by the Court's ruling on the motion to dismiss and by the other
4 extensive litigation, discovery, and expert work conducted.

5 **5. The Experience and Views of Counsel**

6 The recommendation of experienced counsel weighs in favor of granting final
7 approval and creates a presumption of reasonableness. *See Knight v. Red Door Salons,*
8 *Inc.*, 2009 WL 248367, at *4 (N.D. Cal. Feb. 2, 2009); *see also Linney v. Cellular Alaska*
9 *Partnership*, 1997 WL 450064, at *5 (N.D. Cal. July 18, 1997). "Parties represented by
10 competent counsel are better positioned than courts to produce a settlement that fairly
11 reflects each party's expected outcome in litigation." *In re Pac. Enters. Sec. Litig.*, 47
12 F.3d 373, 378 (9th Cir. 1995). Class Counsel have extensive experience litigating and
13 settling class actions and other complex matters, including cases involving data
14 breaches,¹⁸ and they have conducted an extensive investigation into the factual and legal
15 issues raised. The fact that qualified and well-informed counsel endorse the Settlement
16 as being fair, reasonable, and adequate weighs heavily in favor of the Court approving the
17 Settlement. *See* Joint Decl. ¶ 62.

18 **6. The Presence of a Government Participant**

19 While no governmental entity is a party to this litigation, notice has been issued to
20 numerous governmental agencies in accordance with the Class Action Fairness Act, 28
21 U.S.C. § 1715, and to date no governmental entity has raised objections or concerns
22 about the Settlement.

23 **7. The Reaction of the Class**

24 The deadline for Settlement Class Members to opt-out or object is March 9, 2016.
25 While that deadline is still three weeks away, the reaction thus far has been very positive.
26 As of February 17, 2016, only nine Settlement Class Members have opted out of the
27 Settlement Class, and no objections have been submitted. *Supp. Castaneda Decl.*, ¶¶ 12-
28 _____

¹⁸ *See* ECF Nos. 31-2, 31-3, 32; Joint Decl., ¶¶ 88-104.

1 13. The positive reaction thus far further supports the reasonableness of the Settlement.
2 *See, e.g., Churchill Village*, 361 F.3d at 577 (upholding district court’s approval of class
3 settlement with 45 objections and 500 opt-outs for a class of 150,000).

4 **8. Lack of Collusion Between the Parties**

5 “Before approving a class action settlement, the district court must reach a
6 reasoned judgment that the proposed agreement is not the product of fraud or
7 overreaching by, or collusion among, the negotiating parties.” *Class Plaintiffs v. City of*
8 *Seattle*, 955 F.2d 1268, 1290 (9th Cir. 1992). Where a settlement is the product of arm’s-
9 length negotiations conducted by capable and experienced counsel, the court begins its
10 analysis with a presumption that the settlement is fair and reasonable. *See* 4 Newberg
11 § 11.41; *In re Heritage Bond Litig.*, 2005 WL 1594403, at *2 (C.D. Cal. June 10, 2005);
12 *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980).

13 The Settlement is the product of arm’s-length negotiations between the Parties and
14 their well-qualified counsel, was informed by Class Counsel’s extensive discovery,
15 investigation, and litigation, and was negotiated with the assistance of an experienced and
16 well-respected mediator, Professor Eric D. Green of Resolutions, LLC.

17 **VII. CONCLUSION**

18 For the foregoing reasons, Plaintiffs respectfully request that the Court enter an
19 Order granting final approval of the Settlement.

20 Dated: February 17, 2016 Respectfully submitted,

21 **KELLER ROHRBACK L.L.P.**

22
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