

1 John J. Nelson (SBN 317598)  
2 **MILBERG, PLLC**  
3 280 S. Beverly Drive, Penthouse  
4 Beverly Hills, CA 90212  
5 Tel: (858) 209-6941  
6 [jnelson@milberg.com](mailto:jnelson@milberg.com)

Danielle Perry (SBN 292120)  
**MASON LLP**  
5335 Wisconsin Avenue NW  
Suite 640  
Washington, DC 20015  
Tel: (202) 429-2290  
[dperry@masonllp.com](mailto:dperry@masonllp.com)

7 *Counsel for Plaintiffs and the*  
8 *Proposed Class*

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

11 SALLY ANDERSEN and MICHAEL  
12 KEMMERLIN, individually and on  
13 behalf of all others similarly situated,

14 Plaintiffs,

15 v.

16 OAK VIEW GROUP, LLC,

17 Defendant.

Case No.: 2:24-cv-00719-HDV-JPR

**NOTICE OF PLAINTIFFS’  
UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT  
AND MEMORANDUM OF LAW  
IN SUPPORT THEREOF**

Judge: Hon. Hernán D. Vera  
Date: April 9, 2026  
Time: 10:00 a.m.  
Courtroom: 5B

(Filed January 26, 2024)

22  
23 PLEASE TAKE NOTICE that at 10:00 a.m. on April 9, 2026, or as soon  
24 thereafter as the matter may be heard, in the courtroom of the Honorable Hernán D.  
25 Vera, located at the Ronald Reagan Federal Building and U.S. Courthouse, 411 West  
26 4th Street, Courtroom 5B, Santa Ana, California 92701, Plaintiffs Sally Anderson

1 and Michael Kemmerlin (“Plaintiffs”) will and hereby do move for an order of the  
2 Court preliminarily approving the Parties’ class action settlement.

3 Plaintiffs base this Motion for Preliminary Approval of Class Action  
4 Settlement on: this Notice; the Memorandum of Points and Authorities filed in  
5 support thereof; the Settlement Agreement and Release (“Settlement Agreement”)  
6 and all exhibits attached thereto; the Declaration of Danielle L. Perry in Support of  
7 Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement  
8 (“Perry Decl.”); all other records and papers on file in this action; any oral argument  
9 on the Motion; and all other matters properly before the Court.

10 Plaintiffs seek an order pursuant to Federal Rule of Civil Procedure 23(b)(3)  
11 certifying the Settlement Class more fully described in the Settlement Agreement;  
12 preliminarily approving the Settlement as fair, reasonable, and adequate; directing  
13 notice to be disseminated to the Settlement Class in the form and manner proposed  
14 by the parties as set forth in the Settlement Agreement and attached as Exhibits 1-4  
15 thereto; appointing Kroll Settlement Administration, LLC to serve as the Settlement  
16 Administrator; appointing Plaintiffs as the Class Representative and the undersigned  
17 attorneys as Class Counsel; and setting a hearing date and schedule for final approval  
18 of the Settlement and consideration of Class Counsel’s forthcoming motion for an  
19 award of fees, costs, expenses, and service awards.

20 This Motion is made following a conference of counsel pursuant to L.R. 7-3.  
21

22 Dated: February 17, 2025

Respectfully submitted,

23 By: /s/ Danielle L. Perry

24 Danielle L. Perry (SBN 292120)

25 **MASON LLP**

26 5335 Wisconsin Avenue NW, Suite 640

Washington, DC 20015

27 Tel: (202) 429-2290

[dperry@masonllp.com](mailto:dperry@masonllp.com)

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John J. Nelson (SBN 317598)  
**MILBERG, PLLC**  
280 S. Beverly Drive, Penthouse  
Beverly Hills, CA 90212  
Tel: (858) 209-6941  
[jnelson@milberg.com](mailto:jnelson@milberg.com)

*Counsel for Plaintiffs and the Proposed Class*

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1 **I. INTRODUCTION**

2 Plaintiffs Sally Andersen and Michael Kemmerlin submit this Unopposed  
3 Motion for Preliminary Approval of Class Action Settlement. After extensive  
4 arm’s-length negotiations, the Parties have reached a proposed settlement that, if  
5 approved by the Court, will resolve all claims between the Parties in this Action.<sup>1</sup>  
6 Defendant Oak View Group, LLC (“OVG or “Defendant”) does not oppose  
7 certification of the Settlement Class solely for purposes of facilitating the  
8 settlement sought to be approved in this motion (the “Settlement” or “S.A.”) and  
9 does not oppose the relief sought in this motion. As further explained herein, the  
10 terms of the proposed Settlement are fair, adequate, and reasonable; the proposed  
11 Settlement Class meets the requirements for certification for purposes of  
12 settlement, and the proposed notice program provides the best practicable notice  
13 under the circumstances and comports with Fed. R. Civ. P. 23(c)(2). Accordingly,  
14 the Court should grant preliminary approval of the proposed Settlement.

15 **II. STATEMENT OF FACTS**

16 This matter concerns a putative class action arising out of a data breach of  
17 OVG’s computer systems that OVG discovered on or about November 26, 2023  
18 (the “Data Incident”). S.A. ¶ 2. During the Data Incident, an unauthorized third  
19 party may have accessed and acquired personal information stored on its network,  
20 including the full names, dates of birth and Social Security numbers (personally  
21 identifiable information or “PII” or “Private Information”) of approximately  
22 60,672 individuals. *Id.*

23 OVG denies each and all of the claims and contentions alleged against it in  
24 the Litigation. S.A. ¶¶ 15-16. OVG denies all wrongdoing or liability associated  
25 with the Data Incident alleged, or which could be alleged, in the Litigation. *Id.*  
26 Nonetheless, OVG has concluded that further conduct of the Litigation would be

27 \_\_\_\_\_  
<sup>1</sup> Unless defined, capitalized terms have the same meaning attributed to them in the Settlement Agreement.

1 protracted and expensive, and that it is desirable that the Litigation be fully and  
2 finally settled in the manner and upon the terms and conditions set forth in this  
3 Settlement Agreement. *Id.*

### 4 **III. PROCEDURAL HISTORY**

5 After OVG sent its notice of Data Incident, two lawsuits were filed in federal  
6 court against it concerning the Data Incident. On January 26, 2024, Plaintiff Sally  
7 Andersen filed the first-class action lawsuit related to the Data Incident against  
8 Defendant. ECF No. 1. On February 5, 2024, Plaintiff Michael Kemmerlin filed a  
9 second-class action lawsuit against Defendant related to the Data Incident,  
10 *Kemmerlin v. Oak View Group, LLC*, No. 2:24-cv-966.

11 Plaintiffs moved to consolidate the actions on March 11, 2024. ECF No. 16.  
12 The Court granted the motion to consolidate and appointed John Nelson and  
13 Danielle Perry as Interim Co-Lead Counsel. ECF No. 25. On June 14, 2025,  
14 Plaintiffs filed their Complaint alleging claims for: (i) negligence; (ii) invasion of  
15 privacy – public disclosure of private facts and California Constitutional Right to  
16 Privacy; (iii) violation of California Unfair Competition Law, Cal. Bus. & Prof.  
17 Code § 17200, *et seq.*; and (iv) unjust enrichment. ECF No. 26.

18 Defendant filed a Motion to Dismiss on August 27, 2024, which was fully  
19 briefed by the Parties. ECF Nos. 29-35. On November 22, 2024, the Court issued  
20 an order granting in part and denying in part Defendant’s motion to dismiss. ECF  
21 No. 36. The Court found that Plaintiffs had standing to pursue their claims and  
22 denied the Motion to dismiss as to Plaintiffs’ claims for negligence and unjust  
23 enrichment. *Id.*

24 Thereafter, the Parties began discussing the prospect of early resolution and  
25 scheduled a mediation with experienced class action mediator Hon. David E. Jones  
26 (Ret)., for May 29, 2025. S.A. ¶ 9. In advance of mediation, Plaintiffs conducted  
27 informal discovery related to liability and damages, including, but not limited to,

1 the number of individuals impacted by the Data Incident, the categories of personal  
2 information involved, and the security enhancements implemented since the Data  
3 Incident to better protect its computer systems from future incidents. *Id.* ¶ 10. The  
4 Parties also fully briefed the mediator, providing detailed mediation statements  
5 outlining their positions with respect to liability, damages, and settlement. *Id.*

6 After a full day of contested arm’s-length negotiations, the Parties were  
7 unable to reach an agreement on the material terms of a settlement. *Id.* ¶ 11.  
8 Accordingly, litigation continued (including formal discovery) with  
9 contemporaneous settlement negotiations. *Id.* ¶ 12. After weeks of ongoing  
10 discussions, the Parties reached an agreement on the central terms of a settlement.  
11 *Id.* ¶ 13.

12 In the months following the mediation, the Settling Parties continued to  
13 discuss the finer points of the Settlement and draft and finalize the Settlement and  
14 Settlement Agreement for which Plaintiffs seek preliminary approval today.

#### 15 **IV. THE SETTLEMENT TERMS**

16 The Settlement negotiated on behalf of the Class provides for the creation of  
17 a \$824,000.00 non-reversionary Settlement Fund. S.A. ¶ 73. The Settlement Fund  
18 shall be used by the Settlement Administrator to pay the following: (1) Settlement  
19 Class Member Benefits to Settlement Class Members who submit Valid Claims;  
20 (2) Settlement Administration Costs; and (3) any Attorneys’ Fees, Costs, and  
21 Service Awards approved by the Court. *Id.* ¶ 74.

##### 22 **A. Proposed Settlement Class**

23 The Proposed Settlement will provide substantial relief for the Settlement  
24 Class of 60,672, which is defined as:

25 all persons whose PII was compromised as a result of the Data Breach  
26 discovered by Oak View Group, LLC in November 2023 and for  
27 which it provided notice on or about January 2024.

1 *Id.* ¶ 67. Excluded from the Settlement Class are: (1) all persons who are directors,  
2 officers, and agents of Defendant, or their respective subsidiaries and affiliated  
3 companies; (2) governmental entities; and (3) the Judge assigned to the Action, that  
4 Judge’s immediate family, and Court staff. *Id.*

5 The Settlement Class contains approximately 60,672 individuals. *Id.* ¶ 2.

6 **B. Settlement Benefits – Monetary Relief**

7 i. Reimbursement of Out-of-Pocket Losses

8 All Settlement Class Members may submit a claim for up to \$5,000.00 for  
9 reimbursement of Out-of-Pocket Losses. “Out-of-Pocket Losses” are unreimbursed  
10 costs or expenditures incurred by a Settlement Class Member that are fairly  
11 traceable to the Data Incident. A claim for reimbursement for Out-of-Pocket Losses  
12 may be combined with a claim for a Pro Rata Cash Payment for up to \$5,000.00 in  
13 total cash benefits cap. *Id.* ¶ 79(a).

14 ii. Pro Rata Cash Payments

15 *Pro rata* cash payments are to be structured such that California Residents  
16 receive three-times the amount of class members who are not California Residents,  
17 in recognition of the statutory remedies available to California Residents that are  
18 unavailable to residents of other states. *Pro rata* cash payments are estimated to  
19 total \$50 for non-California residents and \$150 for California residents and will be  
20 subject to a *pro rata* (a) increase or decrease depending on the number of claims  
21 received. *Id.* ¶ 79(d).

22 iii. Credit Monitoring and Identity Theft Protection

23 In addition to Reimbursement of Documented Losses and Pro Rata Cash  
24 Payments, Settlement Class Members may also make a Claim for Credit  
25 Monitoring that will include two years of with one credit bureau monitoring with  
26 \$1,000,000.00 in identity theft insurance. *Id.* ¶ 79(e).

1           **C. Class Notice and Settlement Administration**

2           Notice will be given to the Settlement Class via Postcard Notice, Email  
3 Notice, and the Long Form Notice approved by the Court. *Id.* ¶ 88. All Settlement  
4 Class Members will be sent a Postcard Notice, to the extent the Settlement  
5 Administrator can identify the postal address of the Settlement Class Member. The  
6 Postcard Notice shall include, among other information. The notice documents are  
7 clear and concise and directly apprise Class Members of all the information they  
8 need to know to make a claim or to opt-out or object to the Settlement. S.A.,  
9 Exhibits 1-4. Furthermore, an automated toll-free telephone line for Settlement  
10 Class Members to call with Settlement-related inquiries and answer the frequently  
11 asked questions shall be made available to address Settlement Class Members’  
12 inquiries. *Id.* ¶ 83(e).

13           The Parties have retained Simpluris, Inc. (“Simpluris”), a nationally  
14 recognized and well-regarded class action settlement administrator, to serve as  
15 Claims Administrator, subject to the Court’s approval. *Id.* ¶ 65.

16           **D. Attorneys’ Fees and Expenses**

17           If the Settlement is preliminarily approved, Plaintiffs will file a motion  
18 seeking an award of one-third of the Settlement Fund as reasonable attorneys’ fees  
19 as well as reimbursement of their reasonable costs and litigation expenses incurred.  
20 S.A. ¶ 111; *see, e.g., Perez v. Rash Curtis & Assocs.*, No. 4:16-CV-03396-YGR,  
21 2020 WL 1904533, at \*21 (N.D. Cal. Apr. 17, 2020) (“concluding that 33% is a  
22 reasonable percentage”).

23           **E. Service Awards to Named Plaintiffs**

24           Plaintiffs in this case have been vital in litigating this matter, including  
25 providing important information about the impact of the Data Breach to proposed  
26 Settlement Class Counsel. Plaintiffs have been personally involved in the case and  
27 support the Settlement. Perry Dec., ¶¶ 26-27. Plaintiffs will separately petition the

1 Court for awards of \$2,500 each in recognition of the time, effort, and expense they  
2 incurred pursuing the claims that benefited the Settlement Class. S.A. ¶ 112.

3 The amount requested here is presumptively reasonable and commonly  
4 awarded in settled class action cases. *See, e.g., Pauley v. CF Entertainment*, 2020  
5 WL 5809953, at \*4 (C.D. Cal.) (Where the Court granted “class representative  
6 enhancement fees in the amount of \$5,000 each to Plaintiffs,” finding that amount  
7 to be “presumptively reasonable”); *Yahoo Mail Litig.*, No. 13-CV-4980, 2016 WL  
8 4474612, at \*11 (N.D. Cal. Aug. 25, 2016) (“The Ninth Circuit has established  
9 \$5,000.00 as a reasonable benchmark [for service awards].”).

#### 10 **F. Release**

11 “Released Claims” are defined, *inter alia*, as:

12 any and all actual, potential, filed or unfiled, known or unknown, fixed  
13 or contingent, claimed or unclaimed, suspected or unsuspected claims,  
14 demands, liabilities, rights, causes of action, damages, punitive,  
15 exemplary or multiplied damages, expenses, costs, attorneys’ fees  
16 and/or obligations, whether in law or in equity, accrued or unaccrued,  
17 direct, individual or representative, joint or several, of every nature and  
18 description whatsoever, based on any federal, state, local, statutory or  
19 common law or any other law, against the Released Parties, or any of  
20 them, arising out of or relating to actual or alleged facts, transactions,  
21 events, matters, occurrences, acts, disclosures, statements,  
22 representations, omissions or failures to act relating to the Data Incident  
23 and that were or could have been pleaded in the Complaint.

24 S.A. ¶ 61.

#### 25 **V. LEGAL AUTHORITY**

26 Plaintiffs bring this motion pursuant to Federal Rule Civil Procedure 23(e),  
27 under which court approval is required to finalize a class action settlement. Courts,  
including those in this Circuit, endorse a three-step procedure for approval of class  
action settlements: (1) preliminary approval of the proposed settlement followed  
by (2) dissemination of court-approved notice to the class and (3) a final fairness  
hearing at which class members may be heard regarding the settlement and at which

1 evidence may be heard regarding the fairness, adequacy, and reasonableness of the  
2 settlement. *Manual for Complex Litigation* (Fourth) (2004) § 21.63.

3 Here, Plaintiffs request that the Court take the first step and grant preliminary  
4 approval of the proposed Settlement Agreement.

5 **VI. ARGUMENT**

6 Federal courts strongly favor and encourage settlements, particularly in class  
7 actions and other complex matters where the inherent costs, delays, and risks of  
8 continued litigation might otherwise overwhelm any potential benefit the class  
9 could hope to obtain. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276  
10 (9th Cir. 1992) (noting the “strong judicial policy that favors settlements,  
11 particularly where complex class action litigation is concerned”); 4 Newberg on  
12 Class Actions § 11.41 (4th ed. 2002) (citing cases). Forcing claims like those at  
13 issue here to be handled through individual litigation would unduly tax the court  
14 system, require massive expenditures of resources, and would be impracticable  
15 given the relatively small value of the claims of the individual class members. Thus,  
16 the Settlement provides the best vehicle for Settlement Class Members to receive  
17 the relief to which they are entitled in a prompt and efficient manner.

18 For the reasons set forth below, the Court should certify the Class for  
19 settlement purposes and preliminarily approve the Settlement.

20 **A. The Settlement Satisfies Rule 23(a).**

21 Before assessing the Parties’ Settlement, the Court should first confirm the  
22 underlying settlement class meets the requirements of Rule 23(a). *See Amchem*,  
23 521 U.S. at 620; *Manual for Complex Litigation* (Fourth), § 21.632. These  
24 requirements are: numerosity, commonality, typicality, and adequacy—each of  
25 which is met here. Fed. R. Civ. P. 23(a); *Ellis v. Costco Wholesale Corp.*, 657 F.3d  
26 970, 979–80 (9th Cir. 2011).

1 i. The proposed Class is sufficiently numerous.

2 Courts find numerosity where there are so many class members as to make  
3 joinder impracticable. *See* Fed. R. Civ. P. 23(a)(1). Generally, Courts will find  
4 numerosity is satisfied where a class includes at least 40 members. *Rannis v.*  
5 *Recchia*, 380 Fed. App’x 646, 651 (9th Cir. 2010). Numbering approximately  
6 60,672 individuals, the proposed settlement class easily satisfies Rule 23’s  
7 numerosity requirement. Joinder of so many individuals is clearly impracticable—  
8 thus the numerosity prong is satisfied.

9 ii. The Settlement Class Satisfies the Commonality Requirement.

10 The Settlement Class also satisfies the commonality requirement, which  
11 requires that class members’ claims “depend upon a common contention,” of such  
12 a nature that “determination of its truth or falsity will resolve an issue that is central  
13 to the validity of each [claim] in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564  
14 U.S. 338, 350 (2011). Here, as in most data breach cases, “[t]hese common issues  
15 all center on [Defendant’s] conduct, satisfying the commonality requirement.” *In*  
16 *re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, No. 1:14-MD-02583-  
17 TWT, 2016 WL 6902351, at \*2 (N.D. Ga. Aug. 23, 2016). For the same reason,  
18 Plaintiffs allege that predominance is readily met here “where the class is a  
19 ‘cohesive group of individuals [who] suffered the same harm in the same way  
20 because of the [defendant’s] conduct.’” *In re Hyundai & Kia Fuel Economy Litig.*,  
21 926 F.3d 539, 559 (9th Cir. 2019)). Thus, common questions include, *inter alia*,  
22 whether OVG engaged in the wrongful conduct alleged; whether Class Members’  
23 Private Information was compromised in the Data Incident; whether OVG owed a  
24 duty to Plaintiffs and Class members; whether OVG breached its duties; and  
25 whether OVG unreasonably delayed in notifying Plaintiffs and class members of  
26 the material facts of the Data Incident.

27 Thus, Plaintiffs have met the commonality requirement of Rule 23(a).



1 Further, counsel for Plaintiffs have decades of combined experience as  
2 vigorous class action litigators and are well suited to advocate on behalf of the  
3 Class. *See* Perry Dec. ¶¶ 1-10. Thus, Plaintiffs satisfy the requirement of adequacy.

4 **The Requirements of Rule 23(b)(3) Are Met for Purposes of**  
5 **Settlement.**

6 “In addition to meeting the conditions imposed by Rule 23(a), the parties  
7 seeking class certification must also show that the action is maintainable under Fed.  
8 R. Civ. P. 23(b)(1), (2) or (3).” *Hanlon*, 150 F.3d at 1022. Here, Plaintiffs allege  
9 that the Settlement Class is maintainable for purposes of settlement under Rule  
10 23(b)(3), as common questions predominate over any questions affecting only  
11 individual members and class resolution is superior to other available methods for  
12 a fair and efficient resolution of the controversy. *Id.*

13 Rule 23(b)(3) requires that a district court determine that “a class action is  
14 superior to other available methods for the fair and efficient adjudication of the  
15 controversy.” In determining whether the “superiority” requirement is satisfied, a  
16 court may consider: (1) the interest of members of the class in individually  
17 controlling the prosecution or defense of separate actions; (2) the extent and nature  
18 of any litigation concerning the controversy already commenced by or against  
19 members of the class; (3) the desirability or undesirability of concentrating the  
20 litigation of the claims in the particular forum; and (4) the difficulties likely to be  
21 encountered in the management of a class action. Fed. R. Civ. P. 23(b)(3).

22 The predominance requirement “tests whether proposed classes are  
23 sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S.  
24 at 623 (citing *Wright, et al.*, Fed. Prac. and Proc. § 1777, p. 518-19 (2d ed. 1986)).  
25 “If common questions ‘present a significant aspect of the case and they can be  
26 resolved for all members of the class in a single adjudication,’ then ‘there is clear  
27 justification for handling the dispute on a representative rather than on an individual

1 basis,’ and the predominance test is satisfied.” *See Hanlon*, 150 F.3d at 1022. To  
2 satisfy this requirement, “common issues need only predominate, not outnumber  
3 individual issues.” *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir.  
4 2013) (quotations omitted).

5 Plaintiffs’ claims depend foremost on whether OVG used reasonable data  
6 security measures to protect consumers’ Private Information. That question can be  
7 resolved, for purposes of settlement, using the same evidence for all Class  
8 Members, and thus is precisely the type of predominant question that makes a class-  
9 wide settlement worthwhile. *See, e.g., Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct.  
10 1036, 1045 (2016) (“When ‘one or more of the central issues in the action are  
11 common to the class and can be said to predominate, the action may be considered  
12 proper under Rule 23(b)(3) ... .’”) (citation omitted).

13 Class certification here is also “superior to other available methods for . . .  
14 fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(a)(4).  
15 Classwide resolution is the only practical method of addressing the alleged  
16 violations at issue in this case. Adjudicating individual actions here is  
17 impracticable: the amount in dispute for individual class members is too small, the  
18 technical issues involved are too complex, and the required expert testimony and  
19 document review too costly. *See Just Film*, 847 F.3d at 1123; *Local Joint Exec. Bd.*  
20 *of Culinary/ Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163  
21 (9th Cir. 2001) (cases involving “multiple claims for relatively small individual  
22 sums” are particularly well suited to class treatment); *see also Wolin v. Jaguar Land*  
23 *Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (“Where recovery on an  
24 individual basis would be dwarfed by the cost of litigating on an individual basis,  
25 this factor weighs in favor of class certification.”).

26 Because Plaintiffs seek to certify a class in the context of a settlement, this  
27 Court need not consider any possible management-related problems as it otherwise

1 would. *See Amchem Prods.*, 521 U.S. at 620 (“Confronted with a request for  
2 settlement-only class certification, a district court need not inquire whether the  
3 case, if tried, would present intractable management problems, see Fed. R. Civ. P.  
4 23(b)(3)(D), for the proposal is that there be no trial.”).

5 In any event, no one member of the class has an interest in controlling the  
6 prosecution of this action because Plaintiffs’ claims and the claims of the members  
7 of the class are the same. Alternatives to a class action are either no recourse for  
8 thousands of individuals, or a multiplicity of suits resulting in an inefficient and  
9 possibly disparate administration of justice. Classwide resolution is the only  
10 practical method of addressing the alleged violations at issue in this case. There are  
11 thousands of class members with modest individual claims, most of whom likely  
12 lack the resources necessary to seek individual legal redress. *See Local Joint Exec.*  
13 *Bd. of Culinary/ Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152,  
14 1163 (9th Cir. 2001) (cases involving “multiple claims for relatively small  
15 individual sums” are particularly well suited to class treatment); *see also Wolin v.*  
16 *Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (“Where  
17 recovery on an individual basis would be dwarfed by the cost of litigating on an  
18 individual basis, this factor weighs in favor of class certification.”); *Valentino v.*  
19 *Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996) (The class action method  
20 is considered to be superior if “classwide litigation of common issues will reduce  
21 litigation costs and promote greater efficiency.”). A class action is therefore  
22 superior to other methods for the fair and efficient adjudication of the claims of  
23 Plaintiffs and the Class.

24 **C. The Settlement Should Be Preliminarily Approved Pursuant to Rule**  
25 **23(e).**

26 In order for the court to preliminarily approve a class settlement and to direct  
27 that notice be sent to class members, the parties must show that the court “will

1 likely be able to (i) approve the proposal under Rule 23(e)(2); and (ii) certify the  
2 class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1)(B); *Tuttle*  
3 *v. Audiophile Music Direct Inc.*, No.C22-1081JLR, 2023 WL 3318699, at \*3 (W.D.  
4 Wash. May 9, 2023). Rule 23(e) provides that a proposed class action may be  
5 “settled, voluntarily dismissed, or compromised only with the court’s approval.”  
6 Moreover, “[t]he parties must provide the court with information sufficient to  
7 enable it to determine whether to give notice of the proposal to the class.” If the  
8 parties make a sufficient showing that the Court will likely be able to “approve the  
9 proposal” and “certify the class for purposes of judgment on the proposal,” “[t]he  
10 court must direct notice in a reasonable manner to all class members who would be  
11 bound by the proposal.” Fed. R. Civ. P. 23(e). Thus, notice should be given to the  
12 class, and hence preliminary approval should be granted, where the Court “will  
13 likely be able to” finally approve the settlement under Rule 23(e)(2) and certify the  
14 class for settlement purposes. *Id.*

15 As a general matter, preliminary approval is appropriate if the settlement  
16 falls within the range of possible approval. *Hunichen v. Antonomi LLC*, No. C19-  
17 0615-RAJ-SKV, 2021 WL 5854964 at \*4 (W.D. Wash. Nov. 12, 2021). In sum,  
18 “the purpose of the preliminary approval process is to determine whether there is  
19 any reason not to notify the class members of the proposed settlement and to  
20 proceed with a fairness hearing.” *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D.  
21 Colo. 2006). In any event, while a complete fairness evaluation is unnecessary at  
22 this early juncture, Plaintiffs’ and their counsel strongly believe that the resolution  
23 reached here is in the Settlement Class’s best interests.

24 To that end, the Ninth Circuit has identified nine factors to consider in  
25 analyzing the fairness, reasonableness, and adequacy of a class settlement: (1) the  
26 strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration  
27 of further litigation; (3) the risk of maintaining class action status throughout the

1 trial; (4) the amount offered in settlement; (5) the extent of discovery completed  
2 and the stage of the proceedings; (6) the views of counsel; (7) the presence of a  
3 governmental participant; (8) the reaction of the class members to the proposed  
4 settlement and; (9) whether the settlement is a product of collusion among the  
5 parties. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir.  
6 2011); *see also Hanlon*, 150 F.3d at 1026. Rule 23(e) requires a court to consider  
7 several additional factors, including that the class representative and class counsel  
8 have adequately represented the class, and that the settlement treats class members  
9 equitably relative to one another. Fed. R. Civ. P. 23(e).

10 In applying these factors, this Court should be guided foremost by the  
11 general principle that settlements of class actions are favored by federal courts. *See*  
12 *Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1229 (9th Cir. 1989) (“It hardly seems  
13 necessary to point out that there is an overriding public interest in settling and  
14 quieting litigation. This is particularly true in class action suits”). Here, the relevant  
15 factors support the conclusion that the negotiated settlement is fundamentally fair,  
16 reasonable, and adequate, and should be preliminarily approved.

17 i. The Strength of Plaintiffs’ Case

18 Plaintiffs believe they have built a strong case for liability. Perry Dec., ¶ 22.  
19 Plaintiffs contend that OVG is liable for its negligent, unfair, and unlawful conduct  
20 under multiple causes of action. *See, e.g., Huynh v. Quora, Inc.*, 508 F. Supp. 3d  
21 633, 650 (N.D. Cal. 2020) (“[T]ime and money [plaintiff] spent on credit  
22 monitoring in response to the Data Breach is cognizable harm to support her  
23 negligence claim”); *Wallace v. Health Quest Sys., Inc.*, No. 20 CV 545 (VB), 2021  
24 WL 1109727, at \*8–15 (S.D.N.Y. Mar. 23, 2021) (upholding data breach claims  
25 for negligence, breach of implied contract, breach of confidence and violations of  
26 New York General Business Law); *Burrows v. Purchasing Power, LLC*, No. 1:12-  
27 CV-22800-UU, 2012 WL 9391827, at \*6 (S.D. Fla. Oct. 18, 2012) (upholding data

1 sharing claims for violations of Florida Deceptive and Unfair Trade Practices Act).

2 While Plaintiffs believe they have strong claims, they also understand that  
3 their success is not guaranteed. The chances of prevailing on the merits are  
4 uncertain—especially where significant unsettled questions of law and fact exist,  
5 which is common in data breach litigation. “Data breach litigation is evolving; there  
6 is no guarantee of the ultimate result.” *Fox v. Iowa Health Sys.*, No. 3:18-CV-  
7 00327-JDP, 2021 WL 826741, at \*5 (W.D. Wis. Mar. 4, 2021) (citing *Gordon v.*  
8 *Chipotle Mexican Grill, Inc.*, No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at  
9 \*1 (D. Colo. Dec. 16, 2019) (“Data breach cases . . . are particularly risky,  
10 expensive, and complex.”)). Although nearly all class actions involve a high level  
11 of risk, expense, and complexity, this is a particularly complex class action  
12 litigation. Data breach litigation is lengthy, complex, and difficult, and the rapid  
13 evolution of case law in this area of the law makes outcomes uncertain and the  
14 expense of such litigation high. Given the heavy obstacles and inherent risks  
15 Plaintiffs face with respect to the novel claims in data breach class actions,  
16 including class certification, summary judgment, and trial, the substantial benefits  
17 the Settlement provides favors preliminary approval of the Settlement. Perry Dec.,  
18 ¶¶ 22-23.

19 ii. The Risk, Expense, Complexity, and Likely Duration of Further  
20 Litigation

21 While Plaintiffs believe their case is a strong one, all cases, including this  
22 one, are subject to substantial risk. This case involves a proposed class of  
23 approximately 60,672 individuals (each of whom would need to establish  
24 cognizable harm and causation); a complicated and technical factual overlay; and  
25 a motivated Defendant that already has provided some relief to its potentially  
26 affected customers.

27 Although nearly all class actions involve a high level of risk, expense, and  
complexity undergirding the strong judicial policy favoring amicable resolutions

1 (*Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998)), this is an  
2 especially complex class action in an especially risky arena. Historically, data  
3 breach cases face substantial hurdles in surviving even the pleading stage. *See, e.g.*,  
4 *Hammond v. The Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060 (RMB) (RLE), 2010  
5 U.S. Dist. LEXIS 71996, at \*2-4 (S.D.N.Y. June 25, 2010) (collecting cases). Even  
6 cases of similar wide-spread notoriety and implicating data far more sensitive than  
7 that at issue here have been found wanting at the district court level. *In re U.S.*  
8 *Office of Pers. Mgmt. Data Sec. Breach Litig.*, 266 F. Supp. 3d 1, 19 (D.D.C. 2017)  
9 (“The Court is not persuaded that the factual allegations in the complaints are  
10 sufficient to establish . . . standing.”), *reversed in part*, 928 F.3d 42 (D.C. Cir. June  
11 21, 2019) (holding that plaintiff had standing to bring a data breach lawsuit).

12 For now, data breach cases are among the riskiest and uncertain of all class  
13 action litigation, making settlement the more prudent course when a reasonable one  
14 can be reached. The damages methodologies, while theoretically sound in  
15 Plaintiffs’ view, remain untested in a disputed class certification setting and  
16 unproven in front of a jury. And as in any data breach case, establishing causation  
17 on a class-wide basis is rife with uncertainty.

18 Each risk, by itself, could impede the successful prosecution of these claims  
19 at trial and in an eventual appeal—which would result in zero recovery to the class.  
20 “Regardless of the risk, litigation is always expensive, and both sides would bear  
21 those costs if the litigation continued.” *Paz v. AG Adriano Goldschmeid, Inc.*, No.  
22 14CV1372DMS(DHB), 2016 WL 4427439, at \*5 (S.D. Cal. Feb. 29, 2016). Thus,  
23 this factor favors approval.

24 iii. The Risk of Maintaining Class Action Status Through Trial

25 If Plaintiffs were to proceed to litigate their claims through trial, Plaintiffs  
26 would encounter risks in obtaining and maintaining certification of the class. The  
27 class has not yet been certified, and Defendant will certainly oppose certification if

1 the case proceeds. Thus, Plaintiffs “necessarily risk losing class action status.”  
2 *Grimm v. American Eagle Airlines, Inc.*, No. LA CV 11-00406 JAK(MANx), 2014  
3 WL 1274376, at \*10 (C.D. Cal. Sept. 24, 2014). While Plaintiffs are confident that  
4 this case is well suited for class certification, numerous obstacles to certification  
5 remain.

6 In light of the risks and uncertainties presented by data breach litigation, the  
7 value of the Settlement favors approval. The Settlement makes significant relief  
8 available to Settlement Class Members. This Settlement is a strong result for the  
9 Class, and as discussed below is in line with other settlements in cases involving  
10 data breaches of similar scope. Because the settlement amount here is similar to  
11 other settlements reached and approved in similar cases, this factor reflects that the  
12 Settlement is fair. *See Calderon v. Wolf Firm*, No. SACV 16-1622-JLS(KESx),  
13 2018 WL 6843723, at \*7-8 (C.D. Cal. Mar. 13, 2018) (comparing class settlement  
14 with other settlements in similar cases). In light of the difficulties and expenses  
15 Class Members would face pursuing individual claims, and the likelihood that they  
16 might be unaware of their claims, this Settlement Amount is appropriate. *See id.*  
17 Accordingly, this factor favors approval.

18 The Settlement value per class member here is on par with or exceeds that  
19 in other exemplary data breach settlements.<sup>2</sup> Plaintiffs have achieved an excellent

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20  
21 <sup>2</sup> *See, e.g., Dickey’s Barbeque Restaurants, Inc.*, Case No. 20-cv-3424 (N.D. Tex.), Dkt. 62 (data  
22 breach class action involving more than 3 million people that settled for \$2.3 million, or \$0.76 per  
23 person); *In re: Capital One Consumer Data Breach Litigation*, MDL No. 1:19md2915 (AJT/JFA)  
24 Doc. 2251 (Memo in Support of Final Approval), page 1 (\$190 million common fund settlement  
25 for a class of approximately 98 million, or \$1.93 per person); *Cochran v. Accellion, Inc., et al.*,  
26 No. 5:21-cv-01887-EJD (N.D. Cal.), ECF No. 32 (June 30, 2021) (\$5 million settlement fund for  
27 3.82 million class members or approximately \$1.31 per Class member); *Adlouni v. UCLA Health  
Systems Auxiliary, et al.*, No. BC 589243 (Cal. Super. Ct. June 28, 2019) (\$2 million settlement in  
medical information data breach for approximately 4,500,000 Class Members; 44 cents per Class  
Member); *In re Anthem, Inc. Data Breach Litig.*, No. 5:15-md-02617 (N.D. Cal. Aug. 15, 2018)  
(\$115 million settlement in medical information data breach for 79,200,000 Class Members; \$1.45  
per Class Member); *In re The Home Depot, Inc. Customer Data Sec. Breach Litig.*, No. 1:14-  
MD02583, 2016 WL 6902351, at \*7 (N.D. Ga. Aug. 23, 2016) and ECF No. 181-2 ¶¶ 22, 38 (\$13

1 resolution for the Settlement Class.

2 iv. The Extent of Discovery Completed and the Stage of  
3 Proceedings

4 Before entering into settlement discussions on behalf of class members,  
5 counsel should have “sufficient information to make an informed decision.”  
6 *Linney*, 151 F.3d at 1239. Here, Plaintiffs vigorously and aggressively gathered  
7 information that was available regarding OVG and the Data Incident—including  
8 publicly-available documents concerning announcements of the Data Incident and  
9 notice of the Data Incident to Plaintiffs and the Settlement Class. *Perry Dec.*, ¶ 20.  
10 The parties also informally exchanged non-public information concerning the Data  
11 Incident and the size of the Class in preparation for mediation. *Id.*

12 Although the Parties did not complete formal discovery, Class Counsel’s  
13 collective decades of experience in similar types of privacy and data protection  
14 practices provided substantive knowledge on the subject to enable Class Counsel  
15 to represent Plaintiffs’ and Class Members’ interests without expending hundreds  
16 of hours and enormous financial resources to come up to speed on the subject area.  
17 *Id.* ¶ 21. “[T]he efficiency with which the Parties were able to reach an agreement  
18 need not prevent this Court from granting . . . approval.” *Hillman v. Lexicon*  
19 *Consulting, Inc.*, No. EDCV 16-01186-VAP(SPx), 2017 WL 10433869, at \*8  
20 (C.D. Cal. April 27, 2017). Accordingly, Plaintiffs are well informed about the  
21 strengths and weaknesses of this case.

22 v. The Experience and Views of Counsel

23 Class Counsel have substantial experience litigating complex class cases of  
24 various types, including data breach cases such as this one. *See Perry Dec.* ¶¶ 1-10.

25  
26 million settlement for approximately 40 million class members; 32.5 cents per Class Member); *In*  
27 *re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 14-2522, 2017 WL 2178306, at \*1–  
2 (D. Minn. May 17, 2017) (\$10 million settlement for nearly 100 million Class Members; 10 cents  
per Class Member); *In re LinkedIn User Priv. Litig.*, 309 F.R.D. 573, 582 (N.D. Cal. 2015) (\$1.25  
million settlement for approximately 6.4 million Class Members; 20 cents per Class Member).

1 Having worked on behalf of the putative class since the Data Incident was first  
2 announced, evaluated the legal and factual disputes, and dedicated significant time  
3 and monetary resources to this litigation, proposed Class Counsel endorse the  
4 Settlement without reservation. *Id.* ¶¶ 24-25. A great deal of weight is accorded to  
5 the recommendation of counsel, who are most closely acquainted with the facts of  
6 the underlying litigation. *See, e.g., Norton v. Maximus, Inc.*, 2017 WL 1424636, at  
7 \*6 (D. Idaho Apr. 17, 2017); *Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221  
8 F.R.D. 523, 528 (C.D. Cal. 2004). Thus, this factor supports approval.

9 vi. Governmental Participants.

10 There is no governmental participant in this matter. This factor is neutral.

11 vii. The Reaction of the Class Members to the Proposed Settlement

12 Because notice has not yet been given, this factor is not yet implicated;  
13 however, the named Plaintiffs support the Settlement. Perry Dec., ¶ 27.

14 viii. Lack of Collusion Among the Parties

15 The parties negotiated a substantial Settlement, as outlined above. The  
16 parties did not commence discussion of fees until agreement on all substantive  
17 portions of the class resolution had been reached. All settlement points were  
18 negotiated at arm’s-length. Although ultimately finalized independently, the  
19 settlement framework was created and negotiated under the direction of a third-  
20 party neutral mediator, who has extensive experience in handling class action cases  
21 and data breach class action cases. Perry Dec., ¶ 18. Therefore, the Court can be  
22 assured that the negotiations were not collusive. *See G. F. v. Contra Costa Cty.*,  
23 No. 13-cv-03667-MEJ, 2015 WL 4606078, at \*43 (N.D. Cal. July 30, 2015)  
24 (“[T]he assistance of an experienced mediator in the settlement process confirms  
25 that the settlement is non-collusive.”) (internal quotation marks and citation  
26 omitted); *see also Cohorst v. BRE Props.*, No. 3:10-CV-2666-JM-BGS, 2011 WL  
27 7061923, at \*12 (S.D. Cal. Nov. 9, 2011) (“[V]oluntary mediation before a retired

1 judge in which the parties reached an agreement-in-principle to settle the claims in  
2 the litigation are highly indicative of fairness . . . . We put a good deal of stock in  
3 the product of arms-length, non-collusive, negotiated resolution.”). This factor  
4 supports approval.

5 ix. The Settlement Treats Settlement Class Members Equitably

6 Finally, Rule 23(e)(2)(D) requires that this Court confirm that the settlement  
7 treats all class members equitably. The Advisory Committee’s Note to Rule  
8 23(e)(2)(D) advises that courts should consider “whether the apportionment of  
9 relief among class members takes appropriate account of differences among their  
10 claims, and whether the scope of the release may affect class members in different  
11 ways that bear on the apportionment of relief.” Fed. R. Civ. P. 23(e), advisory  
12 comm.’s note (2018).

13 In determining whether this factor weighs in favor of approval, a Court must  
14 determine whether the Settlement “improperly grant[s] preferential treatment to  
15 class representatives or segments of the class.” *Paredes Garcia v. Harborstone*  
16 *Credit Union*, No. 3:21-CV-05148-LK, 2023 WL 4315117 (W.D. Wash. July 3,  
17 2023) (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D.  
18 Cal. 2007)).

19 Here, the Settlement does not improperly discriminate between any  
20 segments of the class and properly takes into account differences between Class  
21 Members. *Pro rata* cash payments are structured such that California Residents  
22 receive three-times the amount of class members who are not California Residents,  
23 in recognition of the statutory remedies available to California Residents that are  
24 unavailable to residents of other states. And while Plaintiffs have been permitted  
25 to seek approval of a service award from this Court, as will be explained in detail  
26 in Plaintiffs’ Fee Motion, the award of \$2,500 per Plaintiff is in line with awards  
27 granted in similar cases, is presumptively reasonable, and does not call into

1 question Plaintiffs’ adequacy or the validity of the Settlement. *See, e.g., Roe v.*  
2 *Frito-Lay, Inc.*, No. 14-cv-00751, 2017 WL 1315626, at \*8 (N.D. Cal. Apr. 7,  
3 2017) (noting a \$5,000 Service Award is presumptively reasonable in the Ninth  
4 Circuit); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 947-48 (9th Cir.  
5 2015) (approving service awards of \$5,000). Thus, this factor supports approval.

6 **D. The Court Should Approve the Proposed Notice Program**

7 Rule 23 requires that prior to final approval, the “court must direct notice in  
8 a reasonable manner to all class members who would be bound by the proposal.”  
9 Fed. R. Civ. P. 23(e)(1)(B). For classes certified under Rule 23(b)(3), “the court  
10 must direct to class members the best notice that is practicable under the  
11 circumstances, including individual notice to all members who can be identified  
12 through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). “The notice may be by one  
13 or more of the following: United States mail, electronic means, or other appropriate  
14 means.” *Id.*

15 Such notice must be the “best notice practicable,” *see* Fed. R. Civ. P.  
16 23(c)(2)(B), which means “individual notice to all members who can be identified  
17 through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173  
18 (1974). To satisfy due process, notice to class members must be the best  
19 practicable, and reasonably calculated under all the circumstances to apprise  
20 interested parties of the pendency of the action and afford them an opportunity to  
21 present their objections. Fed. R. Civ. P. 23(c)(2); *Phillips Petroleum Co. v. Shutts*,  
22 472 U.S. 797, 812 (1985). Class settlement notices must present information about  
23 a proposed settlement simply, neutrally, and understandably. *In re Hyundai & Kia*  
24 *Fuel Econ. Litig.*, 926 F.3d 539, 567 (9th Cir. 2019). Notice is adequate if it  
25 generally describes the terms of the class action settlement in sufficient detail to  
26 alert those with adverse viewpoints to investigate and to come forward and be  
27 heard. *Id.*

1 As explained above, the parties have agreed to a robust notice program to be  
2 administered by a well-respected third-party class administrator—Simpluris—  
3 which will use all reasonable efforts to provide direct and individual notice to each  
4 potential Settlement Class Member. Prior to sending the Postcard Notice, Simpluris  
5 will perform postal address traces including performing National Change of  
6 Address search(es) and/or skip tracing for undeliverable notices. S.A. ¶ 89. All  
7 Settlement Class Members for whom Email Addresses are available will also be  
8 sent an Email Notice. Id. ¶ 90. The Notice and Claim Forms are clear and concise  
9 and inform Settlement Class Members of their rights and options under the  
10 Settlement, including detailed instructions on how to make a claim, object to the  
11 Settlement, or opt-out of the Settlement. *Id.*, Exhibits 1-4.

12 Plaintiffs have negotiated a notice program that is reasonably calculated  
13 under all the circumstances to apprise Class Members of the pendency of the action  
14 and afford them an opportunity to present their objections. Because this notice plan  
15 ensures that Settlement Class Members’ due process rights are amply protected, it  
16 should be approved. *See Hartranft v. TVI, Inc.*, No. 15-01081-CJC-DFM, 2019 WL  
17 1746137, at \*3 (C.D. Cal. Apr. 18, 2019).

18 **E. Appointment of the Settlement Administrator**

19 In connection with implementation of the Notice Program and  
20 administration of the settlement benefits, the Parties request the Court appoint  
21 Simpluris to serve as the Claims Administrator. Simpluris is a well-respected third-  
22 party administrator with a trusted and proven track record of supporting class action  
23 administrations. Perry Dec. ¶ 28.

24 **F. Appointment of Settlement Class Counsel**

25 Under Rule 23, “a court that certifies a class must appoint class counsel [who  
26 must] fairly and adequately represent the interests of the class.” Fed. R. Civ. P.  
27 23(g)(1)(B). In making this determination, courts generally consider the following

1 attributes: the proposed class counsel’s (1) work in identifying or investigating  
2 potential claims, (2) experience in handling class actions or other complex  
3 litigation, and the types of claims asserted in the case, (3) knowledge of the  
4 applicable law, and (4) resources committed to representing the class. Fed. R. Civ.  
5 P. 23(g)(1)(A)(i–iv).

6 Here, proposed Class Counsel have extensive experience prosecuting class  
7 actions and other complex cases, and specifically data breach cases. *See Perry Dec.*  
8 ¶¶ 1-10. Appointing Class Counsel provides a streamlined leadership structure that  
9 is appropriate for and commensurate with the needs of this action.

10 **VII. CONCLUSION**

11 Plaintiffs have negotiated a fair, adequate, and reasonable Settlement that  
12 will provide Class Members with both significant monetary and equitable relief.  
13 The Settlement should be approved and Notice should be ordered to issue to the  
14 class. For all the above reasons, Plaintiffs respectfully request this Court to grant  
15 Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action  
16 Settlement.

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1 Date: February 17, 2026

Respectfully Submitted,

2 By: /s/ Danielle L. Perry  
3 John J. Nelson  
4 **MILBERG, PLLC**  
5 280 S. Beverly Drive  
6 Beverly Hills, CA 92102  
7 Tel: (858) 209-6941  
8 jnelson@milberg.com

9 Danielle L. Perry (SBN 292120)  
10 **MASON LLP**  
11 5335 Wisconsin Avenue NW  
12 Suite 640  
13 Washington, DC 20015  
14 Tel: (202) 429-2290  
15 dperry@masonllp.com

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*Counsel for Plaintiffs and  
the Proposed Class*