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Counsel for Plaintiffs and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

HEATHER HEATH, BRIAN HEINZ, ROBERT RUMA, MATTHEW RUTLEDGE, and ANDREA HANS, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

KEENAN & ASSOCIATES, and DOES 1 through 20, inclusive,

Defendant.

Case No. 24STCV03018

Honorable Kenneth R. Freeman

NOTICE OF MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS; MEMORANDUM OF POINTS AND AUTHORITIES

[Proposed Prelim. App. Order, Settlement Agreement, and Declarations of Plaintiffs' Counsel, Defense Counsel (Vogt), Plaintiffs (Hans, Heath, Heinz, Ruma, & Rutledge), Experts (Green & Siciliano), & Non-Profit Residual Recipient (Braun), filed concurrently herewith]

Date:	January 28, 2025
Time:	10:00 a.m.
Dept.:	14
Complaint Filed:	February 2, 2024
Trial Date:	None

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 28, 2025, at 10:00 a.m., or as soon as the matter may be heard before the Honorable Kenneth R. Freeman, located in Department 14 at the Superior Court for the County of Los Angeles, Spring Street Courthouse, 312 N. Spring Street, Los Angeles, California 90012, Plaintiffs will and hereby respectfully move for entry of an Order:

(1) granting preliminary approval of the proposed class action settlement (the "Settlement") of this Action pursuant to California Rules of Court, Rule 3.769(c);

(2) approving the Notice Plan set forth in the Declaration of Julie Green of CPT, Inc. (the proposed Settlement Administrator), filed in Support of the Unopposed Motion for Preliminary Approval of Class Action Settlement, and directing commencement of Notice;

(3) appointing CPT Group, Inc. as Settlement Administrator;

(4) conditionally certifying the Settlement Class for settlement purposes;

(5) appointing as Class Representatives Heather Heath, Brian Heinz, Robert Ruma, Matthew Rutledge and Andrea Hans;

(6) appointing, as Settlement Class Counsel, Interim Co-Lead Counsel Tina Wolfson and Andrew W. Ferich of Ahdoot & Wolfson, P.C., Ryan J. Clarkson and Yana Hart of Clarkson Law Firm, P.C., M. Andersen Berry and Gregory Haroutunian of Clayeo C. Arnold, A.P.C., and Benjamin F. Johns and Samantha E. Holbrook of Shub & Johns LLC (collectively, "Class Counsel");

(7) approving the form and content of the Claim Form, Long Form Notice, and Summary Notice, attached as Exhibits A, E, and G to the Settlement Agreement, respectively;

(8) further staying the Action or otherwise adjourning litigation deadlines pending decision on Final Approval of the Settlement;

(9) staying and/or enjoining, pending decision on final approval of the Settlement, any actions brought by Settlement Class Members concerning a Released Claim; and

(10) scheduling a Final Fairness Hearing to consider entry of a Final Approval Order approving the Settlement, final certification of the Settlement Class for settlement purposes only, and the request for attorneys' fees, reimbursement of litigation costs, and Service Payments to the Class Representatives.

Plaintiffs also respectfully request that the Court adopt the following schedule with respect to the Settlement:

EVENT	DATE
Notice Date (the date Settlement Administrator must commence Class Notice)	Within 30 calendar days after the issuance of the Preliminary Approval Order
Objection Deadline (filing deadline for Objections)	75 calendar days after the Notice Date
Exclusion Deadline (deadline to submit Opt-Outs)	75 calendar days after the Notice Date
Filing of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Payments	21 calendar days prior to the Objection / Exclusion Deadline
Filing of Plaintiffs' Motion for Final Approval	14 calendar days following the Objection / Exclusion Deadline
Final Fairness Hearing	Any date that is at least 135 days after the issuance of the Preliminary Approval Order

This Motion is based on this Notice, and the concurrently filed (i) Plaintiffs' Memorandum in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement and Certification of Settlement Class, (ii) the Settlement Agreement and its Exhibits, (iii) the Joint Declaration of Class Counsel (Tina Wolfson, Yana Hart, M. Andersen Berry, and Benjamin F. Johns), (iii) the Declaration of John A. Vogt (Defense Counsel), (iv) the Declarations of the Plaintiffs (Heather Heath, Brian Heinz, Robert Ruma, Matthew Rutledge and Andres Hans), (v) the Declaration of Julie Green (Class Action Notice and Administration Expert), (vi) the Declaration of Robert Siciliano (Credit Monitoring and Identity Theft Insurance Expert), and (vi) the Declaration of Jennifer Braun of the Alliance for Children's Rights (Non-Profit Residual Recipient), and all supporting exhibits, the complete file and record in this action, and such oral argument as the Court may consider in deciding this motion.

Dated: December 24, 2024

Respectfully submitted,

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I. INTRODUCTORY INFORMATION

On or around January 25, 2024, Defendant Keenan & Associates ("Keenan") announced a data breach in which unauthorized parties accessed and acquired the personally identifiable information ("PII") and protected health information ("PHI") of approximately 1,780,595 individuals (the "Data Security Incident"). (Second Amended Complaint ("SAC") ¶¶ 8, 94.) In its Notice of Data Breach, Keenan acknowledged that "an unauthorized party gained access . . . at various times between approximately August 21, 2023, and August 27, 2023." (SAC ¶ 8.) Keenan also acknowledged that it had been aware of the breach since around August 27, 2023. *Id.* The perpetrators obtained access to information that federal and state law require companies take security measures to protect, including, but not limited to: names, Social Security numbers ("SSN"), passport and driver's license numbers, as well as PHI in the form of health insurance information and general health information. (SAC ¶ 9.)

Following the issuance of the Notice of Data Breach, over 20 related class actions were filed against Keenan in either this Court or in Federal Court for the Central District of California. Keenan removed the LASC cases to the Central District in early March 2024. (*See, e.g., Heath, et al. v. Keenan & Assoc.*, No. 2:24-cv-01733-MCS-DTBx (C.D. Cal.), ECF 1.) On March 4, 2024, Plaintiffs filed a motion to remand this case to this Court which was set to be heard on June 3, 2024. (*Id*., ECF 9, 18.)

Prior to the June 3, 2024, remand hearing, counsel for Plaintiffs Heath, Heinz and Hans (Plaintiffs in the first three cases filed in this Court), and counsel for plaintiffs in the two of the actions originally brought in federal court (the first filed Plaintiff Rutledge and Plaintiff Ruma) agreed with Keenan to attempt to mediate the dispute in a full-day mediation. (Joint Declaration of Class Counsel ("CC Decl.") ¶¶ 34, 41.) Over the next several months, the parties exchanged confirmatory discovery, agreed to engage the Honorable Jay C. Gandhi (Ret.) of JAMS as mediator, participated in mediation and reached a settlement in principle, continued negotiations thereafter with the assistance of the mediator, negotiated the voluminous terms of the Settlement, and drafted the Class Action Settlement Agreement and Release ("Settlement" or "SA").[1] (*Id.* ¶

[1] The Settlement Agreement is filed concurrently with this Motion. Unless otherwise indicated, all capitalized terms herein shall have the same meaning assigned to them in the Settlement Agreement. (SA, Sec. 1, Definitions.)

12.) The Settlement provides substantial benefits to the Class, eliminates the costs and burdens of continued litigation, and fully accomplishes Plaintiffs' goals in bringing this Action. After the parties reached a settlement in principle, all the federal actions in the California Central District were stayed pending final approval of this Settlement.[2] (*Id.* ¶ 14.) On May 29, 2024, this action was remanded pursuant to the Parties' stipulation. (*Id.* ¶ 15.) On September 25, 2024, Plaintiffs filed the SAC on behalf of a Class comprised of all residents of the United States who were notified by Keenan that their PII was or may have been affected in the Data Security Incident. (SAC ¶ 93.)

Pursuant to the Settlement, Keenan will pay $14 million (SA ¶¶ 1.51; 3.6.1) to establish a non-reversionary Settlement Fund that will be used to provide all Class Members who submit a valid claim with: (i) three years of Credit Monitoring and Identity Theft Insurance Services ("CMIS") (up to $1 million dollars of insurance coverage and three-bureau credit monitoring) ((*id.* ¶ 4.3); and (ii) one of the following Settlement Payments: (1) a cash payment of up to $10,000 for Documented Loss and/or expenditures traceable to the Data Security Incident (requires submission of Reasonable Documentation) (*id.* ¶ 4.2.2), or (ii) a *pro rata* cash payment, calculated in accordance with the terms of the Settlement Agreement (with double the amount to California residents because of the statutory claims available to them) (*id.* ¶¶ 4.2.1., 4.7.2.). The amounts of the *pro rata* cash payments are estimated to be between $226 to $27 for California Claimants and $113 to $13 for all other Claimants (at 2% to 10% claims rates, respectively). (CC Decl. ¶ 57.) The Settlement also provides injunctive relief and data privacy enhancements that will ensure Keenan has adequate processes and procedures to safeguard its customers' PII and PHI in the future. (SA ¶ 4.1.) Consistent with the common-fund model for class settlements, the Settlement Fund will also pay for Court approved Administrative Expenses (includes Notice and

[2] *Rutledge v. Keenan*, 5:24-cv-00263, ECF 53; *Heinz v. Keenan*, 2:24-cv-01735, ECF 19; *Barfield v. Keenan*, 5:24-cv-00320, ECF 21; *Sargent v. Keenan*, 8:24-cv-00260, ECF 20; *Ruma v. Keenan*, 2:24-cv-01070, ECF 22; *Reyes v. Keenan*, 8:24-cv-00274, ECF 19; *Hans v. Keenan*, 2:24-cv-01737, ECF 18; *Mahaffey v. Keenan*, 2:24-cv-01288, ECF 18; *Vanover, v. Keenan*, 2:24-cv-0174, ECF 29; *Nell v. Keenan*, 2:24-cv-01409, ECF 17; *Gaines v. Keenan*, 2:24-cv-01732, ECF 18; *Culberson v. Keenan*, 2:24-cv-01437, ECF 14; *Lopez v. Keenan*, 2:24-cv-01573, ECF 15; *Combs v. Keenan* 2:24-cv-01739, ECF 20; *Teague v. Keenan*, 2:24-cv-01609, ECF 17; *Thomas v. Keenan*, 2:24-cv-01620, ECF 26; *Spina v. Keenan*, 2:24-cv-01699, ECF 19; *Joffre v. Keenan*, 2:24-cv-02853, ECF 14; *Ghyam v. Keenan*, 8:24-cv-00544, ECF 31. (CC Decl. ¶ 14.)

Settlement Administrative Expenses), Service Payments, and any attorneys' fees and expenses. (*Id.* ¶ 3.8.).

Proposed Class Representatives therefore respectfully request the Court to (1) grant preliminary approval of the Settlement, (2) approve the Notice Plan and direct the commencement of Notice, (3) appoint CPT Group, Inc. ("CPT") as Settlement Administrator, (4) certify the Settlement Class, (5) appoint Class Representatives and Class Counsel, (6) approve the form and content of the Claim Form, Long Form Notice, and Summary Notice, attached as Exhibits A, E, and G to the Settlement, respectively; (7) further stay the Action or otherwise adjourn litigation deadlines pending decision on final approval of the Settlement; (8) stay and/or enjoin, pending decision on final approval, any state actions brought by Class Members concerning a Released Claim; (9) impose the proposed schedule of events set forth in the Notice of this Motion; and (10) schedule a Final Fairness Hearing to consider entry of the Final Approval Order and the request for attorneys' fees, reimbursement of litigation costs, and Service Payments.

II. *DUNK* / *KULLAR* ANALYSIS

A. Summary of the Case

Keenan is a Torrance, California-based insurance broker and a member of the Assured Partners family of companies. (SAC ¶ 31.) These companies provide insurance policies for millions of employees, including the employee benefit policies for 80% of California's schools. (*Id.*) Keenan collects, maintains, digitizes, aggregates and stores PII and PHI pertaining to the employees of its customers (this data includes, but is not limited to, names, SSNs, passport numbers, driver's license numbers, as well as personal health information). (*Id.* ¶ 55.) As noted above, in August of 2023, Keenan detected suspicious activity within its computer network, which its investigation determined to be unauthorized intrusion by third parties seeking to steal, among other things, Class Members' PII and PHI. (*Id.* ¶ 72.)

Plaintiffs allege that Keenan failed to properly secure Class Members' PII and PHI resulting in the Data Security Incident, and thus is liable for: (1) negligence; (2) negligence per se; (3) breach of implied contract; (4) breach of fiduciary duty; (5) breach of confidence (6) violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq*. ("UCL"); (7) violations of the California Consumer Privacy Act, Cal. Civ. Code §§ 1798.100,

et seq. ("CCPA"); (8) violations of the California Confidentiality of Medical Information Act, Cal. Civ. Code §§ 56, *et seq.* ("CMIA"); (9) violations of the California Customer Records Act, Cal. Civ. Code §§ 1798.80, *et seq.* ("CRA"); (10) invasion of privacy; and (11) unjust enrichment. (SAC ¶¶ 104-245.)

Plaintiffs allege that Keenan breached its duty to reasonably safeguard the sensitive PII and PHI entrusted to it by allowing the Data Security Incident to occur. (*Id.* ¶¶ 61-62, 113-14, 116, 203, 240-41.) As a result, Plaintiffs and Class Members are at an increased risk of identity theft and medical fraud, spent time and money to prevent, detect, contest, and repair such identity theft and medical fraud, and suffered other harms associated with having their PII and PHI acquired by unauthorized parties. (*Id.* ¶¶ 86-89.) Plaintiffs alleged it would be unjust for Keenan to keep Plaintiffs' and Class Members' payments that should have been applied towards data security. (*Id.* ¶¶ 237-38.) Finally, by its alleged failures, Keenan also violated the common law right of privacy. (*Id.* ¶¶ 227-35.)

In addition to common law claims, the SAC includes claims for violations of the UCL for Keenan's allegedly unlawful, fraudulent, and unfair business practices (*id.* ¶¶ 169-96); the CCPA for Keenan's alleged failure to implement and maintain reasonable security procedures and practices appropriate to protect the PII/PHI of Plaintiffs and the Class Members (*id.* ¶¶ 197-205); the CMIA for Keenan's alleged knowing or negligent release of confidential medical facts and violation of the CMIA's requirement that Keenan treat such information in a "manner that preserves the confidentiality of the information contained therein," (*id.* ¶¶ 206-16); and the CRA for Keenan's failure to implement reasonable measures to protect Plaintiffs' and Class Members' PII and PHI (*id.* ¶¶ 217-26), resulting in Plaintiffs' and Class Members' nonencrypted and nonredacted PII/PHI being subjected to unauthorized access and exfiltration, theft, or disclosure.

For California residents, the CCPA provides for statutory damages of $100 to $750 per Class Member, and the CMIA nominal damages of $1,000 per Class Member. Cal. Civ. Code §§ 56.36(b)(1), 1798.150(a)(1)(A). Thus, for the 1,399,263 California Class Members, potential CCPA damages range from $140 million to $1.05 billion and CMIA damages are $148,524,000 (assuming all California Class Members had PHI compromised). (CC Decl. ¶ 30.) Plaintiffs allege that Keenan violated the CRA by failing to implement reasonable

measures to protect California Class Members' PII and PHI, and promptly notify them of the Data Security Incident. (SAC ¶¶ 219-221.) Based on these facts and causes of action, Plaintiffs also asserted a UCL claim under each prong of the statute: unfair, fraudulent, and unlawful. (*Id*. ¶¶ 171-72, 176, 186-87, 195.)[3]

B. Summary of the Investigation and Discovery Conducted

Prior to filing suit, Plaintiffs' counsel conducted an independent investigation into the Data Security Incident (CC Decl. ¶ 20) and filed separate detailed class action complaints, prior to combining forces. (*Id*.) Plaintiffs first had to understand Keenan's business and its relationship with Class Members, which Class Counsel investigated through both research from publicly available sources and interviews with those affected by the breach. (*Id.* ¶ 21.) Plaintiffs also investigated the facts and circumstances leading to the Data Security Incident, including whether additional entities were potentially liable, and Keenan's response to the breach and whether it was sufficient. (*Id*. ¶ 23.) In order to investigate compliance with state requirements, Plaintiffs also examined the Data Breach Notice actually sent to Class Members, together with the sample notices submitted to various state attorneys general. (*Id.* ¶ 24.) Class Counsel also retained a third-party expert to conduct independent dark web searches for information related to the Data Security Incident. (*Id*. ¶ 25.) Finally, from the outset, Plaintiffs' Counsel stayed abreast of all material developments involving the Data Security Incident. (*Id.* ¶ 26.)

Plaintiffs also obtained detailed verified information from Keenan. (*Id.* ¶ 29.) Plaintiffs received and analyzed data and verified facts relating to the impact of the Data Security Incident, including specific information concerning the timeline of the incident; the total number of individuals who were potentially or actually impacted nationally and in California;

[3] Keenan denies liability under all causes of action and will likely argue that the alleged wrongdoing was performed by third parties, and that there is no liability under the CCPA because it falls within a statutory exemption for being a "business associate." Cal. Civ. Code § 1798.146(a)(3). (*See Mullinix v. US Fertility, LLC,* (C.D. Cal. Apr. 21, 2021) No. SACV2100409CJCKESX, 2021 WL 4935975, at *5 [dismissing a CCPA claim, with prejudice, based on this exemption].) Keenan will also likely contend that it has no liability for CMIA statutory damages because Plaintiffs cannot demonstrate that it "disclosed" their medical information within the meaning of that statute. (*See*, *e.g.*, *Sutter Health v. Superior Court* (2014) 227 Cal. App. 4th 1546, 1556 [explaining that the disclosure element of the CMIA claim requires an affirmative communicative act by the defendant].)

the categories of information potentially accessed by the breach; and communications with the threat actors regarding a ransom demand and ransom payment. (*Id.* ¶ 27.)

C. Summary of Settlement Negotiations

After the filing of the lawsuits, the Parties engaged in meet and confer discussions and reached agreement to participate in mediation. (CC Decl. ¶ 31.) Prior to mediation, the Parties exchanged information to prepare for and facilitate a productive mediation (i*d.* ¶ 32), and confidential mediation briefs stating their position on the merits and settlement. (*Id.* ¶ 33.)

The mediation took place on May 1, 2024, with Hon. Jay C. Gandhi (Ret.), who has significant experience in negotiating the resolution data breach class actions. (*Id.* ¶ 34; https://www.jamsadr.com/gandhi/ (last visited Dec. 22, 2024).) After a full day of hard fought negotiation, the Parties reached a settlement in principle to resolve all claims on a class-wide basis in this Court. (CC Decl. ¶ 35.)

The Parties negotiated the voluminous details of the Settlement for months following the mediation. (*Id.* ¶ 36.) During this time, Plaintiffs' counsel solicited competing bids and negotiated with a number of separate third-party administrators. (*Id.* ¶ 37.) Following an in-depth evaluation of all administrator bids, counsel determined CPT's bid to be the most competitive, and ultimately negotiated an agreement with CPT. (*Id.*)

During Settlement negotiations, the Parties deferred any discussion concerning the maximum Service Payments to be sought by the proposed Class Representatives until after reaching an agreement on all material terms. (*Id.* ¶ 40.) All negotiations were conducted at arm's length, in good faith, free of any collusion, and under the supervision of Judge Gandhi. (*Id.* ¶ 41.)

D. Summary of the Risks, Expenses, Complexity, and Duration of Further Litigation

The risks, expense, and complexity of litigation are significant. Although Plaintiffs are confident of success if this case proceeded to certification and trial, this would entail substantial time, expense, and risk. (CC Decl. ¶ 42.) All class actions involve a high level of risk, expense, and complexity, but the emerging and evolving area of data breach litigation is especially risky and complex. (*Hashemi v. Bosley, Inc.* (C.D. Cal., Feb. 22, 2022), CV 21-946 PSG (RAOx)) 2022 WL 2155117, at *7 ["[D]ata breach class actions are a relatively new type of litigation

and that damages methodologies in data breach cases are largely untested and have yet to be presented to a jury."]; *Cheryl Gaston v. FabFitFun, Inc.* (C.D. Cal., Dec. 9, 2021), 2:20-CV-09534-RGK-E) 2021 WL 6496734, at *3 ["Historically, data breach cases have experienced minimal success in moving for class certification."]; *Gordon v. Chipotle Mexican Grill, Inc*. (D. Colo., Dec. 16, 2019), No. 17-CV-01415-CMA-SKC) 2019 WL 6972701, at *1 ["Data breach cases such as the instant case are particularly risky, expensive, and complex."]; *In re Sonic Corp. Customer Data Security Breach Litigation* (N.D. Ohio, Aug. 12, 2019), 1:17-MD-2807) 2019 WL 3773737, at *7 ["Data breach litigation is complex and risky."].)

Further, "[b]eyond the novel state of the law in regards to identity theft, there are inherent issues of causation" that make litigation and class certification issues uncertain. (*In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.* (W.D. Ky. Aug. 23, 2010), 3:08-MD-01998) 2010 WL 3341200, at *4; *Koenig v. Lime Crime, Inc.* (C.D. Cal. Apr. 2, 2018), CV 16-503 PSG (JEMx)), 2018 WL 11358228, at *3) [approving data breach settlement and finding in part that "[b]ecause of the difficulty of proving damages and causation, Plaintiffs faced a substantial risk of losing at summary judgment or at trial."]; *In re The Home Depot, Inc., Customer Data Sec. Breach Litig.* (N.D. Ga. Aug. 23, 2016), 1:14-MD-02583-TWT) 2016 WL 6902351, at *5 ["[E]stablishing causation . . . has been a barrier to consumer plaintiffs' success" in data breach litigation.]".)

Were this case not to resolve, Keenan's counsel, a preeminent attorney at one of the largest law firms in the country, would vehemently defend this case at the pleadings stage, summary judgment, and class certification. (CC Decl. ¶ 43.) Plaintiffs' ultimate success would come at a considerable expense from expert reports and litigation of numerous factual and legal issues regarding liability, damages, and injunctive relief. (*Id.* ¶ 44.) If Keenan were to succeed in dismissing the case, Plaintiffs and Class Members would receive nothing. On the other hand, even if successful in overcoming Keenan's attempts to dismiss this case, Plaintiffs would still need to succeed at trial and in a likely appeal, meaning any relief to Class Members could be delayed for several years. Given the substantial risk, high costs, and delay involved in continuing litigation, providing meaningful relief to class members now via the Settlement is a win for the Class.

E. Summary of Risks to Achieve and Maintain Class Status

There is substantial risk to Plaintiffs of obtaining and maintaining class certification outside the settlement context. (*Adkins v. Facebook, Inc.* (N.D. Cal. 2019) 424 F.Supp.3d 686 [denying motion to certify data breach damages class under Rule 23(b)(3)]; *In re Anthem, Inc. Data Breach Litig.* (N.D. Cal. 2018) 327 F.R.D. 299, 318 ["While there is no obvious reason to treat certification in a data-breach case differently than certification in other types of cases, the dearth of precedent makes continued litigation more risky."].) Although Courts have certified data breach classes after contested briefing (*e.g. St. Joseph Health System Medical Information Cases*, JCCP No. 4716 (Cal. Super. Ct. Orange Cnty.); *Santana, et al. v. Rady Children's Hospital – San Diego*, No. 37-2014-0002241 (Cal. Super. Ct. San Diego Cnty.)), Keenan likely would have also pointed out that very few cases have been certified in data breach cases under the statutory claims. (*See, e.g.*, *Vigil v. Muir Med. Grp. IPA, Inc.* (2022) 84 Cal.App.5th 197, 218-223 [affirming denial of class certification of CMIA claim].)

Even if the class were certified, the risk of decertification is substantial given that data breach litigation is constantly "evolving" and thus "there is no guarantee of the ultimate result." (*Fox v. Iowa Health System* (W.D. Wis., Mar. 4, 2021), No. 3:18-CV-00327-JDP) 2021 WL 826741, at *5; *see also Gordon, supra*, 2019 WL 6972701, at *1 [noting data breach cases are "particularly risky, expensive, and complex" and "present significant challenges to plaintiffs at the class certification stage."].)

F. Consideration Received in Exchange for Released Claims

The consideration each Class Member stands to receive in exchange for the release is appropriate given the strength and weaknesses of their claims and the risks of continued litigation. Under the Settlement, Class Members who submit a claim are eligible to receive three years of CMIS, valued at $324 per 12 months or $972 for three years for each Claimant, as well as a cash payment expected to be between $226 and $27 for California residents and $113 to $13 for non-California residents, if the claims rate is between 2% and 10%. (SA ¶¶ 4.2.1, 4.3; CC Decl. ¶ 45; Declaration of Robert Siciliano ("Siciliano Decl.") ¶ 7.) Moreover, in the alternative to the *pro rata* cash payment, Class Members who may have actual losses or spent time traceable to the Data Security Incident may instead submit a Documented Loss claim with Reasonable Documentation for a cash payment of up to $10,000. (SA ¶ 4.2.2.) To the

extent an individual incurred more than $10,000 in losses, or otherwise chooses to pursue an individual action, they have the option to opt out of the Settlement and pursue an individual claim. (*Id.* ¶ 7.1)

The monetary and non-monetary Settlement Benefits are substantial and adequately address the type of injuries and repercussions from a data breach that are at the heart of the claims in this Action. (CC Decl. ¶ 47.) Further, the monetary benefits are commensurate with data breach settlement precedents nationwide. (*Id.* ¶ 48.) Class Counsel have handled many of the largest data breach cases in this country, and the combined experience of all Class Counsel in privacy litigation is considerable (*Id*. ¶ 61(a), Ex. A (Ahdoot Wolfson, P.C.); ¶ 62(d), Ex. B (Clarkson Law Firm, P.C.); ¶ 63(b), Ex. C (Clayeo C. Arnold, A.P.C.); ¶ 64(b), Ex. D (Shub & Johns LLC).) Counsel drew on this collective experience to develop the components of the available relief to Class Members. The Settlement Benefits are significant and fair, reasonable, and adequate to release Settlement Class Members' claims related to the Data Security Incident.

III. CLASS CERTIFICATION

The Settlement Class is comprised of "all residents of the United States who were notified by Keenan that their PII was or may have been affected in the Data Security Incident." (SA ¶ 1.47.) Courts recognize the propriety of certifying a settlement class to resolve consumer protection lawsuits. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 445.) Courts also use a "lesser standard of scrutiny" in certifying a settlement class than a litigation class. (*Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1807, n.9.) In assessing settlement class certification requirements, courts may properly consider there will be no trial, and therefore potential trial management problems, if any, are obviated for the settlement class. (*Washington Mut. Bank v. Super. Ct.* (2001) 24 Cal.4th 906, 923.) Moreover, Civil Code § 1781 and Rule 23 of the FRCP may be used as procedural guidelines to ensure fairness in class action suits. (*Richmond v. Dart Industries* (1981) 29 Cal.3d 462, 470, n.7.)[4]

[4] Certification of a nationwide class is appropriate for settlement purposes. (*Dunk,* 48 Cal. App. 4th at 1807 [finding that "a national class was appropriate for settlement purposes."]; *In re Tenet Healthcare Cases II*, (No. BC287130, Cal. Super. Ct. Aug. 8, 2005) 2005 WL 1949562, at *1 ["…this Court of general jurisdiction in California does have jurisdiction to certify a

A. The Class is Numerous

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. (Code Civ. Proc., § 382; Civ. Code, § 1781(b)(1).) There are 1,780,595 Class Members. (CC Decl. ¶ 29(d).) The numerosity requirement is satisfied. (*Delarosa v. Boiron, Inc*. (C.D. Cal. 2011) 275 F.R.D. 582, 587 [classes of forty or more are sufficiently numerous].)

B. The Class is Ascertainable

"Class members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records.'" (*Noel v. Thrifty Payless Inc*. (2019) 7 Cal.5th 955, 966.) Here, Keenan confirmed that the Class is identifiable from its own records and upon preliminary approval, the Settlement Class List identifying each Class Member and their contact information will be provided to the Settlement Administrator. (SA ¶¶ 1.48; 6.2; 13.2.)

C. There is a Community of Interest Between Plaintiffs' Claims and the Claims of the Settlement Class

The test for predominance does not require that each issue in the case be identical for all class members. (*Sav-On Drug Stores, Inc. v. Super. Ct.* (2004) 34 Cal.4th 319, 338.) Rather, the "ultimate question" is whether "the issues which may be jointly tried" or "are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." (*Collins v. Rocha* (1972) 7 Cal.3d 232, 238.) A class should be certified if the defendant engaged in a common course of conduct underlying the claims. (*Sav-On, supra*, 34 Cal.4th at 334.)

Several questions of law and fact here are common to all Class Members, including

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nationwide class action."].) This is particularly true where, as here, the defendant is "headquartered in California, does substantial business in California, and the policies and conduct giving rise to the allegations of the complaints emanated from California." (*Id.*; *Wershba v. Apple Computer, Inc*. (2001) 91 Cal. App. 4th 224, 244 [certification of a nationwide settlement class is appropriate "[s]o long as the requisite significant contacts with California are shown to exist…"]; CC Decl. ¶ 29(i).) And because the case is settling and Keenan does not oppose the certification of a nationwide class, "protracted determinations of other states' laws [are] unnecessary." (*Dunk,* 48 Cal. App. 4th at 1797; *Rockefeller Tech. Invs. (Asia) VII v. Changzhou SinoType Tech. Co.* (2020) 9 Cal. 5th 125, 140, 460 P.3d 764, 772 [recognizing that a defendant can consent to personal jurisdiction for settlement purposes].) Relevant decision-making concerning Keenan's operations, including its cybersecurity, emanated from California. (CC Decl. ¶ 29(i).)

Plaintiffs, such as whether Keenan had a duty to implement and maintain reasonable security procedures and practices appropriate to the nature of the PII and PHI it collected from the Class and whether it breached that duty. (*In re Anthem, supra*, 327 F.R.D. at 316 [holding "the predominant issue in this case is whether Anthem properly secured the personal information taken . . ."]; *In re Yahoo! Inc. Client Data Sec. Breach Litig.* (N.D. Cal. July 22, 2020, No. 16-MD-02752-LHK) 2020 WL 4212811, at *7 ["Indeed, the focus on a defendant's security measures in a data breach class action is the precise type of predominant question that makes class-wide adjudication worthwhile."].) Each of these critical issues turn on Keenan's conduct, as opposed to that of any Plaintiff or individual class member.

In addition, class representatives' claims are typical if they are significantly similar to the claims of other class members. (*Daniels v. Centennial Grp., Inc.* (1993) 16 Cal.App.4th 467, 473.) A representative plaintiff's claim is typical if he was subjected to the same alleged wrong as other class members. (*Fireside Bank v. Super. Ct.* (2007) 40 Cal.4th 1069, 1090.) Here, Plaintiffs' and all other Class Members' claims arise from Keenan's alleged failure to implement and maintain reasonable security measures and the ensuing Data Security Incident. (SAC ¶¶ 11, 96.) Thus, Plaintiffs' claims are typical of the Class. Accordingly, a community of interest exists between Plaintiffs, who are the proposed Class Representatives, and the other Class Members.

D. Plaintiffs and Class Counsel Adequately Represent the Settlement Class

The requirement of adequate representation is met when the class representatives are represented by qualified counsel and their interests are not antagonistic to the class. (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 475.) Proposed Class Counsel are lawyers deeply experienced in prosecuting class action litigation, including consumer class actions, privacy and data breach cases, and thus are "qualified, experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 874; CC Decl. ¶¶ 61-64.)

Plaintiffs' interests also are aligned with the interests of the other Class Members. Plaintiffs and Class Members were injured in the same manner based upon the same inadequate security measures that lead to the Data Security Incident. "[O]nly a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." (*Richmond, supra*, 29 Cal.3d at 470.) Plaintiffs understand the obligations of being adequate

representatives. (Declarations of Plaintiffs Andrea Hans, Heather Heath, Brian Heinz, Robert Ruma, and Matthew Rutledge ("Declarations of Plaintiffs") ¶ 5.) Demonstrating the adequacy of their representation, Plaintiffs have participated in this litigation from its inception through settlement discussions; maintained regular contact with their attorneys during the course of this matter; and reviewed and approved documents including the Complaint and the Settlement Agreement. (*Id.* ¶¶ 2-4; CC Decl. ¶¶ 50-53.)

IV. CLAIM REQUIREMENT

Pursuant to the Settlement, all Class Members are eligible to submit a Claim Form for CMIS and a cash payment (i.e. the *pro rata* cash payment or for Documented Loss). A Claim Form and claims process are necessary for several reasons. First, a Claim Form is necessary to obtain the email address that each Participating Settlement Class Member intends to use for the CMIS, which is required to enroll in that service. Second, a Claim Form is necessary for any Class Member seeking a payment for Documented Loss so that the Settlement Administrator can determine the validity of the claims. Third, by submitting a Claim Form, Class Members will be able to confirm that they want to participate in the Settlement and receive additional mailings from the Settlement Administrator.

A Claim Form will determine which Class Members wish to participate in the Settlement and receive monetary payment. Although the Parties are attempting to make best efforts to serve the Notice in a manner that minimize the chances of the Notice being obtained by an unintended recipient, the claims process will help eliminate future mailings to those who do not wish to receive further correspondence concerning this Settlement.

Additionally, Class Members can elect to receive their monetary payment via several electronic payment methods. (SA ¶ 4.4.) Providing electronic payment options will keep costs of postage and mailing down and reduce the number of uncashed checks, which will ensure that the ultimate *pro rata* cash payment to each Participating Settlement Class Member is successful and the greatest possible amount under the Settlement.

Given the Settlement's substantial benefits, combined with the broad Notice Plan and simple Claim Form, Plaintiffs anticipate the claims rate will be between 1% to 4%, which is consistent, if not greater, than other similar data breach settlements. (CC Decl. ¶ 54.) Plaintiffs will advise the Court of the claims rate in advance of the Final Fairness Hearing.

Class Members are encouraged to submit a claim by making the claims process as easy, intelligible, and straightforward as possible. (Declaration of Julie Green ("Green Decl.") ¶ 23.) For the majority of Class Members who receive Notice via email, the email will directly link to the Settlement Website (www. keenanbreachsettlement.com), where Class Members can fill out and submit their Claim Forms electronically. (SA ¶ 5.1.1, and Ex. A.) Class Members who receive the postcard Summary Notice via U.S. mail (the majority of the class (CC Decl. ¶ 56)), will have the option to simply tear away and return a pre-paid postage Claim Form that will allow the class member to elect CMIS and/or the *pro rata* cash payment by simply checking a box, signing the form, and submitting with the prepaid return addressed card. (SA, Ex. G.) The physical tearaway Claim Form also provides digital payment options. (*Id*.) The Settlement Website address will also be found on the postcard Summary Notice sent by U.S. mail in the event the Class Member wishes to receive other available Settlement Benefits. (*Id.*) Thus, the claims process is simple and accessible, allowing Class Members to submit a claim without spending significant time or any expense.

V. TERMS OF THE SETTLEMENT

A. The Settlement Class Definition

The proposed Settlement Class consists of all residents of the United States who were notified by Keenan that their PII was or may have been affected in the Data Security Incident (1,780,595 persons). (SA ¶ 1.47; SAC ¶ 93; CC Decl. ¶ 8(a).)[5]

B. Release of Claims

The Settlement releases claims that could have been asserted in the Action and are related to, arise out of, or are connected to the Data Security Incident. (SA ¶¶ 1.40.) If approved, the Released Claims are limited to only those that arose between February 3, 2024, and the date in which the Court enters the Preliminary Approval Order. (*Id.*) Class Members who do not opt out of the Settlement will release all claims related to alleged claims or events in the Action or connected to the Data Security Incident, against any of the Released Parties. (*Id.*) The Release will not be effective as to Class Members until 30 Days after the Effective Date.

[5] Excluded from the Settlement Class are (1) the Judges presiding over the Action, Class Counsel, and members of their families; (2) Keenan and related parties; (3) persons who opt out of the Settlement and their successors or assigns. (SA ¶ 1.47.)

(*Id*. ¶ 3.5.1.)

C. The Monetary Terms of the Settlement

The Settlement provides for the creation of a non-reversionary $14 million common fund to provide meaningful relief, including cash payments to Class Members. (SA ¶¶ 3.6.1, 3.7, 4.2.1.) The Fund will be paid via an initial $500,000 deposit and periodic payments (if Settlement Administrator pre-Final Approval invoices exceed the Deposit), with the balance of the Fund to be paid within 30 days after entry of the Final Approval Order. (*Id*. ¶ 3.6.1; *see generally*, Declaration of John A. Vogt.)

1. The Credit Monitoring and Identity Theft Insurance Services

Each Class Member is eligible to claim three years of CMIS. (SA ¶ 4.3.) The CMIS provides various benefits, including: unlimited updates on their individual's credit report and score, email notifications of critical changes, instant email alerts sent as soon as it is determined that someone has applied for credit in a user's name; the ability to lock and unlock TransUnion and Equifax Credit Reports, personalized debt analysis and credit score trending, Score Simulator including how specific credit choices may impact scores, toll-free access to identity theft specialists, and up to $1,000,000 in identity theft insurance. (CC Decl. ¶ 46; Siciliano Decl. ¶ 5.) The CMIS is valued at $27 per month, $972 for three years, for each Participating Settlement Class Member receiving that Settlement Benefit. (*Id.* ¶¶ 6-7.) Thus, Plaintiffs conservatively estimate that the value of this benefit to the Settlement Class is at least $17.3 million for every one percent (1%) of Class Members (17,806 persons) receiving this benefit, before excluding the cost of that benefit. (*Id.* ¶ 8.)

2. Cash Payments to Class Members

All Participating Class Members are eligible to receive (i) a cash payment of up to $10,000 for reimbursement of a Class Member's Documented Loss that is traceable to the Data Security Incident, or (ii) the *pro rata* cash payment estimated to be $226 and $27 for California residents and $113 and $13 for non-California residents, at 2% and 10% claims rate respectively. (SA ¶¶ 4.2.2; CC Decl. ¶ 45.) Claims for Documented Loss must be supported by Reasonable Documentation and such losses must be traceable to the Data Security Incident. (SA ¶ 1.17.)

Each Participating Settlement Class Member (who does not make a claim for

Documented Loss) will receive a *pro rata* cash payment from the Settlement Fund. (*Id.* ¶¶ 4.2.1, 4.7.) The amount of such payment will depend on the number of Approved Claims (the claims rate for the Settlement), and be equal to each Participating Settlement Class Member's *pro rata* share of remaining Settlement Fund. (*Id.* ¶ 4.2.1) The *pro rata* share is based on the total Settlement Fund after first, the Administrative Expenses, Service Payments, Fee and Expense Award, and Taxes have been paid out of the Settlement Fund, and second after all other Settlement Benefits have been paid out of the Settlement Fund, including the costs of CMIS and the total payments for Approved Claims for Documented Loss. (*Id.* ¶¶ 3.8; 4.7; 11.2.) Residents of California comprise 79% of the Class and will receive twice the amount of non-residents (*id.* ¶ 4.2.1), because only they have claims for statutory damages under the CCPA and CMIA. (CC Decl. ¶ 57.)

The following chart shows the estimated *pro rata* cash payment (after payment of Administrative Expenses, Service Payments, Fee and Expense Award, and other Settlement Benefits, but before a deduction for Documented Loss claims) (CC Decl. ¶ 57):

Claims Rate	Cash Payment California Residents	Cash Payment Non-California Residents
2%	**$226**	**$113**
3%	**$143**	**$71**
4%	**$102**	**$51**
5%	**$77**	**$38**
6%	**$60**	**$30**
8%	**$39**	**$19**
10%	**$27**	**$13**

Claimants will have the option of receiving Settlement Payments via electronic means made available by the Settlement Administrator. (SA ¶ 4.4; Green Decl. ¶ 23.) Those who do not exercise this option will receive their Settlement Payment via physical check sent by U.S. Mail. (SA ¶ 4.4.) Settlement Payments will be reduced on a *pro rata* basis, if necessary. (*Id.* ¶ 4.7.3.) Class Members receiving a Settlement Payment via physical check will have 60 Days following distribution to deposit or cash that check. (*Id.* ¶ 4.8.) Likewise, those with Approved Claims will have 120 Days following distribution of the enrollment instructions to sign up for the services. (CC Decl. ¶ 46.)

3. Prospective Relief

In addition to monetary relief, Keenan has agreed to implement and maintain certain cyber security, improve data and privacy protocols, and deploy additional security measures for a period of two years from the entry of the Final Approval Order. (SA ¶ 4.1; CC Decl. ¶ 29(h).) These business practice changes, valued at $2.5 million (CC Decl. ¶ 19), will provide meaningful benefits to all Class Members, regardless of whether they submit a claim. Keenan has provided a description of such prospective relief to Class Counsel, however, for security reasons such changes are not detailed in this public filing. (*Id.*)

4. Attorneys' Fees, Litigation Costs and Expenses, and Service Payments

Pursuant to the Settlement Agreement Class Counsel may seek fees to be paid from the Settlement Fund. (SA ¶ 11.1.) Though the agreement does not include a free sailing clause, Class Counsel have committed to seek an award of attorneys' fees and reimbursement of litigation expenses up to $4,975,000. (SA, Ex. E, p. 6.) This amount is disclosed in the Summary Notice and Long Form Notice (*id.* Exs. G & E) and represents approximately 14.94% of the total value of the Settlement (includes value of prospective relief and of CMIS at 1% claims rate, *see infra*, Sec. V.C.5.) Any award of attorneys' fees and reimbursement of expenses will be paid from the Settlement Fund. (SA ¶ 11.1, Ex. E, p. 6.) Class Counsels' application seeking an award of fees and expenses will be filed at least 21 Days before the objection deadline, so that Class Members will have the opportunity to review such motions and object thereto. (SA ¶¶ 11.1, 8.1.) Class Counsel will detail their work, hours, lodestar, and expenses in their motion for the Fee and Expense Award and will provide the Court with information necessary to determine the adequacy of the requested awards based on an application of the percentage method with a lodestar cross-check. (CC Decl. ¶ 58.) Class Counsel have entered into a fee splitting agreement which stipulates that any fees awarded by the Court shall be split evenly among the four Class Counsel law firms. (*Id.* ¶ 59.) Pursuant to Rule 1.5.1 of the California Rules of Professional Conduct, all clients of the four firms (the proposed Class Representatives) provided their written consent to the fee splitting agreement. (*Id.*) Class Counsel shall make such documentation available to the Court upon request. (*Id.*)

Class Counsel will also seek Service Payments to be awarded to the four proposed Class

Representatives, not to exceed $2,000 each, to be paid out of the Settlement Fund. (SA ¶ 10.1.) These awards are comparable to those awarded in other similar settlements. (*In re Yahoo!, supra*, 2020 WL 4212811, at *43 [approving awards ranging from $2,500 to $7,500 in data breach case].) The proposed Class Representatives each understand their responsibility in serving as a Class Representative, have participated in this litigation from its inception, spent time providing valuable information to Class Counsel in connection with investigating and developing their claims in this action, reviewed and approved documents including the Complaint and the Settlement Agreement, and committed themselves to vigorously pursuing litigation on behalf of the putative class, including committing and exposing themselves to the possibility of sitting for depositions and testifying publicly at trial. (Declarations of Plaintiffs, ¶¶ 2-7.) The Parties negotiated and agreed to these maximum Service Payment amounts, which are subject to Court approval, after they had agreed upon all substantive terms of the Settlement. (SA ¶ 10.4; CC Decl. ¶ 40.) The Settlement is not contingent upon the Court approving the application for attorneys' fees, reimbursement of expenses, or the Class Representatives' Service Payments. (SA ¶ 10.3, 11.6.)

5. Total Value of the Settlement

Given the amount of the Settlement Fund, the provision of three years of CMIS, and the improvements to Keenan's data security practices, Plaintiffs' and Proposed Class Counsel's conservative estimation of the total value of the Settlement Benefits offered to the Proposed Class is well in excess of the $14 million cash Settlement Fund. (SA ¶ 1.51.) The actual value of the Settlement Benefits provided to the Class is $14,000,000.00 plus (i) $17.3 million for every one percent (1%) of Class Members receiving CMIS (before excluding the cost of CMIS) (Sciliano Decl. ¶ 7.), and (ii) the value of the amounts expended to provide the prospective relief (i.e. $2,500,000). (CC Decl. ¶ 19.) Thus, the value of the Settlement, assuming a 1% claims rate, is $33.8 million. Additional information concerning the value of the Settlement, including the actual rate of claims, will be provided prior to the Final Fairness Hearing.

VI. NOTICE ADMINISTRATION

The Notice Plan will be administered by CPT, an experienced settlement administration company that specializes in class action notice plans. (Green Decl. ¶ 5.) The cost of the Notice Plan and the Settlement's administration will be paid from the $14,000,000 Settlement Fund.

CPT estimates that the Notice and administration of the Settlement will be $1,078,000 assuming a 3% claims rate and $1,040,000 at 1.5% claims rate. (Green Decl. ¶ 25.) CPT has agreed to cap the cost for Notice and administration at these rates, based on a class size of up to 1,780,000 and mailing to 1,842,300 (including the initial mailing and any subsequent remails), with a maximum of 5% claims submitted and a maximum of 5,340 checks disbursed. (*Id.* ¶ 25; CC Decl. ¶ 38.) Postage will be charged according to the current postal rates at the time of mailing (Green Decl. ¶ 25.) CPT also has adequate insurance in the event of an incident or defalcation of funds. (*Id.* ¶ 6.) CPT will ensure that Class Member information will remain confidential and secure. (*Id*. ¶ 7; SA ¶ 6.3.)

Within 5 Days after entry of the Preliminary Approval Order, Keenan will provide CPT, the name, last known mailing address, and any available email address for Class Members. (SA ¶¶ 1.48, 6.2.) CPT will update this data using the National Change of Address Registry. (*Id.* ¶ 6.4.6.) Because this data will be provided solely for purposes of administering the Settlement, CPT will maintain this information as confidential and secure and use it solely for this purpose. (*Id.* ¶ 6.3.)

No later than 30 Days after entry of the Preliminary Approval Order, CPT will commence the dissemination of Notice. (SA ¶ 1.29.) Summary Notice will be provided, directly, in the first instance, via email, however, the Parties anticipate that the Class will primarily be provided the Summary Notice via U.S. Mail. (SA ¶¶ 6.4.1, 6.4.2; CC Decl. ¶ 56 [Plaintiffs have been informed the Settlement Class List will include all available Class Member email addresses but will be predominantly comprised of Class Member mailing addresses].) The Summary Notice will be sent in postcard form via U.S. mail to all Class Members for whom Keenan does not provide a valid email. (SA ¶ 6.4.2.) In the event a Summary Notice is returned by the U.S.P.S. as undelivered or undeliverable, CPT will re-mail the Summary Notice using any forwarding address provided by the U.S.P.S. (*Id.* ¶ 6.4.4.) The direct Notice campaign, including all re-mailings (if necessary), will be completed within 30 Days after the Notice Date. (*Id.* ¶ 6.47.) Class Members will have 90 Days after the Notice Date to submit a Claim and 75 Days after the Notice Date to opt-out or object. (*Id*. ¶¶ 1.9, 1.32, 1.33.) Thus, all Class Members (whether their Notice was remailed or not) will have at least 45 Days to Opt-Out or Object, and at least 60 Days to submit a Claim, though likely longer.

CPT will also conduct an internet notice campaign until the expiration of the Claim Deadline. (SA ¶ 6.5; Green Decl. ¶ 16.)

The Summary Notice is attached as Exhibit G to the Settlement Agreement. It includes the URL for the Settlement Website (www.keenanbreachsettlement.com), which will post the Claim Form for online submission. (SA ¶¶ 1.53, 5.1.1, Ex. A.) Notice of any changes to the Final Fairness Hearing and notice of entry of Final Judgment will be provided through the Settlement Website. (Green Decl. ¶ 8; SA ¶ 6.7.) The Settlement Website will also contain the Settlement Agreement, the Long Form Notice, the Summary Notice, the Claim Form, the Court's Preliminary Approval Order, and the operative complaint in the Action as well as such other documents as Class Counsel and Keenan agree to post, or that the Court orders posted. (SA ¶¶ 1.53, 6.7.)

The proposed Notice complies with the California Rules of Court, rule 3.766(d). The Notice is carefully written in plain language, and will be available in both English and Spanish, and satisfies due process. (SA ¶ 6.7; Green Decl. ¶ 26.) It includes: (1) basic information about the Action; (2) a description of the Settlement Benefits; (3) an explanation of how Class Members can obtain Settlement Benefits; (4) an explanation of how Class Members can exercise their right to opt out or object to the Settlement; (5) an explanation that any claims against Keenan related to the Action will be released if the Class Member does not opt out; (6) the names of Class Counsel and information regarding attorneys' fees, expenses, and the Service Payments; (7) the Final Fairness Hearing date; (8) an explanation that each Class Member has the right to appear at the Final Fairness Hearing; and (9) the Settlement Website address and a toll-free number where additional information can be obtained. (SA ¶¶ 1.53, 6.7, Exs. G & E.) The Notice also lists all possible monetary deductions from the Settlement Fund (i.e., Administrative Expenses, Taxes, costs of CMIS, Fee and Expense Award, Service Payments, and Settlement Payments). (*Id.*)

Within 30 Days after the Effective Date or after all Claim Forms have been processed, whichever date is later, CPT will cause funds to be distributed to Class Members with Approved Claims. (*Id.* ¶ 4.7.) No later than 35 Days after the Effective Date, CPT will provide the provider of the CMIS a list of Class Members with Approved Claims electing to receive the CMIS. (*Id*. ¶ 5.3.) These Class Members will be sent the enrollment instructions for the

service within 30 Days of the Effective Date. (*Id*.)

VII. RESPONSES TO NOTICE

Class Members may exclude themselves from the Settlement. To be valid, the Request for Exclusion must be postmarked or received by CPT within 75 Days following the Notice Date. (SA ¶¶ 7.1, 1.33.) Any Request for Exclusion must be in writing and identify the case name *Heath, et al. v. Keenan & Assoc.*, Case No. 24STCV03018, and include (i) the individual's full name, telephone number, and current mailing address; (ii) a statement that they want to be excluded from the Action; and (iii) the individual's signature. (*Id.* ¶ 7.1.)

Class Members may object to the Settlement. Except if otherwise ordered, an objector must mail the objection, within 75 Days following the Notice Date, to CPT with the caption *Heath, et al. v. Keenan & Assoc.*, Case No. 24STCV03018, and include: (i) the Settlement Class Member's full name, current mailing address, and telephone number; (ii) a statement indicating whether the objection applies only to the objector, a subset of the Settlement Class, or the entire Settlement Class, (iii) the specific grounds for the objection; and (iv) all documents or writings that the Settlement Class Member desires the Court to consider. (*Id.* ¶ 8.1.) Of course, the Court may exercise its discretion with respect to hearing from any Class Member who attends the Final Fairness Hearing and asks to speak, regardless of whether they have lodged an objection. (*Id.*)

Class Members who receive a Summary Notice by U.S. mail may simply mail the pre-paid postage Claim Form attached to the Summary Notice or use the unique claim number and confirmation code contained in the Summary Notice to log onto the Settlement Website and either download a Claim Form or submit the Claim Form online. (*Id.* ¶ 5.1.1.) Upon request, CPT will also mail the Claim Form that can be completed hard copy and returned to the Settlement Administrator. (*Id.* ¶ 1.7.)

CPT will have the authority to determine whether a Claim Form is valid, timely, and complete, and to what extent a Claim Form electing to receive a Documented Loss payment reflects valid Documented Loss and Reasonable Documentation. (*Id.* ¶ 4.6.) If CPT determines a claim is deficient, within 10 Days of making such a determination, they shall notify the Claimant of the deficiencies and that Claimant shall have 30 Days to cure and re-submit the claim. (*Id.*) CPT shall exercise reasonable discretion to determine whether the Claimant has

cured the deficient claim. (*Id.*) If the deficiency is not cured, the Settlement Administrator shall have no obligation to extend Settlement benefits to that Claimant. (*Id*.)

VIII. DISTRIBUTION OF THE RESIDUAL

No portion of the Settlement Fund will revert or be repaid to Keenan after the Effective Date. (SA ¶ 3.7.) To the extent any monies remain in the Net Settlement Fund after all distributions of Settlement Payments are made to those with Approved Claims, a subsequent Settlement Payment will be evenly made, *pro rata*, to all Class Members who negotiated their initial Settlement Payment (provided that it is economically feasible to do so). (*Id.* ¶ 4.9.) Such subsequent distributions shall continue until no longer economically feasible to do so. (*Id.*) If it is not (or no longer) economically feasible to distribute such remaining amounts, the remaining Net Settlement Fund will be used to extend the CMIS to those Class Members receiving that benefit for as long as possible. (*Id.* ¶ 4.9.)

Subject to Court approval and to Code of Civil Procedure §384, any amount remaining in the Net Settlement Fund after such further distributions are accomplished, if any, will then be distributed to Alliance for Children's Rights, a 26 U.S.C. § 501(c)(3) non-profit organization whose work relates to legal services advocacy for children in Los Angeles County's foster care system, including protection of their privacy interests, in accordance with Code of Civ. Proc. §384(b). (*Id.* ¶¶ 1.28, 4.9, 4.11; Declaration of Jennifer Braun ¶¶ 3-5.) Class Counsel have no personal interest or involvement in the governance or work of Alliance for Children's Rights. (CC Decl. ¶ 58.)

IX. THE SETTLEMENT MERITS PRELIMINARY APPROVAL

The Court has "broad discretion" in approving a class settlement. (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389.) The required procedures are: (1) preliminary approval of the settlement; (2) notice to class members; and (3) final approval of the settlement after a hearing. (CRC 3.769.) At this stage, the Court need only "make a preliminary determination of the fairness, reasonableness and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement and date of the final fairness hearing." (*Manual for Complex Litigation* (Fourth) (2004) § 21.633.) The Court need not reach ultimate conclusions on the issues of fact and law and need not engage in a trial on the merits. (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85

Cal.App.4th 1135, 1145; *Dunk, supra*, 48 Cal.App.4th at 1802, n.8.) The court's ultimate duty is to determine if the settlement is fair, adequate, and reasonable. (*Id.* at 1801.) "In reviewing the fairness of a class action settlement, due regard should be given to what is otherwise private consensual agreement between the parties." (*Cellphone Termination*, supra, 186 Cal.App.4th at 1389.) The Court should consider the strength of plaintiff's case, the risk, expense, complexity and likely duration of continued litigation, the risk of maintaining class action status through trial, the benefits of the settlement, the extent of information exchanged, and the experience and views of counsel. (*Dunk, supra*, 43 Cal.App.4th at 1801.) Fairness is presumed when settlement is reached through arm's-length bargaining by informed and experienced counsel. (*Id.* at 1802.)

A. The Settlement is Fair, Reasonable, and Adequate

1. The Settlement is the Production of Arm's Length Negotiations

The Settlement was reached after many months of hard-fought, arm's-length negotiations, including a full day mediation with an experienced mediator, conducted by experienced attorneys. Proposed Class Counsel have significant experience prosecuting privacy and data breach consumer class actions and are well-informed of the legal claims at issue and the risks of this case. (CC Decl. ¶¶ 61-64.) After the Parties reached an agreement in principle, they spent the next several months negotiating the language of the Settlement and the related comprehensive exhibits. (*Id*. ¶ 36.) Class Counsel obtained ample confirmatory information through settlement negotiations that provided sufficient information to gauge the strength and weaknesses of Plaintiffs' claims and the probability of success on the merits. (*Id.* ¶¶ 27-29.) The information provided by Keenan was appropriately targeted at information relevant to the Settlement. (*Id*. ¶ 29; *see also In re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459 ["[F]ormal discovery is not a necessary ticket to the bargaining table where the parties have sufficient information to make an informed decision about settlement."]; *Manual for Complex Litigation* (Fourth) § 13.12 [recognizing that the benefits of settlement are diminished if it is postponed until discovery is completed and approving of targeting early discovery at information needed for settlement negotiations].) Informal discovery is a recognized method of minimizing the cost, delay, and burden associated with formal discovery. (*Manual for Complex Litigation* (Fourth) § 11.423.)

Consistent with best practices, the Settlement was reached after Class Counsel was amply informed of the size of the Settlement Class, the nature of the data at issue in the Data Security Incident, and the cause of the Data Security Incident. (CC Decl. ¶¶ 27-29.) Because the Settlement was negotiated at arm's length by experienced and knowledgeable counsel with the assistance of a respected mediator, it should carry a presumption of fairness. (*Dunk, supra*, 48 Cal.App.4th at 1802–03.)

2. The Settlement Benefits are Excellent When Compared to the Costs, Risks, and Delay of Continued Litigation

The timely benefits of the Settlement are excellent taking into consideration the costs, risks, and delay inherent in continuing to litigate this matter. The Settlement provides meaningful relief now to Settlement Class Members, including three years of CMIS; a cash payment of up to $10,000 for Documented Loss; or, in the alternative to a Documented Loss payment, a *pro rata* cash payment expected to be between $226 to $27 for California Claimants and $113 to $13 for all other Claimants (at 2% to 10% claims rates, respectively). (SA ¶ 4.7.1; CC Decl. ¶¶ 39, 45, 57.) The Settlement also provides prospective relief that will ensure that adequate processes and procedures are in place to safeguard customers' PII and PHI in the future. (SA ¶ 4.1.)

The proposed Settlement provides equivalent, if not greater, relief to Class Members compared to other approved data breach settlements. The Settlement Fund alone comes to a $18.98-per-individual total value ($7.86 cash value) based on the 1,780,595 Class Members, a superior result as compared to other recent data breach settlements (*In Re: 21st Century Oncology Customer Data Security Breach Litigation* (M.D. Fl. 2021, No. 8:16-md-2737-MSS-AEP) ($3.57); *Adlouni v. UCLA Health Systems Auxiliary, et al.* (Cal. Super. Ct. 2019, No. BC589243) ($0.44); *Cochran, et al. v. The Kroger Co. et al.,* (N.D. Cal., No. 5:21-cv-01887-EJD) ($1.31); *Premera Blue Cross Data Breach Litig.* (D. Or., No. 3:15-md-2633-SI) ($3.61); *Kesner, et al. v. UMass Mem'l Health Care, Inc*., (Mass. Super. Ct., No. 2185-cv-01210) ($5.74); *Harbour, et el. v California Health & Wellness Plan, et al.,* (N.D. Cal., No. 5:21-cv-03322-EJD) ($6.62); *In re Fitzgibbon Hospital Data Security Incident Litig.*, (Mo. Cir. Ct., 23SA-CV00020) ($5.80); *In re Forefront Dermatology Data Breach Litig.*, (E.D. Wis., No. 21-cv-887) ($1.56); *see also* CC Decl. ¶¶ 29(d), 48), even without accounting for the true

Settlement value, which includes the value of the CMIS and the prospective relief.

Proposed Class Counsel also recognize the substantial risks involved in continuing to litigate this matter. Keenan has denied all allegations of wrongdoing and maintained its positions that Plaintiffs cannot state a claim for relief, a litigated class should not be certified, it would not be found liable at trial, and Plaintiffs would not be able to prove class-wide damages resulting from the Data Security Incident. Although Class Counsel disagree with Keenan's assessment, they acknowledge the inherent difficulties of proof and possible defenses in litigation. They also recognize the difficulties in establishing liability on a class-wide basis and in achieving a result better than that offered by the Settlement.

Prosecuting this litigation through trial and subsequent appeal would be lengthy, complex, and impose significant costs on all parties. (*In re Anthem, supra*, 327 F.R.D. at 317-318.) Continued proceedings would likely include substantial motion practice, extensive fact discovery, class certification proceedings, considerable expert discovery and of course, a trial and appeal. Moreover, the timely enhanced security implementations by Keenan under the Settlement will protect the Settlement Class Members' PII and PHI in ways that a later monetary judgment could not. The Settlement is excellent as compared to the risks, costs, and delay of continued litigation.

X. CONCLUSION

For the reasons stated above, Plaintiffs respectfully request an order: (1) granting preliminary approval of the Settlement; (2) approving the Notice Plan, and directing commencement of Notice; (3) appointing CPT as Settlement Administrator; (4) conditionally certifying the Settlement Class for settlement purposes only; (5) appointing as Class Representatives Plaintiffs Heather Heath, Brian Heinz, Robert Ruma, Matthew Rutledge, and Andrea Hans; (6) appointing, as Settlement Class Counsel, Tina Wolfson and Andrew Ferich of Ahdoot & Wolfson, P.C., Ryan J. Clarkson and Yana Hart of Clarkson Law Firm, P.C., M. Andersen Berry of Clayeo C. Arnold, A.P.C.; and Benjamin F. Johns and Samantha Holbrook of Shub & Johns, LLC; (7) approving the form and content of the Claim Form, Long Form Notice, and Summary Notice, attached as Exhibits A, E, and G to the Settlement Agreement, respectively; (8) further staying the Action or otherwise adjourning litigation deadlines pending decision on final approval of the Settlement; (9) staying and/or enjoining, pending

decision on final approval of the Settlement, any actions brought by Class Members concerning a Released Claim; (10) imposing the proposed schedule of events set forth in the Notice of this Motion, and (11) scheduling a Final Fairness Hearing 135 Days following preliminary approval, or as soon thereafter as the Court's schedule permits.

Dated: December 24, 2024

Respectfully submitted,

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