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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

12 ANURAG GUPTA and by and through  
13 him, D.G. and V.G., his minor children,  
14 *individually and on behalf of all others similarly*  
15 *situated,*

16 Plaintiffs,

17 v.

18 AERIES SOFTWARE, INC.,  
19  
20 Defendant.

CASE NO. 8:20-cv-00995

**CLASS ACTION**

**NOTICE OF MOTION AND  
RENEWED MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Date: December 16, 2021

Time: 10:00 a.m.

Crtrm.: 6D

1 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on December 16, 2021 at 10:00 a.m., or as soon  
3 thereafter as the matter may be heard in the Courtroom of the Honorable Fernando M.  
4 Olguin, United States District Court, Central District of California, Western Division,  
5 350 W. 1st Street, 6th Floor, Courtroom 6D, Los Angeles, CA 90012, Plaintiff Melinda  
6 Tomes (“Plaintiff”) will and hereby does move the Court, pursuant to Federal Rule of  
7 Civil Procedure 23(e), for the entry of an Order:

8 1. Preliminarily approving the Revised Settlement Agreement<sup>1</sup> between  
9 Plaintiff and Defendant Aeries Software, Inc.;

10 2. Approving the form, manner, and content of the notice for the proposed  
11 settlement to the Settlement Class;

12 3. Appointing JND Legal Administration as the Settlement Administrator;

13 4. Conditionally certifying the Settlement Class;

14 5. Appointing Plaintiff Tomes as the Class Representative;

15 6. Appointing Hassan A. Zavareei and Daniel L. Warshaw as Class Counsel  
16 on behalf of their firms; and

17 7. Setting a Fairness Hearing date and briefing schedule for final approval of  
18 the Settlement and consideration of Plaintiff’s fee application.

19 The grounds for this motion are that the proposed settlement is within the  
20 necessary range of reasonableness to justify granting preliminary approval pursuant to  
21 Rule 23(e). This motion is based upon this Notice of Motion and Motion for Preliminary  
22 Approval of Class Action Settlement, the Memorandum of Points and Authorities, the  
23 Declarations of Hassan A. Zavareei, Daniel L. Warshaw, Melinda Tomes, Jonathan  
24 Cotton and Gina M. Intrepido-Bowden filed herewith, the pleading and papers on file in  
25

26 <sup>1</sup> Unless indicated otherwise, all capitalized terms shall have the meaning agreed to by the  
27 parties in the Revised Settlement Agreement (“RSA”), which is attached as Exhibit 1 to  
28 the Declaration of Hassan A. Zavareei in Support of Renewed Motion for Preliminary  
Approval of Class Action Settlement.

1 this action, and such oral argument and documentary evidence as may be presented at  
2 the hearing on this motion.

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Dated: November 15, 2021

Respectfully submitted,

/s/ Hassan A. Zavareei

Hassan A. Zavareei (CA Bar No. 181547)

Mark A. Clifford (*pro hac vice*)

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1 **I. INTRODUCTION**

2 Plaintiff Melinda Tomes, on behalf of herself and all other persons similarly  
3 situated, (“Plaintiff” or “Tomes”), with the consent of Defendant Aeries Software, Inc.  
4 (“Aeries” or “Defendant”), respectfully requests entry of an order granting preliminary  
5 approval of the class action settlement (the “Settlement”) set forth in the parties’ Revised  
6 Settlement Agreement, certifying a class, appointing Class Counsel, appointing Tomes as  
7 Class Representative for settlement purposes, providing for issuance of Notice to the  
8 Settlement Class, and scheduling a date for the Final Approval Hearing.

9 Tomes’s claims arise from a data breach that took place in or about January 2020,  
10 which affected personal identifying information (“PII”) of approximately 100,000  
11 individuals with Aeries accounts through the San Dieguito Union High School District  
12 (“SDUHSD”) relating to the Aeries School Information System (“Aeries SIS”) utilized  
13 to manage student data (the “Data Breach”).

14 The proposed Settlement is the result of arm’s-length negotiations with the  
15 assistance of mediator Martin Quinn, Esq. of JAMS, and provides substantial and  
16 meaningful relief to the Settlement Class. If approved, the Settlement will create a  
17 \$1,750,000 Settlement Fund and resolve all claims that Tomes and the Settlement Class  
18 have against Aeries arising from the Data Breach. Settlement Class Members who submit  
19 a valid claim will be entitled to compensation for out-of-pocket losses and lost time. In  
20 addition, Aeries will offer twelve months of credit monitoring and identity theft  
21 protection services to all Settlement Class Members and implement enhanced security  
22 measures. The proposed Settlement is fair and well within the range of preliminary  
23 approval. *See* Declaration of Daniel L. Warshaw (“Warshaw Decl.”) ¶ 13; *see also*  
24 Declaration of Hassan Zavareei (“Zavareei Decl.”) ¶ 20. By settling now, the Settlement  
25 Class can take advantage of remedies that would be unavailable or worth substantially  
26 less by the time of a litigated final judgment. Zavareei Decl. ¶ 22. By providing for credit  
27 monitoring and information security improvements, the Settlement helps preserve the  
28 confidentiality of PII in ways that a later monetary judgment would not. Accordingly,

1 Tomes respectfully requests that the Court preliminarily approve the Settlement.

2 **II. BACKGROUND**

3 **A. Facts**

4 Aeries manages student data in public school district systems in California that  
5 utilize the Aeries SIS. ECF No. 54 ¶ 1. Aeries admits that 166 databases that are hosted  
6 on Aeries’ servers and store data on behalf of the school districts (“Aeries Hosting”)  
7 were subject to unauthorized access beginning on or about November 4, 2019. *Id.* ¶ 4.  
8 Despite knowing of the unauthorized access as early as November 2019, and certainly  
9 no later than January 2020, Aeries did not notify its school district customers of the Data  
10 Breach until April 27, 2020, when it issued a “Notice of Data Breach” to school districts.  
11 *Id.* ¶ 5. The April 27, 2020 “Notice of Data Breach” disclosed only that the following  
12 personal information was compromised: “Parent and Student Login information,  
13 physical residence addresses, emails, and ‘password hashes.’” *Id.* ¶ 6. The Notice of Data  
14 Breach did not disclose that additional PII was stored on behalf of its school district  
15 customers, including, *inter alia*, (1) minor students’ immunization and other health  
16 records, (2) social security numbers, (3) class grades, (4) standardized test information,  
17 (5) previous addresses, and (6) parent’s or guardian’s credit or debit cards and other  
18 financial information. *Id.* ¶ 7. After Aeries sent its school district customers the Notice  
19 of Data Breach, SDUHSD sent notifications to parents and guardians of children  
20 attending SDUHSD schools, including a press release dated May 14, 2020. *Id.* ¶ 9.<sup>2</sup>

21  
22 \_\_\_\_\_  
23 <sup>2</sup> Aeries and SDUHSD are parties to the Agreement for Acquisition of License For  
24 Aeries Software (“License Agreement”), as amended from time to time. Declaration of  
25 J. Cotton (“Cotton Decl.”) ¶ 8. The License Agreement contains a warranty of  
26 functionality, in which Aeries “represents, warrants and agrees that the License Software  
27 shall perform in all material respects according to [Aeries’] specifications concerning the  
28 License Software when used with the appropriate computer equipment.” *Id.* ¶ 9 & Ex. 1.  
In state court litigation brought by a student particularly targeted by John Doe against  
the District and John Doe and his parents, SDUHSD has taken the position that this  
warranty provision, along with the doctrine of comparative indemnity, obligates Aeries  
to indemnify SDHUSD for any damages relating to the Data Breach. *Id.* ¶¶ 10-11.

1 Tomes alleges that Aeries is responsible for the Data Breach because it failed to  
2 implement and maintain sufficient safeguards and failed to comply with industry-  
3 standard data security practices, contrary to the representations made in Aeries' privacy  
4 statements and its explicit and implied agreements with its school district customers. *Id.*  
5 ¶ 12. During the Data Breach, Aeries failed to detect the unauthorized third parties'  
6 access to its servers, notice the massive amounts of data that were compromised, and  
7 failed to take steps to investigate the red flags that should have warned Aeries that its  
8 systems were not secure. *Id.* ¶ 13. Tomes alleges that, as a result of these failures, she and  
9 Settlement Class Members have been exposed to and/or are at a significant risk of  
10 identity theft and financial fraud into the indefinite future. *Id.* Tomes also alleges that she  
11 and Settlement Class Members have lost the inherent value of their PII. *Id.*

12 **B. Procedural History**

13 On May 28, 2020, plaintiffs Anurag Gupta and his minor children, D.G. and V.G.,  
14 (“Individual Plaintiffs”) filed a Class Action Complaint against Aeries on behalf of a  
15 nationwide class and California subclass of individuals whose PII was compromised in  
16 the Data Breach. ECF No. 1. Before filing the Complaint, Class Counsel investigated the  
17 potential claims against Aeries, interviewed potential plaintiffs, and gathered information  
18 about the Data Breach and its potential impact on consumers. *See* Zavareei Decl. ¶ 4. On  
19 July 21, 2020, Aeries filed a Motion to Dismiss the Complaint. ECF No. 20.

20 Individual Plaintiffs filed a First Amended Class Action Complaint on August 13,  
21 2020 (“Amended Complaint”). ECF No. 26. The Amended Complaint alleged the Data  
22 Breach and sought to certify a nationwide class and a California subclass of students,  
23 parents, and guardians whose PII was compromised in the Data Breach. *Id.* ¶ 86. The  
24 Amended Complaint also sought to certify a nationwide subclass and a California  
25 subclass of minor students (and adults who provided their PII to Aeries when they were  
26 minor students) whose PII was compromised in the Data Breach. *Id.* Specifically, the  
27 Amended Complaint alleged that Aeries' inadequate security practices resulted in the  
28 compromise of incredibly sensitive PII of thousands of Aeries' school district customers.

1 On August 27, 2020, Aeries moved to dismiss the Amended Complaint. ECF No.  
2 27. On September 11, 2020, the parties stipulated that all proceedings and deadlines in  
3 the case would be stayed up through and including November 10, 2020, to allow them  
4 to focus on mediation and settlement, ECF No. 29, upon which the Court entered an  
5 Order granting the Stipulation on September 21, 2020. ECF No. 30.<sup>3</sup>

6 The parties first engaged in mediation on October 26, 2020, with Mr. Quinn, an  
7 experienced class action mediator, to explore whether a negotiated resolution was  
8 possible. *See* Zavareei Decl. ¶ 6. Aeries provided information about the scope of the Data  
9 Breach, the number of class members, and remedial efforts, to Plaintiff’s counsel. *Id.* The  
10 parties also exchanged lengthy mediation briefs in advance of the mediation. *Id.* The  
11 October 26, 2020 mediation did not result in settlement, but counsel continued to engage  
12 in settlement discussions. *Id.* The parties spent significant time negotiating the specific  
13 terms and language of the settlement agreement. *Id.* ¶ 5. On December 17, 2020, Aeries  
14 submitted a counteroffer to Class Counsel’s settlement proposal to Mr. Quinn. *Id.* ¶ 7.  
15 The parties continued to negotiate and exchange counteroffers through Mr. Quinn, and  
16 scheduled a second mediation to expedite a resolution of this matter. *Id.*

17 On March 12, 2021, the parties attended their second mediation with Mr. Quinn.  
18 *Id.* On April 2, 2021, the parties filed a Notice of Settlement, advising the Court of the  
19 agreement and the need to negotiate a written settlement agreement and related  
20 documents to submit to the Court and handle other administrative matters. ECF No. 48.  
21 While the parties continued to work diligently to finalize the terms of a written settlement  
22 agreement, they became aware of the need to amend the Amended Complaint for the  
23 purpose of substituting out the Individual Plaintiffs to ensure proper representation for  
24 the putative Settlement Class. *See* ECF No. 50. On June 8, 2021, the parties filed a  
25 Stipulation to File Second Amended Class Action Complaint, which the Court granted  
26 on June 9, 2021. ECF No. 53. Plaintiffs filed their Second Amended Class Action

27 \_\_\_\_\_  
28 <sup>3</sup> The Court granted subsequent stays as negotiations progressed. *See* ECF Nos. 36, 40,  
42, 46, 49, 51.

1 Complaint (“Second Amended Complaint” or “SAC”) on June 9, 2021. ECF No. 54.  
2 The Second Amended Complaint added a new class representative, *i.e.*, Tomes, narrowed  
3 the putative class to individuals who had an Aeries account through the SDUHSD at the  
4 time of the Data Breach, and recast Individual Plaintiffs’ claims as individual claims,  
5 rather than the previously pled class claims. *Id.*

6 On June 9, 2021, a final mediation session with Mr. Quinn was held and attended  
7 by Class Representative Tomes. Zavareei Decl. ¶ 8. On June 14, 2021, the parties  
8 executed the original Settlement Agreement. *Id.* The proposed Settlement is limited to  
9 students and parents or guardians of students of the SDUHSD because Class Counsel  
10 determined—based on verified representations made by Aeries—that this population  
11 was differently situated than the students and parents or guardians of students with  
12 Aeries accounts through the other affected school districts and, in Class Counsel’s view,  
13 had an increased risk of exposure in connection with the Data Breach. *Id.* ¶ 10; *see also*  
14 Cotton Decl. ¶¶ 5-7.<sup>4</sup> Because Individual Plaintiffs are outside of that district, they settled  
15 their claims individually, and Tomes, who had an Aeries account through the SDUHSD  
16 at the time of the Data Breach, will instead adequately represent the Settlement Class.

17 Plaintiff Tomes moved for Preliminary Approval of the Settlement Agreement on  
18 June 15, 2021. ECF No. 55. Following a hearing on October 14, 2021, the Court denied  
19 the Motion for Preliminary Approval without prejudice and with leave to file a renewed  
20 motion to address issues identified during the hearing. ECF No. 72. In light of issues  
21 identified by the Court, the parties executed a Revised Settlement Agreement (“RSA”)  
22 on November 15, 2021. Zavareei Decl. ¶ 9.

23 \_\_\_\_\_  
24 <sup>4</sup> Specifically, an unauthorized individual actually gained access “to a database of  
25 information for students and parents associated with [SDUHSD]” which led to the  
26 potential compromise of those individuals’ “usernames, hashed or encrypted passwords,  
27 and certain medical information.” Cotton Decl. ¶¶ 5-6. In contrast, individuals with  
28 Aeries accounts from other school districts—including the Individual Plaintiffs—only  
had their names, student ID numbers, hashed passwords, and addresses (*i.e.*, no medical  
information) potentially exposed when the same “unauthorized third-party individual ran  
a script across the Aeries network as well as other locally hosted networks.” *Id.* ¶ 4.

1 **III. THE SETTLEMENT AGREEMENT**

2 **A. The Settlement Class**

3 The RSA contemplates certification of the following Class for settlement purposes  
4 only: *All individuals in the United States who had an Aeries account through the San Dieguito Union*  
5 *High School District at the time of the Data Breach. See RSA ¶ 38.* The Settlement Class consists  
6 of approximately 98,199 individuals who had an Aeries account through SDUHSD at  
7 the time of the Data Breach and whose username/hashed passwords and medical  
8 information was compromised. Zavareei Decl. ¶ 11. The Settlement Class excludes:  
9 Aeries’ customers, Aeries itself, any entity in which Aeries has a controlling interest, and  
10 Aeries’ officers, directors, legal representatives, successors, subsidiaries, and assigns. Also  
11 excluded from the Settlement Class are any judicial officer presiding over this matter,  
12 members of their immediate family, members of their judicial staff, and any judge sitting  
13 in the presiding court system who may hear an appeal of any judgment entered. *Id.*

14 **B. Settlement Consideration**

15 **1. Cash Payments to Settlement Class Members**

16 The RSA provides for a Settlement Fund of \$1,750,000 from which the following  
17 will be paid: (i) Notice and Administrative Expenses; (ii) Taxes and Tax-Related  
18 Expenses;<sup>5</sup> (iii) Service Award Payments approved by the Court; (iv) Fee Award and  
19 Costs; (v) reimbursement for Out-of-Pocket Losses and Attested Time; and (vi) Pro Rata  
20 Cash Payments. *See* RSA ¶¶ 20, 42. After payment of Notice and Administrative  
21 Expenses, Taxes and Tax-Related Expenses, any Court-approved Service Award  
22 Payment and Fee Awards and Costs, and reimbursement for Out-of-Pocket Losses and  
23 Attested Time to Settlement Class Members submitting a valid and timely Claim Form,  
24 any remaining funds (the “Remaining Funds”) shall be distributed to each Participating  
25

26 \_\_\_\_\_  
27 <sup>5</sup> “Taxes and Tax-Related Expenses” are expected to be minimal and pertain to taxes  
28 that the Settlement Administrator will have to pay on interest earned on the Settlement  
Fund after Aeries transfers the \$1,750,000 to the Settlement Administrator but prior to  
the distribution of monetary relief to Settlement Class Members. *See* JND Decl. ¶ 26.

1 Settlement Class Member to be calculated by dividing the Remaining Funds by the  
2 number of Participating Settlement Class Members, subject to an individual aggregate  
3 cap of \$10,000 for total payments under the Settlement. *Id.* ¶ 58. Claims may be subject  
4 to a *pro rata* reduction. *Id.* ¶ 65.

5 Each Settlement Class Member may submit a Claim for Out-of-Pocket Losses. *Id.*  
6 ¶ 52. Claims will be subject to review for completeness and plausibility by a Settlement  
7 Administrator. *Id.* If it is determined that a Claim is deficient in whole or part, the  
8 Settlement Administrator shall provide the Settlement Class Member with an  
9 opportunity to cure the deficiencies. *Id.* ¶ 55. Settlement Class Members may submit a  
10 Claim for “Ordinary Losses,” capped at \$1,000 per person, and/or “Extraordinary  
11 Losses,” capped at \$10,000 per person. *Id.* ¶ 52. “Ordinary Losses” include (1) “Out of  
12 pocket expenses incurred as a result of the Data Breach, including bank fees, long  
13 distance phone charges, cell phone charges (only if charged by the minute), data charges  
14 (only if charged based on the amount of data used), postage, or gasoline for local travel”;  
15 (2) “Fees for additional credit reports, credit monitoring, or other identity theft insurance  
16 products purchased between November 4, 2019 and the date of the Preliminary  
17 Approval Order”; and (3) “Up to 40 hours of Attested Time, at \$25/hour, if at least one  
18 full hour was spent dealing with the Data Breach.”<sup>6</sup> *Id.* ¶ 52. “For Attested Time, a sworn  
19 attestation detailing how the time was spent shall constitute ‘supporting  
20 documentation.’” *Id.* “Extraordinary Losses” are “losses arising from financial fraud or  
21 identity theft if:” (1) “The loss is an actual, documented, and unreimbursed monetary  
22 loss”; (2) “The loss is fairly traceable to the Data Breach”; (3) “The loss is not already  
23 covered by one or more of the normal reimbursement categories”; and (4) “The  
24 settlement class member made reasonable efforts to avoid, or seek reimbursement for,  
25 the loss.” *Id.*

26 Cash payments will be made by the Settlement Administrator and will either (1)  
27

28 <sup>6</sup> Attested Time “means time spent remedying issues related to the Data Breach.” RSA ¶ 4.

1 be mailed by check (a “Settlement Check”); or (2) sent electronically. *Id.* ¶ 72; *see also id.*,  
2 Ex. A (Claim Form). For any Settlement Check returned as undeliverable, the Settlement  
3 Administrator shall make reasonable efforts to locate a valid address and resend the  
4 Settlement Payment within thirty (30) days. *Id.* ¶ 61. Any checks that are not cashed  
5 within 180 days (or an additional 90 days in the case of replacement Settlement Checks)  
6 shall be voided and the money returned to the Settlement Fund for distribution as  
7 required by state law or to the Non-Profit Residual Recipient.<sup>7</sup> *Id.* Prior to such  
8 occurrence, the Settlement Administrator shall attempt to contact the Settlement Class  
9 Member to whom the original Settlement Check was issued and, if unsuccessful, make  
10 reasonable efforts to locate an updated address for the Settlement Class Member. *Id.*

11 No portion of the Settlement Fund shall revert or be repaid to Defendant after  
12 the Effective Date. *Id.* ¶ 62. If any monies remain in the Net Settlement Fund more than  
13 150 days after the distribution of Settlement payments to the Participating Settlement  
14 Class Members, or 30 days after all reissued Settlement Checks are no longer negotiable,  
15 whichever occurs later or as otherwise agreed to by the parties, the parties shall  
16 implement a Secondary Distribution *pro rata* to all Participating Settlement Class  
17 Members—only if the secondary distribution is economically feasible. *Id.* If a Secondary  
18 Distribution is not economically feasible, or if any funds remain from uncashed  
19 Secondary Distribution checks, any remaining monies shall be distributed as required by  
20 state law or to the Non-Profit Residual Recipient, EFF. *Id.* ¶¶ 21, 62. EFF’s mission is  
21 aligned with the objectives of the litigation, addresses the objectives of the underlying  
22 law, and targets the class members. *See Nachshin v. AOL LLC*, 663 F.3d 1034, 1039 (9th  
23 Cir. 2011). The parties and their counsel do not have an affiliation with EFF.

## 24 2. Free Credit Monitoring Services

25 Aeries shall also offer to all Settlement Class Members twelve (12) months of  
26

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27 <sup>7</sup> The “Non-Profit Residual Recipient” means the Electronic Frontier Foundation  
28 (“EFF”). *Id.* ¶ 21. The EFF is a 501(c)(3) nonprofit organization defending civil liberties  
in the digital world, and its mission is to ensure that technology supports freedom, justice,  
and innovation for all people of the world. Zavareei Decl. ¶ 16.

1 Credit Monitoring Services at no cost, regardless of whether the Settlement Class  
2 Member submits a claim for Ordinary or Extraordinary Losses. These services will  
3 include daily credit monitoring of the Settlement Class Member’s credit file at one of the  
4 three major credit reporting agencies; a \$1 million identity theft insurance policy; identity  
5 restoration services; and other additional features (“Credit Monitoring and Identity  
6 Restoration Services”). Such Credit Monitoring and Identity Restoration Services shall  
7 be provided on an opt-in basis. *See* RSA ¶ 56; *see also id.*, Ex. A (Claim Form). The cost  
8 of the services (a value of approximately \$70 to \$120 per Settlement Class Member) will  
9 be paid by Aeries separate and apart from the Settlement Fund. *Id.*; Zavareei Decl. ¶ 14.

10 **3. Equitable Relief: Data Security Improvements**

11 Aeries has or will employ information security enhancements, including external  
12 review of security controls; implemented whitelisting and multifactor authentication  
13 where possible for third party system access; increased training of all Aeries team  
14 members regarding cybersecurity; reviewed security posture and updated risk  
15 assessments for all Aeries vendors and implemented additional controls upon them,  
16 where possible; and increased staff in Vendor Management, Audit and Compliance. *See*  
17 RSA ¶ 67. Aeries estimated that these measures cost \$50,000. Zavareei Decl. ¶ 12.

18 **C. Settlement Administrator and Administration Costs**

19 Subject to Court approval, the Settlement Administrator is JND Legal  
20 Administration (“JND”), a leading class action administration firm in the United States.  
21 *See* Declaration of Gina M. Intrepido-Bowden (“JND Decl.”) ¶ 3. All Notice and  
22 Administration Expenses shall be paid from the Settlement Fund. *See* RSA ¶¶ 24, 50, 66,  
23 74. The Settlement Administrator will oversee the provision of Notice to the Settlement  
24 Class Members and administration of the Settlement Fund. *Id.* ¶¶ 72-73. The estimated  
25 Notice and Administrative Expenses are \$139,216, and are capped at \$250,000. Zavareei  
26 Decl. ¶ 17. This reasonable estimate assumes that 5% of Settlement Class Members will  
27 file claims; 85% of the claims will be valid; 20% of valid claims will be for ordinary losses  
28 (at 10 minutes per claim/\$75 per hour); and that 10% of valid claims will be for

1 extraordinary losses (at 30 minutes per claim/\$75 per hour). *Id.*; JND Decl. ¶ 25.

2 **D. The Notice Plan**

3 Notice will be disseminated directly to the Settlement Class via E-Mail or Postcard  
4 Notice. Aeries will provide the Settlement Administrator with the Settlement Class List  
5 within twenty-one (21) days after the date of the Preliminary Approval Order. *See* RSA ¶  
6 68. Within thirty (30) days after entry of the Preliminary Approval Order, the Settlement  
7 Administrator shall disseminate Notice to members of the Settlement Class. *Id.* ¶¶ 23, 68  
8 (“Notice Deadline”). Prior to the date on which the Settlement Administrator initiates  
9 the Notice, the parties shall choose a mutually acceptable URL for the Settlement  
10 Website. *Id.* ¶ 69.c. The Settlement Website shall remain accessible until at least sixty (60)  
11 days after all Settlement Payments have been distributed. *Id.* The Website shall contain:  
12 the Settlement Agreement; contact information for Class Counsel, Aeries Counsel, and  
13 the Settlement Administrator; the motions for preliminary approval, final approval and  
14 for attorneys’ fees and expenses (when available); the preliminary approval order; and a  
15 downloadable and online version of the Claim Form and Longform Notice. *Id.*

16 **E. Opt-Out and Objection Procedures**

17 The Class Notice will advise Settlement Class Members of their right to opt out  
18 of the Settlement or to object to the Settlement and/or to Class Counsel’s application  
19 for attorneys’ fees, costs, and expenses and/or Service Award to the Class  
20 Representative, and of the associated deadlines to opt out or object. *See id.* ¶¶ 70-71.

21 Settlement Class Members who choose to opt out must submit a Request for  
22 Exclusion, which will be available on the Settlement Website or can be obtained from  
23 the Settlement Administrator. *Id.* ¶ 70; *id.*, Ex. E (Request for Exclusion). The Request  
24 for Exclusion must be postmarked on or before the deadline set by the Court and  
25 specified in the Class Notice, which shall be no less than 60 calendar days after the Notice  
26 Deadline. *Id.* It must include the name of the proceeding, the individual’s full name,  
27 current address, telephone number, personal signature, and will state that the individual  
28 does not wish to participate in the Settlement. *Id.* Any person who receives the Class

1 Notice and does not submit a Request for Exclusion will be bound by the Settlement. *Id.*  
2 Settlement Class Members who wish to object to the Settlement must send a  
3 written Objection to the Court (since the Objections will thereafter be available to the  
4 parties on the case docket once the Objections are filed by the clerk of court). *Id.* ¶ 71.  
5 Objections must be postmarked on or before the deadline set by the Court and specified  
6 in the Class Notice, which shall be no less than 60 calendar days after the Notice  
7 Deadline. *Id.* The written Objection must include (i) the name of the proceedings; (ii) the  
8 Settlement Class Member’s full name, current mailing address, and telephone number;  
9 (iii) a statement of the specific grounds for the Objection, as well as any documents  
10 supporting the Objection; (iv) a statement as to whether the Objection applies only to  
11 the objector, to a specific subset of the class, or to the entire class; (v) the identity of any  
12 attorneys representing the objector; (vi) a statement regarding whether the Settlement  
13 Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; and  
14 (vii) the signature of the Settlement Class Member or the Settlement Class Member’s  
15 attorney. *Id.* Subject to Court approval, any objecting Settlement Class Member may  
16 appear at the Final Approval Hearing, in person or through counsel, to show cause why  
17 the proposed Settlement should not be approved as fair, adequate, and reasonable.

18 **F. Release of Claims**

19 In exchange for the benefits conferred by the Settlement, all Settlement Class  
20 Members who do not timely and validly opt out of the Settlement Class will be bound  
21 by the terms of the Settlement, including the release of the Released Parties from all  
22 claims and causes of action pleaded or that could have been pleaded that are related in  
23 any way to the activities stemming from the Data Breach. *See id.* ¶¶ 31-33, 70, 83. The  
24 release does not extend to claims the Settlement Class Members do not know or suspect  
25 to exist in their favor at the time of executing the release and that, if known to them,  
26 would have materially affected their settlement with Aeries. *See* Cal. Civ. Code § 1542.

27 The Release includes SDUHSD. Aeries is SDUHSD’s information management  
28 software service provider and, solely for the issues relating to this Action, Aeries has

1 assumed SDUHSD’s obligations to the Settlement Class. Without a full release of  
2 SDUHSD, the settlement of the issues relating to those in the SAC would not be full or  
3 final, as it is clear SDUHSD intends to use the warranty provisions in the License  
4 Agreement and/or the doctrine of comparative liability to require Aeries to indemnify it  
5 for any further issues relating to the Action. This is not a hypothetical risk. Indeed,  
6 SDUHSD has already filed a cross-complaint against Aeries in state court litigation filed  
7 against SDUHSD by a SDUHSD student who was harassed by John Doe alleging exactly  
8 that. Cotton Decl. ¶ 10. The Settlement Payment serves as appropriate consideration for  
9 the release of SDUHSD, as the obligations owed to the Settlement Class by SDUHSD  
10 have been assumed by Aeries for any issues related to the Data Breach, and the class  
11 members would not be entitled to double recovery for the same alleged harm.

12         Additionally, it is wholly appropriate for a settlement agreement to release a  
13 nonparty to a class action suit. *Moralez v. Whole Foods Market, Inc.*, 897 F. Supp. 2d 987,  
14 995 (N.D. Cal. 2012) (“A settlement agreement can release claims against non-parties.”)  
15 (citing *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 748 (9th Cir. 2006)).  
16 Settlement agreements and releases are contracts, and the intent of the party governs the  
17 meaning of the contract. *Moralez*, 897 F. Supp. 3d at 996 (citing *United Commercial Ins. Serv.,*  
18 *Inc. v. Paymaster Corp.*, 962 F.2d 853, 856 (9th Cir. 1992)). Here, the Revised Settlement  
19 Agreement clearly intends to release SDUHSD in consideration for the Settlement  
20 Payment. This intent is fair and equitable in light of the Settlement Payment.

21         In any event, any claims brought against SDUHSD in the future based on the Data  
22 Breach would be barred by the preclusive effect of the Settlement Agreement, regardless  
23 of the explicit release, because they would inherently be based on an identical factual  
24 predicate. “The weight of authority holds that a federal court may release not only those  
25 claims alleged in the complaint, but also a claim ‘based on the identical factual predicate’  
26 as that underlying the claims in the settled class action...” *Reyn’s Pasta Bella*, 442 F.3d at  
27 748 (quoting *Class Plaintiffs v. City of Seattle*, 995 F.2d 1268, 1287 (9th Cir. 1992)). This  
28 includes claims against an unnamed party. For example, in *Reyn’s Pasta Bella*, members of

1 a previous class action settlement attempted to sue a defendant who was not specifically  
2 named as a defendant in their previous class settlement agreement. 442 F.3d at 748. The  
3 Ninth Circuit upheld the district court’s dismissal of the claims in the second lawsuit,  
4 finding that the plaintiffs could not attack the previous class action settlement by virtue  
5 of collateral estoppel. *Id.* at 747. In addition, and “even if issue preclusion were not  
6 applicable,” the Ninth Circuit held that plaintiffs’ claims were released because they were  
7 based on an identical factual predicate to the claims released in the previous settlement  
8 agreement, even though the defendant was not a party to the previous litigation and the  
9 plaintiffs asserted several new legal theories in their second lawsuit. *Id.* at 748.

10 Here, any future claim brought by a Settlement Class Member against SDUHSD  
11 related solely to the Data Breach would be based on an identical factual predicate as the  
12 Class Settlement. Accordingly, the release of SDUHSD expressly limits the Settlement  
13 Class’s right to future recovery against SDUHSD to mirror the already preclusive effect  
14 of the release for any claims with an identical factual predicate to those in the Complaint.

15 **G. Attorneys’ Fees and Costs and Service Award**

16 The Revised Settlement Agreement contemplates Class Counsel petitioning the  
17 Court for attorneys’ fees and litigation costs. RSA ¶¶ 14-15, 19, 87. Any approved  
18 attorneys’ fees and costs will be paid from the Settlement Fund prior to distribution to  
19 the Settlement Class Members. *Id.* ¶ 66. Class Counsel intends to seek a fee award of  
20 25% of the Settlement Fund, \$437,500, and will explain why this fee is warranted in a  
21 separately-filed petition for attorneys’ fees and costs. *See id.* ¶¶ 14, 87. Class Counsel will  
22 also seek to recover costs (up to \$20,000) and will petition the Court for a Service Award  
23 of \$2,500 to Tomes as compensation for her service, time and effort on behalf of the  
24 Settlement Class, to be deducted from the Settlement Fund. *Id.* ¶¶ 15, 85, 87; *see also*  
25 Declaration of Melinda Tomes (“Tomes Decl.”) ¶¶ 4-5. The attorneys’ fees, Litigation  
26 Costs and Expenses, and Service Award were not negotiated, and the parties have no  
27 agreement with respect to fees and expenses. Zavareei Decl. ¶ 18. Neither final approval,  
28 nor the size of the Settlement Fund, are contingent upon approval of the full amount of

1 requested Service Award, Litigation Costs and Expenses, and/or fees. *Id.*; RSA ¶¶ 85-87.

2 **IV. ARGUMENT**

3 **A. The Proposed Settlement Class Should be Certified.**

4 **1. The Settlement Class Meets the Requirements of Rule 23(a).**

5 Before assessing the parties’ Settlement, the Court should first confirm that the  
6 underlying Settlement Class meets the requirements of Federal Rule of Civil Procedure  
7 23 (“Rule 23”). *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); Manual for  
8 Complex Litigation, § 21.632. The prerequisites for class certification under Rule 23(a)  
9 are numerosity, commonality, typicality, and adequacy—each of which is satisfied here.

10 **Numerosity.** The Settlement Class, comprised of approximately 98,910  
11 members, satisfies the numerosity requirement. *See Jordan v. Cty. of Los Angeles*, 669 F.2d  
12 1311, 1319 (9th Cir.), *vacated on other grounds*, 459 U.S. 810 (1982) (class sizes of 39, 64,  
13 and 71 are sufficient to satisfy the numerosity requirement).

14 **Commonality.** The Settlement Class also satisfies the commonality requirement,  
15 which requires that Settlement Class Members’ claims “depend upon a common  
16 contention . . . capable of classwide resolution—which means that a determination of its  
17 truth or falsity will resolve an issue that is central to the validity of each [claim] in one  
18 stroke.” *Odom v. ECA Mktg., Inc.*, No. ED-CV-20851-JGB-SHKX, 2021 WL 4803488,  
19 at \*2 (C.D. Cal. May 27, 2021) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350  
20 (2011)). Here, all Settlement Class Members’ claims turn on whether Defendant’s security  
21 environment was adequate to protect Settlement Class Members’ PII. Thus, common  
22 questions include, *inter alia*, whether Aeries engaged in the wrongful conduct alleged;  
23 whether Settlement Class Members’ PII was compromised in the Data Breach; whether  
24 Aeries owed a duty to Tomes and Settlement Class Members; whether Aeries breached  
25 its duties; whether Aeries unreasonably delayed in notifying Tomes and Settlement Class  
26 Members of the material facts of the Data Breach; and whether Aeries committed the  
27 common law and statutory violations alleged in the Second Amended Complaint. *See In*  
28 *re Yahoo! Inc. Customer Data Sec. Breach Litig.* (“*In re Yahoo!*”), No. 16-MD-02752-LHK,

1 2020 WL 4212811, at \*3 (N.D. Cal. July 22, 2020) (common questions of whether  
2 defendant employed sufficient data security measures, knew of inadequacies, and  
3 timeliness of data breach disclosure satisfy commonality requirement).

4 **Typicality.** Tomes’s claims are typical of Settlement Class Members because they  
5 arise from the same course of alleged conduct. *See Just Film, Inc. v. Buono*, 847 F.3d 1108,  
6 1118 (9th Cir. 2017). Tomes had PII that was stored on Aeries Hosting and was  
7 compromised in the Data Breach, and so she suffered the same injury, and was harmed  
8 by the same inadequate data security, as the rest of the Settlement Class. *See Ellis v. Costco*  
9 *Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011) (“The test of typicality is whether other  
10 members have the same or similar injury, whether the action is based on conduct which  
11 is not unique to the named plaintiff[ ], and whether other class members have been  
12 injured by the same course of conduct.”) (internal quotation marks omitted).

13 **Adequacy.** Tomes has and will continue to “fairly and adequately protect the  
14 interests of the class.” Fed. R. Civ. P. 23(a)(4). To make this determination, “courts must  
15 resolve two questions: ‘(1) do the named plaintiffs and their counsel have any conflicts  
16 of interest with other class members and (2) will the named plaintiffs and their counsel  
17 prosecute the action vigorously on behalf of the class?’” *Ellis*, 657 F.3d at 985 (quoting  
18 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)). Here, Tomes adequately  
19 represents the Settlement Class, as she has no conflicts of interest with other Settlement  
20 Class Members, is subject to no unique defenses, and she and her counsel have and  
21 continue to vigorously prosecute this case on behalf of the Settlement Class. *See Tomes*  
22 *Decl.* ¶ 8; *Zavareei Decl.* ¶ 19. Further, Class Counsel are experienced in the successful  
23 litigation and settlement of class action litigation, including data privacy cases. *See*  
24 *Zavareei Decl.* ¶ 3 & Ex. 2; *Johnson v. Moss Bros. Auto Grp.*, No. ED-CV-192456-FMO-  
25 SPX, 2021 WL 4556052, at \*6 (C.D. Cal. June 25, 2021) (adequacy satisfied where  
26 “[p]laintiffs are represented by experienced and competent counsel who have litigated  
27 numerous class action cases.”) (internal quotation mark and citation omitted).

28

1                                   **2. The Settlement Class Meets the Predominance and**  
2                                   **Superiority Requirements of Rule 23(b)(3).**

3                                    “In addition to meeting the conditions imposed by Rule 23(a), the parties seeking  
4 class certification must also show that the action is maintainable under Fed. R. Civ. P.  
5 23(b)(1), (2) or (3).” *Hanlon*, 150 F.3d at 1022. Here, the proposed Settlement Class is  
6 maintainable under Rule 23(b)(3), as common questions predominate over any questions  
7 affecting only individual members and class resolution is superior to other available  
8 methods for a fair resolution of the controversy. *Id.* Tomes’s liability case primarily  
9 depends on whether Aeries used reasonable data security to protect her PII, which can  
10 be resolved using the same evidence for all Settlement Class Members, and thus is the  
11 precise type of predominant question that makes a class-wide adjudication worthwhile.  
12 *See Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016); *In re Yahoo!*, 2020 WL  
13 4212811, at \*7 (“[T]he focus on a defendant’s security measures in a data breach class  
14 action ‘is the precise type of predominant question that makes class-wide adjudication  
15 worthwhile.’”) (quoting *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 312 (N.D.  
16 Cal. 2018)). Further, “the relief sought applies to all class members and is traceable to  
17 [P]laintiff’s liability case,” as each Settlement Class Member is entitled to a monetary  
18 payment and credit monitoring, the same relief they could have obtained at trial. *Johnson*,  
19 2021 WL 4556052, at \*6.<sup>8</sup>

20                                   Certification is particularly appropriate in this context because “the proposal is  
21 that there be no trial,” and so manageability considerations have no impact on whether  
22 the proposed Settlement Class should be certified. *Amchem*, 521 U.S. at 620. There is only  
23 the predominant issue of whether Aeries properly secured the PII compromised in the  
24 Data Breach, such that Aeries’ security should be improved and Settlement Class

25 \_\_\_\_\_  
26 <sup>8</sup> Moreover, while the Settlement Class is a nation-wide class, “[t]he Ninth Circuit recently  
27 held that differences in state law do not defeat predominance in the settlement class  
28 context.” *Graves v. United Indus. Corp.*, No. 217CV06983CASSKX, 2020 WL 953210, at  
\*11 (C.D. Cal. Feb. 24, 2020) (quoting *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d  
539, 561 (9th Cir. 2019)).

1 Members affected by the Data Breach provided with a remedy. As a practical matter, that  
2 issue cannot be resolved through individual trials or settlement negotiations: the amount  
3 at stake for each individual Settlement Class Member is too small, the technical issues are  
4 too complex, and the required expert testimony and document review too costly. *See Just*  
5 *Film*, 847 F.3d at 1123. Moreover, “there is no indication that any class member is  
6 involved in any other litigation concerning the claims in this case.” *Johnson*, 2021 WL  
7 4556052, at \*7; *Zavareei Decl.* ¶ 26 (plaintiffs in separate suit excluded from Settlement  
8 Class). A class action is thus the superior method of adjudicating consumer claims arising  
9 from this Data Breach, as in other data breach cases where class settlements were  
10 approved. *See, e.g., In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 585 (N.D. Cal. 2015).

11 **B. The Proposed Settlement Should be Preliminarily Approved.**

12 **1. Legal Standard for Preliminary Approval**

13 The Ninth Circuit has a “strong judicial policy that favors settlements, particularly  
14 where complex class action litigation is concerned.” *Campbell v. Facebook, Inc.*, 951 F.3d  
15 1106, 1121 (9th Cir. 2020). Whether to approve a class action settlement is committed to  
16 the sound discretion of the trial judge. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458  
17 (9th Cir. 2000).

18 Rule 23 was amended in 2018 to codify the “preliminary approval” process that is  
19 customary in class settlements. Fed. R. Civ. P. 23 advisory committee’s note to 2018  
20 amendment. Under amended Rule 23(e)(1), “[t]he court must direct notice in a  
21 reasonable manner to all class members who would be bound by the proposal if giving  
22 notice is justified by the parties’ showing that the court will likely be able to: (i) approve  
23 the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on  
24 the proposal.” Fed. R. Civ. P. 23(e)(1).

25 Amended Rule 23(e)(2) allows the district court to approve a proposal “only after  
26 a hearing and only on finding that it is fair, reasonable, and adequate after considering  
27 whether: (A) the class representatives and class counsel have adequately represented the  
28 class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the class

1 is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the  
2 effectiveness of any proposed method of distributing relief to the class, including the  
3 method of processing class-member claims; (iii) the terms of any proposed award of  
4 attorney’s fees, including timing of payment; and (iv) any agreement required to be  
5 identified under Rule 23(e)(3); and (D) the proposal treats class members equitably  
6 relative to each other.” Fed. R. Civ. P. 23(e)(2).<sup>9</sup>

7 Courts in the Ninth Circuit also employ a multi-factor balancing test to analyze  
8 whether a given settlement is fair, adequate, and reasonable. *See, e.g., Churchill Vill., L.L.C.*  
9 *v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). That test includes the following factors:  
10 “(1) the strength of the plaintiffs’ case; (2) the risk, expense, complexity, and likely  
11 duration of further litigation; (3) the risk of maintaining class action status throughout  
12 the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and  
13 the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of  
14 a governmental participant; and (8) the reaction of the class members to the proposed  
15 settlement.” *Id.*; *accord Hanlon*, 150 F.3d at 1026. “This list is not exclusive and different  
16 factors may predominate in different factual contexts.” *Perks v. Activehours, Inc.*, No. 5:19-  
17 cv-05543-BLF, 2021 WL 1146038, at \*4 (N.D. Cal. Mar. 25, 2021).

18 For the following reasons, the Settlement complies with Rule 23(e), the *Churchill*  
19 factors, and the requirements set forth in this Court’s Order re: Notice of Settlement and  
20 Requirements re: Preliminary Approval [ECF No. 49], and should be approved.

21 **2. The Court Should Direct Notice Under Rule 23(e)(1).**

22 The Court should hold that there are grounds to distribute notice to the Settlement  
23

24 \_\_\_\_\_  
25 <sup>9</sup> “[T]he Advisory Committee states that ‘[c]ourts have generated lists of factors to shed  
26 light’ on whether a proposed class-action settlement is ‘fair, reasonable, and adequate.’”  
27 *Wong v. Arlo Techs., Inc.*, No. 5:19-cv-00372-BLF, 2021 WL 1531171, at \*5 (N.D. Cal. Apr.  
28 19, 2021). The Advisory Committee explained that the enumerated factors added to Rule  
23(e)(2) “are not intended to ‘displace’ any factors currently used by the courts but  
instead aim to focus . . . on ‘the core concerns of procedure and substance that should  
guide the decision whether to approve the proposal.’” *Id.*

1 Class, and order distribution of the Notice, because (1) the settlement is likely to be  
2 approved after the Final Approval Hearing pursuant to the requirements of Rule 23(e)(2),  
3 as discussed below; and (2) the Settlement Class is likely to be certified after the Final  
4 Approval Hearing pursuant to the requirements of Rule 23(a) & (b), as discussed in  
5 Section IV.A, *supra*. See Fed. R. C. P. 23(e)(1).

6 **3. The Settlement is Fair, Reasonable, and Adequate.**

7 **(a) *Class Representative Tomes and Class Counsel***  
8 ***Adequately Represented the Class (Rule 23(e)(2)(A)).***

9 Tomes and Class Counsel have adequately represented the Settlement Class.  
10 Tomes “actively participated in the prosecution of this case,” *Norton v. LVNV Funding,*  
11 *LLC*, No. 18-cv-05051-DMR, 2021 WL 3129568, at \*8 (N.D. Cal. July 23, 2021), and  
12 “[t]here are no indications that [Tomes has] failed to adequately represent the interests  
13 of the class,” *Moreno v. Cap. Bldg. Maint. & Cleaning Servs., Inc.*, No. 19-cv-07087-DMR,  
14 2021 WL 1788447, at \*10 (N.D. Cal. May 5, 2021). Tomes assisted Class Counsel by  
15 reviewing the Second Amended Complaint, searching for relevant documents, consulting  
16 with Class Counsel regarding the lawsuit over email and telephone, attending a mediation  
17 session with Mr. Quinn, and reviewing and approving the Settlement Agreement. Tomes  
18 Decl. ¶ 4. Tomes has no conflicts with the other Settlement Class Members and has  
19 adequately represented the Settlement Class in the litigation. *Id.* ¶ 8; Zavareei Decl. ¶ 19.

20 Likewise, Class Counsel have vigorously prosecuted this case. Prior to filing, Class  
21 Counsel investigated the available facts and potential claims arising from the Data  
22 Breach. Zavareei Decl. ¶ 4. They were in the process of drafting an opposition to Aeries’  
23 motion to dismiss when settlement negotiations began, drafted a detailed mediation  
24 statement after reviewing documentation produced by Aeries, and engaged in three  
25 mediation sessions with the assistance of Mr. Quinn. *Id.* ¶ 6. Class Counsel acted  
26 efficiently and expeditiously to obtain an excellent result for the class because of their  
27 many years of litigating and settling class action cases, including consumer data privacy  
28 class actions. See Zavareei Decl. ¶ 3 & Ex. 2; Warshaw Decl. ¶¶ 4-12 & Ex. A.



1 confident in the strength of their claims, Tomes and Class Counsel are also pragmatic  
2 and recognize the risks inherent in litigation of a complex data breach case. *See* Zavareei  
3 Decl. ¶ 21. Indeed, Tomes and the Class’s highest value claim, for violation of the  
4 California Consumer Privacy Act (“CCPA”), could have been dismissed on the pleadings  
5 because the Data Breach began before the CCPA’s effective date and because, as a  
6 “Service Provider,” it is an open question whether Aeries could be held liable for  
7 violations of the CCPA. *Id.* ¶ 23 Further, this is not a case where Settlement Class  
8 Members may have stronger claims in parallel proceedings (as there are none). *Id.* ¶ 26.  
9 The Settlement is a far cry from the settlement in *Kim v. Allison*, 8 F.4th 1170, 1181 (9th  
10 Cir. 2021), where the settlement class members were also members of a state-court class  
11 action that had received a favorable ruling on the merits of their primary claim.

12 Thus, the risks, expense, complexity, and likely duration of further litigation  
13 support preliminary approval of the Settlement. Zavareei Decl. ¶¶ 21-24. Should the case  
14 proceed in litigation, Tomes’s claims could be dismissed or narrowed at the motion to  
15 dismiss stage, summary judgment, at trial, or on a subsequent appeal. Tomes also faces  
16 the risk that class certification could be denied. *Id.* Each risk, by itself, could impede the  
17 successful prosecution of these claims at trial and in an eventual appeal—which would  
18 result in *zero* recovery for the Class. *Id.* And even if Tomes prevailed at trial, any recovery  
19 could be delayed for years by an appeal.

20 In contrast, the Settlement provides immediate and substantial benefits to nearly  
21 100,000 Settlement Class Members—similar to the relief and benefits obtained in other  
22 data breach class actions—and on a much quicker timeline. *See, e.g.,* Final Approval  
23 Order, *In re Banner Health Data Breach Litigation*, No. 2:16-cv-02696-PHX, ECF No. 198  
24 (D. Az.) (up to \$6 million claims-made settlement after 3 years of litigation where breach  
25 compromised names, Social Security numbers, and PHI of approximately 2.9 million  
26 class members); Zavareei Decl. ¶ 24.

27 It is “plainly reasonable for the parties at this stage to agree that the actual recovery  
28 realized and risks avoided here outweigh the opportunity to pursue potentially more

1 favorable results through full adjudication.” *Dennis v. Kellogg Co.*, No. 09-cv-1786-  
2 L(WMc), 2013 WL 6055326, at \*3 (S.D. Cal. Nov. 14, 2013). “Here, as with most class  
3 actions, there was risk to both sides in continuing towards trial. The settlement avoids  
4 uncertainty for all parties involved.” *Chester v. TJX Cos.*, No. 5:15-cv-01437-ODW(DTB),  
5 2017 WL 6205788, at \*6 (C.D. Cal. Dec. 5, 2017). This case is settling in its early stages;  
6 if the Settlement is not approved, the parties will likely need to litigate through multiple  
7 dispositive motions and a motion for class certification. *Zavareei Decl.* ¶ 22; *Grimm v.*  
8 *Am. Eagle Airlines, Inc.*, No. LA CV 11-00406 JAK(MANx), 2014 WL 1274376, at \*10  
9 (C.D. Cal. Sept. 24, 2014). That process would likely take years to resolve and involve  
10 expensive expert discovery. Yet there is no guarantee lengthy litigation and expensive  
11 discovery would lead to greater benefits for Settlement Class Members. *Id.* Instead, there  
12 would be multiple points at which the Settlement Class’ claims could be narrowed or  
13 dismissed. “Regardless of the risk, litigation is always expensive, and both sides would  
14 bear those costs if the litigation continued.” *Paz v. AG Adriano Goldschmeid, Inc.*, No.  
15 14CV1372DMS(DHB), 2016 WL 4427439, at \*5 (S.D. Cal. Feb. 29, 2016).

16 An early resolution, before both sides spend significant sums on litigation costs,  
17 is in the best interest of the Settlement Class. “[T]he efficiency with which the Parties  
18 were able to reach an agreement need not prevent this Court from granting preliminary  
19 approval.” *Hillman v. Lexicon Consulting*, No. ED-CV-16-01186-VAP(SPx), 2017 WL  
20 10433869, at \*8 (C.D. Cal. April 27, 2017). This factor favors preliminary approval.

21 **(d) *The Effectiveness of Any Proposed Method of***  
22 ***Distributing Relief to the Settlement Class (Rule***  
23 ***23(e)(2)(C)(ii)***

24 The proposed method of distributing relief to the Settlement Class, including the  
25 method of processing Settlement Class Member Claims, is highly effective. *Zavareei*  
26 *Decl.* ¶ 15. The proposed Notice plan is designed to reach as many Settlement Class  
27 Members as possible and is the best notice practicable under the circumstances of the  
28 instant case. The federal rules require that, before finally approving a class settlement,

1 “[t]he court must direct notice in a reasonable manner to all class members who would  
2 be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). Where the settlement class is certified  
3 pursuant to Rule 23(b)(3), the notice must also be the “best notice that is practicable  
4 under the circumstances, including individual notice to all members who can be identified  
5 through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B).

6 The proposed notice plan would provide Settlement Class Members with direct  
7 E-Mail notice (to the extent their e-mail addresses are available) and direct mail notice to  
8 the last known address of each class member.<sup>10</sup> There will also be a website that will  
9 make available for download pertinent case documents, including the operative Second  
10 Amended Complaint and Settlement Agreement.

11 The proposed notice plan also adequately informs Settlement Class Members of  
12 the Settlement and their right to object. The notice provided to class members should  
13 “clearly and concisely state in plain, easily understood language” the nature of the action;  
14 the class definition; the class claims, issues, or defenses; that the class member may  
15 appear through counsel; that the court will exclude from the class any member who  
16 requests exclusion; the time and manner for requesting exclusion; and the binding effect  
17 of a class judgment on class members. Fed. R. Civ. P. 23(c)(2)(B). The form of notice  
18 proposed by the parties complies with those requirements. Settlement Class Members  
19 will receive an e-mail or a postcard in the mail designed to catch their attention and alert  
20 them to the Settlement and available remedies. *See* RSA ¶ 69. It will also direct them to  
21 the Settlement Website, where more information—including a detailed long-form notice  
22 and other case documents including the operative Second Amended Complaint and  
23 Settlement Agreement—will be made available. *See id.* The parties believe that this is the  
24 most effective way to alert the Settlement Class Members to the existence of the  
25 Settlement and convey detailed information about the Settlement approval process, and  
26 accordingly ask that the Court approve the proposed forms of notice. *Zavareei Decl.* ¶

27 \_\_\_\_\_  
28 <sup>10</sup> This plan contrasts with the notice plan in *Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d  
1035, 1046-48 (9th Cir. 2019), which included only a single mailing and no e-mail notice.

1 15; see *Schaffer v. Litton Loan Servicing, LP*, No. CV 05–07673 MMM (JCx), 2012 WL  
2 10274679, at \*8 (C.D. Cal. Nov. 13, 2012) (approving similar postcard notice plan).

3 The opt-out, objection, and notice procedures are also effective and reasonable.  
4 Zavareei Decl. ¶ 15. The proposed notice plan will advise Settlement Class Members of  
5 their right to opt out of, or object to, the Settlement and of the associated deadlines and  
6 procedure to do so. See Section III.D, *supra*.

7 The method of processing Settlement Class Members’ Claims is also effective.  
8 Zavareei Decl. ¶ 15. Each Settlement Class Member may submit a Claim for  
9 reimbursement for Out-of-Pocket Losses (*i.e.*, claims for “Ordinary Losses,” capped at  
10 \$1,000 per person, and/or “Extraordinary Losses,” capped at \$10,000 per person). See  
11 Section III.B.1, *supra*. The Settlement Administrator will make cash payments by check  
12 or electronic payment. *Id.* For any Settlement Check returned as undeliverable, the  
13 Settlement Administrator shall make reasonable efforts to locate a valid address and  
14 resend the Settlement Payment. *Id.* A Secondary Distribution shall be implemented *pro*  
15 *rata* to all Settlement Class Members who had an Approved Claim, but only if a Second  
16 Distribution is economically feasible. *Id.* Any uncashed checks shall be voided and the  
17 money returned to the Settlement Fund for distribution as required by state law or to the  
18 Non-Profit Residual Recipient. *Id.* No portion of the Settlement Fund shall revert or be  
19 repaid to Defendant after the Effective Date. *Id.*

20 (e) *The Terms of the Proposed Award of Attorneys’ Fees*  
21 *(Rule 23(e)(2)(C)(iii))*

22 In examining the terms of any proposed award of attorneys’ fees, courts must  
23 apply the factors set forth in *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935 (9th  
24 Cir. 2011) (“*Bluetooth*”) to determine if collusion may have led to class members being  
25 shortchanged: (1) “when counsel receives a disproportionate distribution of the  
26 settlement, or when the class receives no monetary distribution but class counsel are  
27 amply rewarded”; (2) “when the parties negotiate a ‘clear sailing’ arrangement providing  
28 for the payment of attorneys’ fees separate and apart from class funds, which carries ‘the

1 potential of enabling a defendant to pay class counsel excessive fees and costs in  
2 exchange for counsel accepting an unfair settlement on behalf of the class”; and (3)  
3 “when the parties arrange for fees not awarded to revert to defendants rather than be  
4 added to the class fund.” *Id.* at 947 (citations omitted). Additionally, the court must  
5 “balance the ‘proposed award of attorney’s fees’ vis-à-vis the ‘relief provided for the class’  
6 in determining whether the settlement is ‘adequate’ for class members.” *Briseño v.*  
7 *Henderson*, 998 F.3d 1014, 1024 (9th Cir. 2021) (citation omitted). Here, the proposed  
8 award of attorneys’ fees complies with *Bluetooth* and *Briseño* and is proportionate in  
9 relationship to the relief provided to the Settlement Class. The Settlement Class is  
10 receiving a substantial monetary distribution (*i.e.*, \$1,750,000), and Class Counsel will  
11 request a fee of 25% of the Settlement Fund, which is consistent with the Ninth Circuit’s  
12 benchmark and not a disproportionate distribution of the Settlement (*i.e.*, the first  
13 *Bluetooth* factor is not implicated here). RSA ¶ 87. Furthermore, the parties have not  
14 negotiated a “clear sailing” arrangement, *Zavareei Decl.* ¶ 18, and have agreed that any  
15 remaining monies in the Settlement Fund after all payments have been made shall be  
16 distributed as required by state law or to EFF (not Aeries) (*i.e.*, the second and third  
17 *Bluetooth* factors are not implicated here). RSA ¶ 62.

18 In contrast to cases where the Ninth Circuit criticized the use of speculative  
19 settlement valuations to justify settlement approval and attorneys’ fee awards, the  
20 settlement value here is straightforward and non-speculative. *See Kim v. Allison*, 8 F.4th  
21 1170, 1181 (9th Cir. 2021) (district court improperly valued injunctive relief and value  
22 of claims-made settlement in evaluating the settlement’s benefit to the class and fee  
23 award); *Roes , 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1055-56 (9th Cir. 2019) (same).  
24 Settlement Class Members who submit a valid claim will be entitled to compensation  
25 for out-of-pocket losses and lost time from a \$1.75 million common fund. Separate from  
26 that fund, Aeries will pay for twelve months of credit monitoring and identity theft  
27 protection services to each Settlement Class Members that requests it, and will  
28 implement enhanced security measures. Class Counsel will seek a fee that is 25% of the

1 \$1.75 million common fund—i.e., they will *not* seek a percentage based on the value of  
2 injunctive or non-cash relief provided to the Settlement Class, unlike in *Kim* and *Roes*.

3 (f) *The Agreement with Individual Plaintiffs (Rule*  
4 *23(e)(2)(C)(iv))*

5 In addition to the proposed Settlement, Aeries has agreed to settle Individual  
6 Plaintiffs’ individual claims (the “Gupta Settlement”). *See* ECF 56. The Gupta Settlement  
7 provides that Aeries will pay \$1000 to Mr. Gupta and \$1500 to each of his two children.  
8 *See id.* at 3-4. Aeries also will pay an additional \$210 to each of Mr. Gupta’s two children  
9 for the cost of three years of enrollment in an identity theft protection product. *Id.* at 4.

10 In contrast, after paying anticipated Notice and Administration expenses  
11 (estimated at \$139,216 and capped at \$250,000), Attorneys’ Fees (\$437,500); Costs  
12 (capped at \$20,000), and Service Award (\$2,500), from the \$1.75 million Settlement  
13 Fund, between \$1,040,000 and \$1,150,784 will be distributed to Participating Settlement  
14 Class Members. Assuming a 5% claims rate (i.e., 4,910 of the 98,199 Settlement Class  
15 Members), JND Decl. ¶ 25, Zavareei Decl. ¶ 17, Participating Settlement Class Members  
16 will each receive an average payment of between \$211.81 and \$234.37, plus one year of  
17 credit monitoring and identity protection services at a value of \$70 to \$120.

18 That Individual Plaintiffs will receive greater relief under the Gupta Settlement  
19 than the relief afforded to Settlement Class Members does not constitute preferential  
20 treatment to Individual Plaintiffs under the circumstances. Zavareei Decl. ¶ 27. Without  
21 Individual Plaintiffs, this action would not have been filed and the proposed  
22 Settlement—which affords immediate and substantial benefits to nearly 100,000  
23 Settlement Class Members—would not have occurred. *Id.* ¶ 28. Many months after filing  
24 this action, discovery revealed that students and parents or guardians of students of the  
25 SDUHSD were differently situated than the students and parents or guardians of  
26 students with Aeries accounts through the other affected school districts (and, in Class  
27 Counsel’s view, had an increased risk of exposure in connection with the Data Breach).  
28 *Id.* ¶ 29. Accordingly, Individual Plaintiffs, who are outside of the SDUHSD district,

1 settled their claims individually (and will receive no relief under the proposed Settlement).

2         Since Individual Plaintiffs are not members of the Settlement Class, Class Counsel  
3 cannot petition this Court for a service award for Individual Plaintiffs’ service, time, and  
4 efforts on the behalf of the Class.<sup>11</sup> Accordingly, Class Counsel negotiated the Gupta  
5 Settlement with Aeries to not only resolve Individual Plaintiffs’ individual claims against  
6 Aeries (which Aeries has its own incentives to resolve), but also to compensate Individual  
7 Plaintiffs for their service, time, and efforts prosecuting this action on behalf of the Class.  
8 *Id.* ¶ 31. The proposed Settlement is thus fair, reasonable, and adequate after considering  
9 the terms of the Gupta Settlement. *See Spann v. J.C. Penny Corp.*, 314 F.R.D. 312, 329 (C.D.  
10 Cal. 2016) (greater payment than received by class members warranted based on the  
11 plaintiff’s role in protecting the interests of the class and ensuring the class benefited  
12 from the litigation); *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1029 (E.D. Cal.  
13 2019) (approving \$5,000 payments to former class representatives “to compensate them  
14 for their time and efforts in assisting this case”); *Krumbine v. Schneider Nat’l Carriers, Inc.*,  
15 No. 10CV4565GHKJEMX, 2013 WL 12209908, at \*6 (C.D. Cal. Aug. 6, 2013)  
16 (approving \$5,000 payment to former named plaintiff for “provid[ing] valuable services  
17 to the Final Settlement Class for which a monetary recovery was obtained”).

18         No other agreements were reached between the parties. Zavareei Decl. ¶ 32.

19                                 **(g)    *The Settlement Treats Settlement Class Members***  
20   ***Equitably (Rule 23(e)(2)(D)).***

21         The Settlement provides for a notice plan that is designed to reach as many  
22 Settlement Class Members as possible and provides Settlement Class Members with  
23 direct notice of the Settlement. *See* Section IV.B.3(d), *supra*. It also informs each  
24

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25 <sup>11</sup> This fact distinguishes the present case from *Roes*, where the class representatives who  
26 actually approved the class-wide settlement received separate “general release” payments.  
27 *Roes*, 944 F.3d at 1056-57. In short, the Guptas cannot “sell out” the Settlement Class as  
28 they are not members of it. Further, unlike in *Roes*, the Gupta Settlement payments will  
*not* be paid from the Settlement Fund, and will have no effect on the recovery available  
to the Settlement Class. *Id.*

1 Settlement Class Member of their right to object to, or opt out of, the Settlement. And  
2 each Settlement Class Member can submit a claim for out-of-pocket expenses and lost  
3 time, and all are eligible for credit monitoring services. Thus, the Settlement treats  
4 Settlement Class Members equitably relative to each other and is consistent with the  
5 distribution of funds in settlements of other data breach cases. *See* Zavareei Decl. ¶ 20.

6 **4. Additional *Churchill* Factors Favor Final Approval or Are**  
7 **Neutral.**

8 **(a) *The Amount Offered in the Settlement***

9 While it is not among the Rule 23(e) factors, the “relief that the settlement is  
10 expected to provide to class members is a central concern,” which the Court should  
11 consider. *Wong*, 2021 WL 1531171, at \*9; *see also Churchill Vill., L.L.C.*, 361 F.3d at 575.  
12 Here, the Settlement Fund of \$1,750,000<sup>12</sup> allows for reimbursement of up to \$1,000 in  
13 out-of-pocket expenses, including lost time of up to 40 hours at \$25/hour, up to \$10,000  
14 in documented extraordinary losses, and a residual cash payment. The Settlement also  
15 provides for a year of credit monitoring (available to each Settlement Class Member) and  
16 assurances from Aeries that it has implemented changes to its data security practices and  
17 procedures. Every Settlement Class Member is entitled to this credit monitoring  
18 injunctive relief and to submit a claim for cash reimbursement. *Contra Kim*, 8 F.4th at  
19 1179 (criticizing settlement where injunctive relief did not benefit settlement class). The  
20 Settlement is a strong result for the Settlement Class and in line with other data breach  
21 settlements of similar scope. *See* Zavareei Decl. ¶ 20. Because the amount of the  
22 Settlement is similar to other settlements approved in similar cases (when taking into  
23 account the size of the class), this factor reflects that the Settlement is fair. *See Calderon v.*  
24 *Wolf Firm*, No. SACV 16-1622-JLS(KESx), 2018 WL 6843723, at \*7-8 (C.D. Cal. Mar.

25 <sup>12</sup> The amount of the Settlement Fund is based on various factors, including: the nature  
26 of the Data Breach, including the unique risk faced by individuals with accounts through  
27 the SDUHSD; the lack of evidence that the accessed information was exfiltrated; the  
28 timing of the Settlement; Aeries’ willingness to make immediate changes to its data  
security measures and to offer credit monitoring; the benefits to the Settlement Class in  
comparison to similar cases; and Aeries’ insurance coverage. *See* Zavareei Decl. ¶ 13.

1 13, 2018) (comparing class settlement with other settlements in similar cases).

2 “Critical to the determination of adequacy is the ratio of ‘plaintiffs’ expected  
3 recovery balanced against the value of the settlement offer.” *Wong*, 2021 WL 1531171,  
4 at \*9. However, “[i]t is well-settled law that a cash settlement amounting to only a fraction  
5 of the potential recovery will not per se render the settlement inadequate or unfair.”  
6 *Officers for Just. v. Civ. Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th  
7 Cir. 1982). Here, the Settlement will allow Settlement Class Members to recover  
8 essentially the same amounts as if they had fully prevailed on each of the claims at trial.  
9 Settlement Class Members are at risk of having their identities stolen until such time that  
10 Settlement Class Members receive credit monitoring services, which they will receive  
11 under the Settlement. Participating Settlement Class Members will also receive 100% of  
12 their out-of-pocket losses, up to \$10,000. And, as the Settlement provides for pro-rata  
13 subsequent cash payments, Participating Settlement Class Members will each receive an  
14 average payment of between \$211.81 and \$234.37. Thus, it is possible that Settlement  
15 Class Members would actually recover *less* at trial, as their only statutory damages claim,  
16 for violation of the CCPA, allows for an award of between \$100 and \$750. Cal. Civ. Code  
17 § 1798.150(a)(1)(A). This *Churchill* factor supports preliminary approval.

18 **(b) *The Views of Class Counsel***

19 In the view of Class Counsel (who are experienced in class action litigation,  
20 including data breach and consumer privacy cases), this Settlement is an outstanding  
21 recovery for the Settlement Class. *Zavareei Decl.* ¶¶ 3, 20; *see also Warshaw Decl.* ¶ 13.  
22 Based on Class Counsel’s experience, counsel for Aeries is also experienced and  
23 sophisticated. *Zavareei Decl.* ¶ 25. “‘Great weight’ is accorded to the recommendation  
24 of counsel, who are most closely acquainted with the facts of the underlying litigation.”  
25 *Nat’l Rural Telecomms. Coop.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004). Thus, this *Churchill*  
26 factor supports preliminary approval. *Wong*, 2021 WL 1531171, at \*9

27 **(c) *Government Participant and Class Member Reaction***

28 As there is no government participant in this case, and Settlement Class Members

1 have yet to have the opportunity to react to the Settlement, these factors are neutral.

2 **5. Notice Will be Provided Under CAFA.**

3 Pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715, Aeries will provide  
4 notice of the proposed Settlement to the U.S. Attorney General, including all required  
5 materials, so that the federal government may independently evaluate the Settlement.

6 **C. The Court Should Appoint the Settlement Administrator.**

7 The parties respectfully request that the Court appoint JND to serve as Settlement  
8 Administrator. JND has over 80 years of collective experience in law and administration.  
9 JND Decl. ¶ 5. It has experience serving as a settlement administrator in many large and  
10 complex class action lawsuits, including in other data breach lawsuits in which it handled  
11 similar duties with respect to assisting class members avail themselves of credit  
12 monitoring services and resolving claims for out-of-pocket expenses. *Id.* ¶ 6. JND was  
13 selected after the parties retained bids from multiple administrators and determined that  
14 engaging JND was in the best interests of the Settlement Class. Zavareei Decl. ¶ 17.

15 **D. The Court Should Schedule a Final Approval Hearing.**

16 A key advantage of early resolution is the ability of Settlement Class Members to  
17 receive the benefits of the Settlement in short order. Also, for Settlement Class Members  
18 who opt-in to credit monitoring services, time is of the essence to ensure they do not  
19 unknowingly become victims of identity theft while waiting for approval of the  
20 Settlement. To that end, the parties respectfully request the Court schedule a Preliminary  
21 Approval Hearing as soon as possible and schedule a Final Approval Hearing as soon as  
22 the Court deems appropriate after entry of the Preliminary Approval Order.

23 **V. CONCLUSION**

24 For the foregoing reasons, Tomes requests that the Court preliminarily approve  
25 the Settlement, enter the Preliminary Approval Order, appoint her as Class  
26 Representative, appoint Daniel L. Warshaw of Pearson, Simon & Warshaw, LLP, and  
27 Hassan A. Zavareei of Tycko & Zavareei LLP as Class Counsel, direct that the Notice  
28 Plan be implemented, and schedule a Final Approval Hearing.

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Respectfully submitted,

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