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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., et al.,

Debtor and Debtor in Possession.

Lead Case No. 2:18-bk-20151-ER

Jointly Administered With:
CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER



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- ☒ Affects All Debtors
- ☐ Affects Verity Health System of California, Inc.
- ☐ Affects O'Connor Hospital
- ☐ Affects Saint Louise Regional Hospital
- ☐ Affects St. Francis Medical Center
- ☐ Affects St. Vincent Medical Center
- ☐ Affects Seton Medical Center
- ☐ Affects O'Connor Hospital Foundation
- ☐ Affects Saint Louise Regional Hospital Foundation
- ☐ Affects St. Francis Medical Center of Lynwood Foundation
- ☐ Affects St. Vincent Foundation
- ☐ Affects St. Vincent Dialysis Center, Inc.
- ☐ Affects Seton Medical Center Foundation
- ☐ Affects Verity Business Services
- ☐ Affects Verity Medical Foundation
- ☐ Affects Verity Holdings, LLC
- ☐ Affects De Paul Ventures, LLC
- ☐ Affects De Paul Ventures - San Jose Dialysis, LLC

CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
CASE NO.: 2:18-bk-20168-ER
CASE NO.: 2:18-bk-20169-ER
CASE NO.: 2:18-bk-20171-ER
CASE NO.: 2:18-bk-20172-ER
CASE NO.: 2:18-bk-20173-ER
CASE NO.: 2:18-bk-20175-ER
CASE NO.: 2:18-bk-20176-ER
CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

Chapter 11 Cases

NOTICE OF MOTION AND MOTION OF IRIS LARA, TANYA LLERA, AND JARMAINE JOHNS FOR AUTHORIZATION TO FILE A CLASS PROOF OF CLAIM ON BEHALF OF CLAIMANTS SIMILARLY SITUATED; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF KEVIN MAHONEY, MARK OZZELLO, AND DAVID B. SHEMANO

Hearing:

Date: April 24, 2019
Time: 10:00 a.m.
Place: Courtroom 1568
255 E. Temple Street
Los Angeles, CA 90012

PLEASE TAKE NOTICE that on April 24, 2019, at 10:00 a.m., or as soon thereafter as the matter can be heard, before the Honorable Ernest M. Robles, United States Bankruptcy Judge, in Courtroom 1658, located at 255 E. Temple Street, Los Angeles, CA 90012, Iris Lara, Tanya Llera, and Jarmaine Johns (the "Claimants") will move for an order authorizing the Claimants to file a class prepetition unsecured proof of claim on behalf of all creditors similarly situated as the Claimants (the "Motion").

PLEASE TAKE FURTHER NOTICE that the Motion is made pursuant to Federal Rules of Bankruptcy Procedure 7023 and 9014, and is based on the attached Memorandum of Points and Authorities and Declarations of Kevin Mahoney, Mark Ozzello, and David B. Shemano, and such other argument as may be offered prior to or at the time of the hearing on the Motion.

PLEASE TAKE FURTHER NOTICE that a formal response to the Motion must be filed with the Bankruptcy Court and served on counsel for the Claimants no later than fourteen (14) days before the scheduled hearing. Pursuant to Bankruptcy Rule 9013-1(h), failure to file and serve timely a response in accordance with the Local Bankruptcy Rules may be deemed by the Bankruptcy Court to be consent to the granting of the relief requested in the Motion.

DATED: April 3, 2019

SHEMANOLAW

By: /s/ David B. Shemano
David B. Shemano

Bankruptcy counsel to Iris Lara, Tanya Llera,
and Jarmaine Johns, individually and on
behalf of all others similarly situated

and

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similarly situated

and

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

JURISDICTION AND VENUE

On August 31, 2018 (the “Petition Date”), the above-captioned debtors (the “Debtors”) filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code to commence the above-captioned case

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter relates to the administration of the estate and is accordingly a core proceeding pursuant to 28 U.S.C. § 157(b)(1), (2)(A) and 2(B). Venue of this proceeding is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein are Federal Rules of Bankruptcy Procedure 7023 and 9014.

II.

BACKGROUND

On the Petition Date, the Debtors operated a nonprofit health care system. The Debtors have represented that in 2017 they provided medical services to over 50,000 inpatients and approximately 480,000 outpatients. The Debtors have represented that on the Petition Date they had over 7,300 employees. During the chapter 11 cases, the Debtors have sold or are in the process of selling substantially all of their assets.

A. The Prepetition Employee Data Breach Litigation

Claimants Iris Lara, Tanya Llera, and Jarmaine Johns were prepetition employees of Verity Health System of California, Inc. (the “Debtor”).

On May 12, 2017, Claimants Iris Lara and Tanya Llera, individually and on behalf of all other employees similarly situated, filed a complaint against the Debtor in the Superior Court of the State of California for the County of Los Angeles (the “Superior Court”), Case No. BC661000, alleging negligence, breach of implied contract, violation of the California Customer Records Act, and violation of section 17200 *et seq.* of the California Business & Professions Code.

1 On May 19, 2017, Claimant Jarmaine Johns, individually and on behalf of all other
2 employees similarly situated, filed a complaint against the Debtor in the Superior Court of the
3 State of California for the County of San Mateo, Case No. 17CIV02216, alleging violation of the
4 California Confidentiality of Medical Information Act (California Civil Code, §§ 56 *et seq.*),
5 invasion of privacy, breach of contract, negligence, and breach of implied contract.

6 The two actions were consolidated and a consolidated complaint was filed on June 21,
7 2018. A copy of the consolidated complaint is attached as Exhibit A.

8 In summary, the complaint alleges that on or before April 27, 2016, the Debtor was
9 targeted in a “phishing” scam, whereby cybercriminals contacted the Debtor’s HR department
10 and requested that employee W-2 files and other information be sent to the cybercriminals via
11 email. The Debtor responded by sending the requested information, which included the names,
12 addresses, and full Social Security numbers of thousands of current and former employees, as
13 well as the personally identifiable information (“PII”) of beneficiaries designated by those
14 employees for certain of their employment benefits. Claimants were employees of the Debtor at
15 the time of the data breach.

16 The cybercriminals were able to perpetrate this breach because the Debtor failed to
17 maintain reasonable and adequate security measures to protect the employees’ information from
18 access and disclosure, and failed to properly train those with access to employee PII. The Debtor
19 was obligated to protect employee information that was in its control, yet failed to do so.

20 Further, due to the Debtor’s substandard cybersecurity protocols, this breach was not
21 discovered until May 22, 2016, nearly four weeks after employee PII was released to criminals,
22 and written notification to those affected was not sent until June 1, 2016, more than a month after
23 the breach.

24 As a result of the Debtor’s failure to maintain adequate security measures and timely
25 notify employees of security breaches, the Debtor’s employees have suffered an ascertainable loss
26 in that they have had tax refunds withheld or otherwise delayed, engaged professional tax, legal
27 or other professional assistance, and undertook additional security measures (at their own
28 expense) to minimize the risk of future data breaches including, without limitation, changing

1 passwords, security questions and answers, and/or purchasing a security freeze on their credit
2 files. However, due to the Debtor's incomplete investigation, the Debtor's employees have no
3 guarantee that these security measures will in fact adequately protect their personal information.
4 As such, the Debtor's employees have an ongoing interest in ensuring that their personal
5 information is protected from past and future cybersecurity threats.

6 The litigation was stayed when the Debtors filed their bankruptcy petitions.

7 **B. Iris Lara Was Appointed To The Creditors' Committee**

8 When the Debtors filed their petitions, they listed Iris Lara, Tanya Llera, and Jarmaine
9 Johns, in their capacity as class claimants, as their 7th largest unsecured creditor. A copy of the
10 Debtors' list of 50 largest unsecured creditors is attached as Exhibit B to the Declaration of David
11 B. Shemano (the "Shemano Declaration").

12 On September 17, 2018, the United States Trustee appointed Iris Lara to the Official
13 Committee of Unsecured Creditors. [Docket No. 197]. Ms. Lara continues to serve on the
14 Committee.

15 **III.**

16 **THE CLAIMANTS SHOULD BE AUTHORIZED**
17 **TO FILE A CLASS PROOF OF CLAIM**

18 The Claimants timely filed proofs of claim individually and on behalf of all others
19 similarly situated. Copies of the proofs of claim are attached as Exhibits C and D to the Shemano
20 Declaration.

21 Pursuant to Federal Rules of Bankruptcy Procedure 7023 and 9014, this Court has the
22 power to authorize the Claimants to file a class proof of claim on behalf of all others similarly
23 situated. *Birting Fisheries v. Lane (In re Birting Fisheries)*, 92 F.3d 939 (9th Cir. 1996).

24 As a general rule, class proofs of claims are favored and "particularly appropriate" in
25 bankruptcy cases. *First Alliance Mortg. Co. v. First Alliance Mortg. Co.*, 269 B.R. 428, 444
26 (C.D. Cal. 2001). Accordingly, the party opposing the use of a class claim has the burden to
27 demonstrate why the class claim should not be permitted. *Id.* at 445.

28 In determining whether to authorize a class claim, this Court first decides whether it

1 would be beneficial to apply Rule 7023 to the claim process, and then decides whether the
2 requirements of Rule 7023 are satisfied in the case. 10 COLLIER ON BANKRUPTCY ¶
3 7023.01 (16th 2018). Among the facts the Court may consider are (1) whether the class was
4 certified prepetition, (2) whether the members of the putative class received notice of the bar date,
5 and (3) whether class certification will adversely affect the administration of the estate. *Id.*

6 **A. A Class Proof of Claim Will Benefit The Claims Administration Process**

7 The class at issue consists of all of the Debtors' current and former employees that were
8 employed at the time of the data breach in April 2016. The Claimants believe that the class may
9 exceed over 7,300 claimants. Class claims filed on behalf of current and former employees are
10 routinely authorized by bankruptcy courts. *See, e.g., In re Pac. Sunwear of Cal., Inc.*, 2016
11 Bankr. LEXIS 2579 (Bankr. D. Del. June 22, 2016); *In re MF Global, Inc.*, 512 B.R. 757 (Bankr.
12 S.D.N.Y. 2014); *Bent v. ABMD Ltd. (In re ABMD Ltd.)*, 439 B.R. 475 (Bankr. S.D. Ohio 2010);
13 *Burgio v. Protected Vehicles, Inc. (In re Protected Vehicles, Inc.)*, 392 B.R. 633 (Bankr. D. S.C.
14 2008); *Turner v. Talbert (In re Talbert)*, 347 B.R. 804 (Bankr. E.D. La. 2005).

15 In fact, recognizing the benefits of the collective resolution of employee claims, certain
16 debtors have either voluntarily consented to a class claim or even preemptively filed a motion
17 requesting that the bankruptcy court authorize a class employee claim. *See, e.g., In re SIW*
18 *Holding Company*, Case No. 18-11579 (Bankr. D. Del. 2018) (Docket No. 61, pages 10-14)
19 (motion by debtor preemptively requesting authorization for class counsel to file a class claim);

20 While some of the individual claims may be significant, many will be relatively small and
21 it would not be economically feasible for many claimants to hire an attorney and prosecute their
22 individual claims. This factor weighs heavily in favor of permitting a class claim. *First Alliance*
23 *Mortg. Co. v. First Alliance Mortg. Co.*, 269 B.R. at 446.

24 Because of the commencement of the Debtors' cases and the imposition of the automatic
25 stay, the class has not yet been certified by the Superior Court. However, the fact that the
26 Superior Court has not yet certified the class is a minor factor that does not prevent this Court
27 from permitting the class claim. *Id.* at 445.
28

1 While it appears that the Debtors served notice on employees that were employed as of the
2 Petition Date, it does not appear that the Debtors served notice on former employees. The fact
3 that many of the class claimants were not served with notice of the commencement of the case
4 and bar date is a strong factor supporting a class claim. *Id.*

5 Permitting the class claim at this time will not unduly burden the estate. The Debtors have
6 been aware of the class claim since May 2016, listed the class claim in their list of 50 largest
7 unsecured creditors, and raised no objection to the appointment of a Claimant to the Official
8 Committee of Unsecured Creditors. The Debtors have not confirmed a reorganization plan and
9 are not ready to make a distribution to creditors. Accordingly, the Motion is timely. *Compare, In*
10 *re Ephedra Prods. Liab. Litig.*, 329 B.R. 1 (S.D.N.Y. 2005) (permission to file class claim denied
11 where the class claimant did not request permission until after the debtor had confirmed the plan
12 and adjudication of the class claim would unduly delay a distribution to creditors).

13 **B. The Elements Of FRBP 7023(a) Are Satisfied**

14 In order to satisfy Rule 7023, the Claimants must demonstrate that the requirements of
15 numerosity, commonality, typicality and adequacy have been met.

16 **1. Numerosity is satisfied**

17 A class must be “so numerous that joinder of all members is impracticable.” FRCP
18 23(a)(1). A class size of 27 members has been held to satisfy the requirement. *Tietz v. Bowen*,
19 695 F. Supp. 441, 445 (N.D. Cal. 1987). Here, the Claimants estimate that the class includes over
20 7,300 current and former employees.

21 **2. Commonality is satisfied**

22 The commonality requirement is satisfied when “there are questions of law or fact
23 common to the class.” FRCP 23(a)(2). At the certification stage, the focus of inquiry is whether
24 or not plaintiff’s theory of liability is amenable to class treatment. *Campbell v. Vitran Express*
25 *Inc.*, 2015 U.S. Dist. LEXIS 155512* 27 (C.D. Cal. Nov. 12, 2015) (“Liability does not hinge on
26 the individual conduct of the employees, but on the existence of a uniform policy to deny meal
27 and rest periods.”).
28

1 The United States Supreme Court held that a case meets the commonality requirement
2 whenever the plaintiffs raise a common contention and the “determination of its truth or falsity
3 will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-*
4 *Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). The Supreme Court went on to hold that,
5 “[w]e quite agree that for purposes of Rule 23(a)(2), even a single common question will do . . .”
6 *Id.* at 359 (internal quotations omitted). While there needs to be common claims, they “need not
7 be identical.” *Stoffels v. SBC Commc’n Inc.*, 238 F.R.D. 446, 452 (W.D. Tex. 2006).

8 This case easily meets the commonality requirement because the claims are based on a
9 data breach that affected the class of employees. Courts have recognized that data breach claims
10 are amenable to class treatment. *See, e.g., Ree v. Zappos.com, Inc. (In re Zappos.com, Inc.)*, 888
11 F.3d 1020 (9th Cir. 2018); *Smith v. Triad of Alabama, LLC*, 2017 U.S. Dist. LEXIS 38574 (M.D.
12 Ala. Mar. 17, 2017). As set forth in the complaint attached as Exhibit A, the common questions
13 to be addressed in this matter apply to the Claimants and all putative class members. Although
14 class members at some point may be required to prove their individual damages, commonality is
15 not defeated by the need for an individualized damages determination. *Comcast Corp. v.*
16 *Behrend*, 133 S. Ct. 1426, 1433 (2013). Accordingly, commonality is easily satisfied here.

17 3. Typicality is satisfied

18 Typicality is established where the “claims or defenses of the representative parties are
19 typical of the claims or defenses of the class . . .” FRCP 23(a)(3).

20 The test of typicality “is whether other members have the same or similar injury, whether
21 the action is based on conduct which is not unique to the named plaintiffs, and whether other
22 class members have been injured by the same course of conduct.” *Hanon v. Dataproducts Corp.*,
23 976 F.2d 497, 508 (9th Cir. 1992). Generally, “the commonality and typicality requirements”
24 tend to merge. *Dukes*, 564 U.S. at 349. Indeed, “like commonality, the typicality requirement
25 does not mandate that all class members share identical claims.” *In re United Cos. Fin. Corp.*,
26 276 B.R. 368, 373 (Bankr. D. Del. 2002); *see also Driver*, 265 F.R.D. at 304 (“typicality is a ‘low
27 hurdle’ that requires neither complete coextensiveness nor even substantial identity of claims”).

28 Typicality “refers to the nature of the claims of the representative, not the individual

1 characteristics of the plaintiff.” *In re United Cos.*, 276 B.R. 368, 373 (internal citation omitted).
2 Factual differences do not defeat typicality. *In re Pac. Sunwear of Cal., Inc.*, 2016 Bankr. LEXIS
3 2579 *8 (Bankr. D. Del. June 22, 2016).

4 In *Driver*, the court held that typicality was satisfied because the class representatives’
5 claims were typical of the class. *Driver*, 265 F.R.D. at 304. In particular, there was no
6 suggestion that the proposed class representatives were treated differently from other employees
7 under the company’s standard policy and procedures. *Id.*.

8 Here, like *Driver*, because the challenge is to the Debtors’ employee data policies, the
9 typicality requirement of Rule 23 is met. The Claimants were employed by the Debtor, the
10 Claimants and the class members have been injured in the same manner in that their personal data
11 was not secured by Debtor and as a result was taken by cybercriminals, and the Claimants seek
12 the same relief as the class members. The risk of an individual’s personal data being misused by
13 hackers who breached a network to obtain such information is immediate and real. *In re Adobe*
14 *Systems, Inc. Privacy Litig.*, 66 F.Supp.3d 1197, 1214 (N.D. Cal. 2014). It is also inevitable that
15 the stolen data will be misused making actual injury inevitable. *Id.* at 1215. As set forth in
16 paragraphs 35, 36, 42, 43, 48 and 49 of the complaint, the Claimants’ data was misused and false
17 tax returns were filed with the IRS resulting in monetary loss and continuing injury to the
18 Claimants. While each class member may not have yet to experience this type of misuse of their
19 personal information, typicality does not have such a requirement where it is literally certain harm
20 will occur. *Id.* Therefore, the typicality requirements of Rule 23 are met.

21 **4. Adequacy is satisfied**

22 The final requirement of Rule 23(a) – whether the representative party will fairly and
23 adequately protect the interests of the class – is also satisfied here.

24 Legal adequacy requires (1) the absence of conflicts of interest between the class
25 representatives and their counsel with other class members, and (2) a finding that the class
26 representatives and their counsel will vigorously prosecute the action on behalf of the class.
27 *Resnick v. Frank (In re Online DVD-Rental Antitrust Litig.)*, 779 F.3d 934, 943 (9th Cir. 2015).

28 Here, the Claimants have no interests that diverge from those of the class, and their claims

1 are typical of the claims of the class. As noted above, they have been injured in the same manner
2 and seeks the same relief as each class member. Further, the same strategies that will vindicate
3 their claims will vindicate those of the class. Thus, the Claimants are adequate representatives for
4 the class proof of claim. *See, e.g., Driver*, 265 F.R.D. at 301 (“The named plaintiffs here have a
5 sufficient interest in the outcome of the case to ensure their vigorous advocacy, and there are no
6 indications that their claims conflict with those of other members of the proposed classes.
7 Accordingly, this element is also satisfied.”).

8 Mahoney Law Group and Capstone Law APC are law firms that concentrate their practice
9 in employment law, with an emphasis on class actions. The lawyers at the firms are seasoned
10 litigators who are experienced in employment issues with considerable experience in prosecuting
11 data breach class actions, and are therefore competent and capable of conducting this litigation.
12 The qualifications of the Mahoney Law Group are set forth in the attached Declaration of Kevin
13 Mahoney, and the qualifications of Capstone Law APC are set forth in the attached Declaration of
14 Mark Ozzello. The Mahoney Law Group and Capstone Law APC will be assisted by experienced
15 bankruptcy counsel. Accordingly, counsel is qualified and able to litigate the claims, thereby
16 satisfying the adequacy requirement. *See, e.g., Driver*, 265 F.R.D. at 300 (adequacy requirement
17 satisfied where “Plaintiffs’ counsel is competent and experienced in FLSA and Illinois wage law
18 class action suits and have acted as representative counsel in numerous actions in federal and state
19 court.”).

20 Thus, the Claimants and their counsel will adequately represent the proposed employee
21 class in accordance with Rule 23(a)(4).

22 **C. The Elements Of FRBP 23(b) Are Satisfied**

23 Once the requirements of Rule 23(a) are met, plaintiffs must also satisfy the requirements
24 of at least one of the subdivisions of Rule 23(b).

25 **1. Rule 23(b)(1) Is Satisfied**

26 Rule 23(b)(1) provides that a class action may be maintained if prosecuting separate
27 actions by individual class members would create a risk of either: “(A) inconsistent or varying
28

1 adjudications with respect to individual class members that would establish incompatible
2 standards of conduct for the party opposing the class; or (B) adjudications with respect to
3 individual class members that, as a practical matter, would be dispositive of the interests of the
4 other members not parties to the individual adjudications or would substantially impair or impede
5 their ability to protect their interests.” Where, as here, the actions alleged against a defendant
6 include a breach of a duty similarly affecting a large class of individuals, certification under Rule
7 23(b)(1) is appropriate. *Ballas v. Anthem Blue Cross Life & Health Ins. Co.*, 2013 U.S. Dist.
8 LEXIS 199523 *40 (C.D. Cal. April 29, 2013).

9 Further, class actions are commonly approved pursuant to Rule 23(b)(1)(B) in “limited
10 fund” cases, which “is an action in which any recovery will come from a fixed pool of assets that
11 is or may be insufficient to satisfy all of the claims against the fund.” 5 MOORE'S FEDERAL
12 PRACTICE - CIVIL § 23.42[2][a] (2019). As set forth above, the Debtors have sold or are in the
13 process of selling all of their assets, and this case is now a liquidation case. The assertion of
14 claims in a liquidating bankruptcy case satisfies the test. *In First Alliance Mortg. Co. v. First*
15 *Alliance Mortg. Co.*, 269 B.R. at 448.

16 2. Rule 23(b)(3) Is Satisfied

17 Rule 23(b)(3) provides that class action may be maintained if (1) the class members’
18 claims not only have common questions of law or fact but they also predominate over any
19 individual questions; and (2) the class action is the superior method to adjudicate the action fairly
20 and efficiently. The predominance inquiry “focuses on the relationship between the common and
21 individual issues.” *Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas*
22 *Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001). “When common questions present a significant
23 aspect of the case and they can be resolved for all members of the class in a single adjudication,
24 there is clear justification for handling the dispute on a representative rather than on an individual
25 basis.” *Hanlon v. Chrysler*, 150 F.3d 1011, 1022 (9th Cir. 1998).

26 To establish predominance of common issues, a party seeking class certification is not
27 required to show that the legal and factual issues raised by the claims of each class member are
28 identical. Rather, the predominance inquiry focuses on whether the proposed class is “sufficiently

1 cohesive to warrant adjudication by representation.” *Local Jt. Exec. Bd. Of Culinary/Bartender*
2 *Trust Fund v. Las Vegas Sands*, 244 F.3d at 1162. “When common questions present a
3 significant aspect of the case and they can be resolved for all members of the class in a single
4 adjudication, there is clear justification for handling the dispute on a representative rather than
5 individual basis.” *Hanlon v. Chrysler*, 150 F.3d at 1022. Proof that the plaintiffs will prevail on
6 the merits is not required as a prerequisite to class certification, only a showing that questions
7 common to the class predominate. *Amgen, Inc. v. Conn. Ret. Plans and Trust*, 133 S. Ct. 1184,
8 1191 (2013). Although the certification analysis may require some overlap with the merits, “Rule
9 23 grants courts no license to engage in free-ranging merits inquiries at the certification stage.”
10 *Id.* at 1195.

11 Rule 23(b)(3) includes a list of factors for courts to consider: (1) interest of members of
12 the class in individually controlling the prosecution of separate actions; (2) the extent and nature
13 of litigation already commenced by class members; (3) the desirability of concentrating litigation
14 of claims in a particular forum; and (4) the difficulties likely to be encountered in managing a
15 class action.

16 1. Common Questions of Law and Fact Predominate

17 The complaint asserts claims based on the Debtor’s employee data policies. The common
18 questions applicable to this case include whether the Debtor owed a duty to the Claimants and the
19 class members to protect their private information, whether the Debtor’s security measures were
20 adequate, whether the Debtor failed in its duty to protect this private information and whether the
21 Debtor’s notice to the Claimants and the class members of the breach was timely and sufficient.
22 As set forth in more detail below, these questions can be resolved on a class-wide basis making
23 the class claim appropriate. The common questions in this case predominate as the resolution of
24 such questions will be applicable to all class members.

25 Further, there is no dispute that the Claimants’ and class members’ personal information
26 was in fact taken. Therefore, the Claimants and the class suffered the same injury. In *In re*
27 *Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299 (N.D. Cal. Aug. 15, 2018) the court analyzed
28 the common issues at the settlement approval stage and found that “the extensiveness and

1 adequacy of Anthem’s security measures lies at the heart of every claim.” *Id.* at 308. The court
2 further found common issues would predominate as to liability because any related factual
3 questions about whether Anthem knew its data was not secure would apply uniformly across the
4 entire class. *Id.* The same applies in this matter. The Debtor’s knowledge and adequacy of its
5 security measures to protect employees’ private information would be the focal point as well as
6 its response to the data breach. *See In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 583 (N.D.
7 Cal. Sept. 15, 2015). Those issues will not vary by class member and as such, common legal and
8 factual issues predominate.

9 Merely because individuals may have to prove damages at some point does not defeat
10 certification. *Leyva v. Medline Indust., Inc.*, 716 F.3d 510, 514 (9th Cir. 2013). While there
11 might be some need to make some factual determinations, including the calculation of individual
12 damages, the predominate issue will be the legality of the Debtor’s practices and procedures.
13 Accordingly, the requirement is satisfied. *See, e.g., Sali v. Corona Reg'l Med. Ctr.*, 909 F.3d 996
14 (9th Cir. 2018) (reversing denial of class certification of employee claims); *Ayala v. U.S. Xpress*
15 *Enters.*, 2017 U.S. Dist. LEXIS 125247 (C.D. Cal.).

16 **2. The Class Action is the Superior Method**

17 In determining if a class action is superior, the Court considers: “(A) the class members’
18 interests in individually controlling the prosecution or defense of separate actions; (B) the extent
19 and nature of any litigation concerning the controversy already begun by or against class
20 members; (C) the desirability or undesirability of concentrating the litigation of the claims in the
21 particular forum; and (D) the likely difficulties in managing a class action.” Rule 23(b)(3).

22 As set forth above, it does not appear that former employees were notified of the
23 commencement of the Debtors’ bankruptcy cases and the applicable bar date. Therefore, without
24 a class proof of claim, these individuals may never know they were required to file an individual
25 proof of claim or may be able to secure recovery from the estate.

26 Further, in this case a class proof of claim is a superior method of adjudicating this matter
27 than requiring individual claims. It is highly likely that few if any individual proofs of claim will
28 have been filed by the bar date, which will make it clear that most class members do not have an

1 interest in individually prosecuting their claims. Moreover, many of the class members would be
2 discouraged from vindicating their rights if they were required to pursue their claims on an
3 individual basis. And if this Court were to require individual claims, this Court would likely be
4 burdened by individuals trying to navigate through the court system without legal representation.

5 **a. A Class Claim Will Assist The Liquidation Of The Amount Of The**
6 **Claims Based On The Debtor's Breach**

7 Superiority is further supported by the fact that the damages can be determined on a class-
8 wide basis. As set forth above, the damages are anticipated to fall into two categories: (1) proof
9 of use and monetary loss as a result of use of the breached private data, and (2) ongoing credit
10 monitoring to prevent use of the breached private data.¹ In order to efficiently and effectively
11 present this information to the Court at the appropriate time, expert witness testimony can be
12 presented in lieu of testimony from each individual claimant to establish the amount of damages
13 collectively. *Spann v. J.C. Penny Corp.*, 307 F.R.D. 508, 517 (2015). This means that a class
14 proof of claim would be manageable and less burdensome on the Court and the parties.

15 Therefore, the Claimants have demonstrated that the conditions of Rule 23(b)(3) have
16 been satisfied.

17 **IV.**

18 **ALTERNATIVELY, THE COURT SHOULD ESTABLISH A PROCESS**
19 **FOR COLLECTIVE ADJUDICATION OF THE CLASS CLAIMS**

20 Should the Court reject the Claimants' request for authority to file and prosecute a class
21 proof of claims, the Court should (1) extend the bar date for members of the class to file
22 individual claims, and (2) establish a practical process of for ascertaining and collectively
23 adjudicating the claims. *See, Schuman v. Connaught Group, Ltd. (In re Connaught Group, Ltd.)*,
24 491 B.R. 88 (Bankr. S.D.N.Y. 2013) ("If the representative files a timely adversary proceeding or
25 class proof of claim, and the Court denies a motion to certify the class, it should set a reasonable

26 _____
27 ¹ The Claimants do not contend these are the only damages available to the Claimants and class
28 members. The Claimants and class members also seek equitable relief and other consequential
damages.

1 bar date to allow the members of the putative class to file individual claims.”).

2 An alternative process was recently utilized in *In re Buffets LLC*’s, No. 16-50557-RBK
3 (Bankr. W.D. Tex.). In *Buffets*, the court established a process whereby the debtor produced a
4 notice list, and a notice and consent form was mailed to all putative class members to participate
5 in the bankruptcy proceedings. All consent forms had to be filed within 30 days. A copy of the
6 order establishing the process is attached to the Shemano Declaration as Exhibit E. All of the
7 above was administered substantially after the general bar date in the cases by way of forms
8 specially agreed by counsel to all parties. As a testimony to what these procedures can
9 accomplish, they elicited over 1,600 employee claims. The parties then scheduled “bellwether”
10 trials to expedite the collective adjudication of the claims.

11 **V.**

12 **CONCLUSION**

13 For the reasons set forth above, the Claimants request that the Bankruptcy Court enter an
14 order authorizing the Claimants to file a proof of claim on behalf of all others similarly situated.

15 DATED: April 3, 2019

16 **SHEMANOLAW**

17 By: /s/ David B. Shemano
18 David B. Shemano

19 Bankruptcy counsel to Iris Lara, Tanya Llera,
20 and Jarmaine Johns, individually and on
21 behalf of all others similarly situated

22 and

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SHEMANOLAW
LOS ANGELES

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individually and on behalf of all others
similarly situated

and

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Attorneys for Iris Lara and Tanya Llera,
individually and on behalf of all others
similarly situated

DECLARATION OF KEVIN MAHONEY

I, Kevin Mahoney, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and am an attorney of record for Jarmaine Johns ("Mr. Johns") in the class action commenced by Mr. Johns in the Superior Court of the State of California for the County of San Mateo, Case No. 17CIV02216 and consolidated with *Lara et al. v. Verity Heath System of California, Inc.*, Los Angeles Superior Court Case No. BC 661000 on June 8, 2018. A true and correct copy of the Consolidated Complaint is attached as Exhibit A. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would competently testify thereto.

2. Mr. Johns began employment with St. Francis medical center, operated by Debtor, in or around February 2013.

3. In summary, the consolidated complaint alleges that on or before April 27, 2016 the Debtor unreasonably caused to be transmitted to hackers the personal information of Plaintiffs, other employees and their family members. This information included W-2 files, containing the social security numbers, names, addresses, earnings and other personal information of Debtor's employees. The consolidated complaint further alleges Debtor waited more than a month to notify employees of the data breach. The notice failed to adequately warn employees that the information of their spouses, dependents, and family members was also compromised nor did Debtor undertake any steps to directly notify these other victims of the data breach. As a direct result of Debtor's failure to properly secure and protect this private information, Mr. Johns experienced significant delay in the process of his State and Federal tax returns and has learned a third party is using his social security number to file a fraudulent tax return. Further, Mr. Johns has been required to engage tax professionals and credit consultants in order to determine the extent of use of his and his family's personal information by cybercriminals.

4. The Debtors' illegal conduct described in the consolidated complaint occurred prior to the Debtors filing their bankruptcy cases.

5. The claims for recompense for the data breach predominates over individual issues. The central issue on this claim is simple: whether Debtors are liable for the damages

1 suffered by Claimants and Class Members for failing to adequately protect their private
2 information. Resolution of these issues will require common proof and predominate over any
3 individualized issues.

4 6. On August 31, 2018, the Debtors commenced their bankruptcy cases. No
5 determination of the propriety of class action treatment was made prior to the commencement of
6 the bankruptcy cases.

7 7. To the best of my knowledge, neither Mr. Johns, nor I, nor any person associated
8 with my law firm, have a conflict of interest with the class.

9 8. I am the Managing partner of Mahoney Law Group, APC and have extensive
10 experience handling class action litigation both in state and federal court. Since August 2009 my
11 practice has focused on consumer and employment class actions.

12 9. The firm currently serves as lead counsel and/or co-counsel in numerous class
13 action matters in the Los Angeles Superior Court, Orange County Superior Court, and United
14 States District Court for the Central District of California. Some examples of cases where my
15 firm and/or its attorneys have served as lead and/or co-counsel include: *Michael Allen v. UCLA*
16 *Heath Systems Auxiliary, et al.* Los Angeles County Superior Court Case No. BC590219 [data
17 breach]; *Valerie Brooks v Life Care Centers of America, Inc. et al.*, Case No. SACV 12-00659-
18 CJC(RNBx); *Harvey Holt, et al. v. Parsec, Inc.*, Case No. CV-9540-VBF; *Dorothy Berry v.*
19 *Brierwood Terrace Convalescent Hospital, et al.*, Case No. BC437781; *Dante Booker v The*
20 *Goodyear Tire and Rubber Company*, Case No. BC498399; *Manuel Diaz v Excel Sheet Metal,*
21 *Inc.*, Case No. BC504033; *Fernando Albiar, et al. v. Spectrum Athletics-Canoga Park, et al.* Case
22 No. BC413860; *Gerardo Ortega, et al. v. CR & R Incorporated*, Case No. BC414434; *William*
23 *Davis v Pacific Hospital of Long Beach, et al.* Case No. BC488542; *Kurt Casadine v Maxim*
24 *Healthcare Services, Inc.*, Case No. CV 12-10078-DMG (CWx); *Deborah Cabanillas v*
25 *Lakewood Park Manor Healthcare, Inc. et al.* Case No. BC443859; *Daniel Branch v. Indiana*
26 *Plumbing Supply, Co. Inc. et al.*, Case No. BC425627; *Butch Calvo v. Providence Health*
27 *Systems-Southern California, et al.* Case No. BC419843; *John De La Torre Cri-Help, Inc.*, Case
28 No. BC508430; *Esmerelda Fernandez, et al v Teva Parenteral Medicines, Inc.*, Case No. 30-

2010-00412849-CU-OE-CXC; *Kimya Oliver, et al. v. College Health Enterprise, et al.* Case No. BC406481; *Audi Velazquez v. New Vista Health Services, Inc.*, Case No. BC 424797; *Rick Wilcox, et al. v. Presbyterian Intercommunity Hospital, et al.*, Case No. BC 424796; *Gardner v. Longwood Management Corp.*, Case Nos. BC377127; and *Davis v. Vital Care, Inc.*, Case No. BC385484; *Raenan Guadez, et al v Sega Gameworks, LLC*, Case No. CIVRS1105099; *Erica Teyuca v Pacific Alliance Medical Center, Inc.*, Case No. BC459422; *Yessenia Martinez v Fresh & Easy Neighborhood Market, Inc.*, Case No. CIVRS1104607; *Maria Zimmerman v Quality Children's Services*, Case No. BC472001; *Czuchaj v. Conair Corporation*, USDC Southern District of California, 13CV01901-BEN-RBB [certification granted November 12, 2015]; *Oberschlake v. St. Joseph's Hospital*, Orange County Superior Court-Complex Division, 04CC00301; *Flores v. Cambrian Home Care* Los Angeles County Superior Court Case No. BC544612; *Mays v. Children's Hospital of Los Angeles* Los Angeles County Superior Court Case No. BC477830; *Levanoff v. SoCal Wings, LLC, et al.* Orange County Superior Court Case No. 30-2011-00511808; *Faulkinbury v. Boyd & Associates* Orange County Superior Court Case No. 05CC00107.

10. Our attorneys have also been involved in numerous favorable appellate court decisions involving class issues:

- a. *Faulkinbury v. Boyd & Associates*, (2013) 216 Cal.App.4th 220, successful Petition for Review filed with the California Supreme Court (one of the first cases to reverse a previous denial of certification following the landmark case *Brinker Restaurant v. Superior Court* (2012) 53 Cal.4th 1004);
- b. *Brennan v. U.S. TelePacific*, Orange County Superior Court, 30-2010-00422317; Fourth Appellate District, Division 3, Case No. G046225. (consumer class action where we successfully argued on appeal to uphold the lower court's ruling denying the defendant's motion to compel arbitration pursuant to the *AT&T v. Concepcion* U.S. Supreme Court decision);
- c. *Doneyda Perez v. DirecTV, et al.*, United States District Court, Central District of California, Southern Division, Case No. 8:16-cv-01440-JLS-DFM (9th Circuit

1 Court of Appeal decision affirming trial court's denial of motion to compel
2 arbitration in RICO class);

3 d. *Lewis v. Apple American Group LLC* (2017) [Unpublished] Court of Appeal, for
4 the State of California, Second Appellate District, Division Five Case No.
5 B275193 (affirming denial of motion to compel arbitration agreement containing
6 class waiver);

7 e. *Mandviwala v. Five Star Quality Care, et al.* United States Supreme Court Case
8 No. 17-1357 (defeat of Petition for Writ of Certiorari challenging the ability to
9 submit California Private Attorneys General Act claims to arbitration).

10 11. Attorney Katherine Odenbreit joined my firm in November 2015. Ms. Odenbreit's
11 practice has been dedicated to consumer and employment class actions since 2001. She has been
12 certified as class counsel or co-class counsel on numerous matters both in state and federal court.
13 A small sample of those matters include: *Dibel v. Jenny Craig*, USDC Southern District of
14 California, 06CV2533 JLS (AJB) (FLSA Conditional Certification); *Levine, et al. v. 24 Hour*
15 *Fitness*, USDC Southern District of California, 02CC00386 and *Boyce v. 24 Hour Fitness*, USDC
16 Southern District of California, 03CV2140 BEN (BLM) (FLSA Conditional Certification/Rule 23
17 Class Certification-over 40,000 class members); *Harris v. Liberty Mutual Ins. Co.*, JCCP 4234;
18 California Supreme Court Case No. S156555; *Salvador v. PLS Financial Services*, USDC Central
19 District of California; 07CV00882 AHM (CWx); *Lockhart v. County of Los Angeles*, USDC
20 Central District of California, 07CV1680 ABV (CWx); *Oberschlake v. St. Joseph's Hospital*,
21 Orange County Superior Court-Complex Division, 04CC00301; *Solley v. Pier 1 Imports*, JCCP
22 4373; *Chapman v. Intel Corp.*, Santa Clara Superior Court, 107CV082329; *Holman et al. v.*
23 *Downey Savings & Loan*, Los Angeles County Superior Court Case No. BC323796; *Czuchaj v.*
24 *Conair Corporation*, USDC Southern District of California, 13CV01901-BEN-RBB [certification
25 granted November 12, 2015]; *Flores v. Cambrian Home Care* Los Angeles County Superior
26 Court Case No. BC544612; *Mays v. Children's Hospital of Los Angeles* Los Angeles County
27 Superior Court Case No. BC477830; *Levanoff v. SoCal Wings, LLC, et al.* Orange County
28

1 Superior Court Case No. 30-2011-00511808; *Faulkinbury v. Boyd & Associates* Orange County
2 Superior Court Case No. 05CC00107.

3 12. In my experience, a class proof of claim would be the most efficient and effective
4 way to address the claims of thousands of individuals in the bankruptcy proceeding.

5 I declare under penalty of perjury that the foregoing is true and correct to the best of my
6 knowledge, information and belief.

7 Executed this 3rd day of April 2019, at Long Beach, California.

8 

9 _____
10 Kevin Mahoney

DECLARATION OF MAR A. OZZELLO

I, Mark A. Ozzello, declare as follows:

1. I am admitted, in good standing, to practice as an attorney before all courts in the State of California, the United States District Court, Washington, D.C., the Ninth Circuit Court of Appeals, the Eighth Circuit Court of Appeals, the United States District Courts for the Central, Northern, Southern and Eastern Districts of California and the United States District Court, Western District of Michigan. I have been admitted pro hac vice to practice before innumerable other state and federal courts. I have never been subject to discipline by the State Bar of California or any other bar. Unless the context indicates otherwise, I have personal knowledge of the facts stated in this declaration, and if called as a witness, I could and would testify competently thereto. I am a Senior Associate at Capstone Law APC (“Capstone”), counsel of record for Claimants Iris Lara and Tanya Llera, individually and on behalf of a class of current and former employees of Verity, their spouses and dependents who they seek to represent. I make this declaration in support of the Motion to File a Class Proof of Claim.

2. I received my undergraduate degree from Georgetown University and my law degree from Pepperdine School of Law. I was admitted to the California Bar in December 1984. I have been practicing law for approximately 35 years, and have been focused exclusively on consumer and employment class actions and complex matters since 1998.

3. Capstone represents Plaintiffs Iris Lars and Tanya Llera in the Consolidated Class Action Complaint [Judicial Counsel Coordination Proceeding No. 4950]. That Complaint alleges that on or before April 27, 2016, the Debtors unreasonably transmitted the personal information of Plaintiffs, other employees and their family members to an email request from an unknown party commonly known as (“phishing”). Importantly, the Consolidated Complaint alleges that this information included W-2 files, which contained the social security numbers, names, addresses, earnings and other personal information of the Debtor’s employees (PII). It is alleged that the Debtor waited more than a month to notify its employees of the data breach, and the Debtor failed to undertake any steps to directly notify the family members of the employees and these individuals also became the victims of the data breach.

1 4. I am informed that both Iris Lars and Tanya Llera experienced significant problems
2 and delays associated with the filing of their state and federal tax returns. Both plaintiffs learned
3 that third parties were using their social security numbers to file fraudulent tax returns. Both
4 Plaintiffs have also been required to engage tax professionals and credit consultants to determine
5 the extent of use of their personal information and their families personal information, by
6 cybercriminals.

7 5. The Consolidated Complaint alleges claims for the data breach which predominate
8 over individual issues. The central issue with respect to these claims are straight forward: whether
9 Debtors are liable for the damages suffered by Claimants and Class Members for failing to
10 adequately protect their PII. Resolution of these issues will require common proof and predominate
11 over any individualized issues.

12 6. The Debtors' illegal conduct described in the Consolidated Complaint occurred prior
13 to the Debtors filing their bankruptcy cases. A mere two months after the Consolidated Complaint
14 was filed, that the Debtors sought protection before the present court. As such, there has not been
15 a determination of the appropriateness of class treatment.

16 7. I have personally been engaged in the representation of plaintiffs in the
17 consumer, data breach, employment, disability rights, telecommunications, insurance,
18 banking, securities, antitrust, defective products, mass and toxic tort fields since 1988. During
19 that time, I have been involved in the representation of plaintiffs in more than 100 different
20 class action cases and have been certified to act as Class Counsel in various Superior Courts
21 of the State of California and United States District Courts in California and various other
22 jurisdictions throughout the country.

23 8. I have successfully prosecuted appeals in class actions and obtained numerous
24 published decisions, including the following:

- 25 • *Laliberte v. Pacific Mercantile Bank* (2007) 147 Cal.App.4th 1.
- 26 • *Ghazarian v. Diva Limousine, Ltd.* (2008) 160 Cal.App.4th 1524.
- 27 • *Gomez v. Lincare, Inc.* (2009) 173 Cal.App.4th 508.

28 9. Capstone is committed to investigating and advancing the Class claims and to

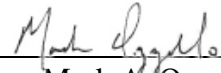
1 protecting Plaintiffs' and Class members' PII. Capstone has already undertaken significant work
2 in identifying and investigating the potential claims in the consolidated action and has already
3 dedicated, and will continue to dedicate, the resources necessary to investigate and advance the
4 claims of the Class.

5 10. Capstone is one of California's largest plaintiff-only consumer law firms. With
6 thirty seasoned attorneys who focus exclusively on prosecuting complex class action lawsuits and
7 appeals, Capstone has the requisite experience, resources, and expertise to successfully and
8 vigorously prosecute the consolidated action against the Debtors on behalf of the Class.

9 11. Capstone attorneys also have significant experience and knowledge in actions which
10 specifically include PII and data breach. Capstone represented named plaintiffs in the Sony Data
11 breach case; Capstone currently represents named plaintiffs in the Yahoo Data breach MDL, and
12 the Facebook Data breach MDL.

13 I declare under penalty of perjury that the foregoing is true and correct to the best of my
14 knowledge, information and belief.

15 Executed this 3rd day of April 2019, at Los Angeles, California.

16
17 
18 _____
19 Mark A. Ozzello
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DECLARATION OF DAVID B. SHEMANO

I, David B. Shemano, declare as follows:

1. I am bankruptcy counsel to Iris Lara, Tanya Llera, and Jarmaine Johns, in the bankruptcy cases filed by Verity Health System of California, Inc, and its affiliates (the “Debtors”). Each of the facts contained in this declaration is based upon my personal knowledge and, if called as a witness to do so, I could competently testify thereto.

2. When the Debtors filed their petitions, they listed Ms. Lara as their 7th largest unsecured creditor. A copy of the Debtors’ list of 50 largest unsecured creditors is attached as Exhibit B.

3. Attached as Exhibit C is the proof of claim filed by Iris Lara and Tanya Llera in the Verity Health System of California, Inc., case.

4. Attached as Exhibit D is the proof of claim filed by Jarmaine Johns in the Verity Health System of California, Inc., case.

5. Attached as Exhibit E is Docket No. 2126 in *In re Buffets LLC’s*, No. 16-50557-RBK (Bankr. W.D. Tex.).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 3rd day of April 2019, at Los Angeles, California.

/s/ David B. Shemano
David B. Shemano

EXHIBIT A

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Attorneys for Plaintiff Jarmaine Johns

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

**VERITY HEALTH EMPLOYEE
DATA BREACH CASES**

Included Actions:

**LARA, et al. v. VERITY HEALTH
SYSTEM OF CALIFORNIA, INC.**

**JOHNS v. VERITY HEALTH SYSTEM
OF CALIFORNIA, INC.**

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4950
L.A.S.C. Case No.: BC661000

*Assigned for All Purposes to Judge Kenneth R.
Freeman*

**CONSOLIDATED CLASS ACTION
COMPLAINT**

- (1) Negligence
- (2) Breach of Implied Contract
- (3) Violation of the California Customer
Records Act
- (4) Confidentiality of Medical Information
Act
- (5) Violation of Unfair Competition Law,
California Business & Professions Code
§ 17200 *et seq*
- (6) Invasion of Privacy
- (7) Unjust Enrichment

DEMAND FOR JURY TRIAL

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUN 21 2018

Sherri R. Carter, Executive Officer/Clerk of Court

By: Brittney Smith, Deputy

BY FAX

INTRODUCTION

1
2 1. Plaintiffs Iris Lara, Tanya Llera, and Jarmaine Johns (“Plaintiffs”) bring this
3 action for themselves and on behalf of all others similarly situated who provided personally
4 identifiable information (“PII”) to Verity Health System of California, Inc. (“Defendant” or
5 “Verity”), and whose PII was in the possession and control of Defendant at any time since
6 January 1, 2015.

7 2. On or before April 27, 2016, Verity was targeted in a “phishing” scam, whereby
8 cybercriminals contacted Verity’s HR department and requested that employee W-2 files and
9 other information be sent to the cybercriminals via email. Verity responded by sending the
10 requested information, which included the names, addresses, and full Social Security numbers
11 of thousands of current and former Verity employees, as well as the PII of beneficiaries
12 designated by those employees for certain employment benefits (the “Data Breach” or the
13 “breach”).

14 3. Cybercriminals were able to perpetrate this breach because Verity failed to
15 maintain reasonable and adequate security measures to protect the employees’ information
16 from access and disclosure, and failed to properly train those with access to employee PII.
17 Verity was obligated to protect employee information that was in its control, yet failed to do so.

18 4. Further, due to Verity’s substandard cybersecurity protocols, this breach was not
19 discovered until May 22, 2016, nearly four weeks after employee PII was released to criminals,
20 and written notification to those affected was not sent until June 1, 2016, more than a month
21 after the breach.

22 5. Following the breach, the company attempted to limit its liability by appearing to
23 promptly notify employees and offer credit monitoring services. However, these measures
24 were inadequate to protect employees from identity theft or make them whole, as further
25 alleged below.

26 6. Health systems are frequently the subject of data breaches and despite the known
27 damage such data breaches have caused in recent years, Defendant failed to implement and
28 maintain adequate and advanced data security and data management systems and policies to

1 protect Plaintiff and Class Members' PII.

2 7. Defendant intentionally, or by and through its negligence, allowed Plaintiffs and
3 Class Members' PII to be kept in an unencrypted state. Furthermore, Defendant intentionally,
4 or at the very least negligently disclosed Plaintiff and Class Members' PII, to an unauthorized
5 third party, through an email "phishing scam." Due to Defendant's acts, Plaintiff and Class
6 Members' PII has been used to steal the identities of Plaintiff and Class Members, for unlawful
7 purposes, including but not limited to the filing of fraudulent tax returns by third parties.

8 8. While the company assured employees that "[n]one of our systems were
9 breached, and no other information was accessed or obtained" and "we are doing everything we
10 can to work with our staff to prevent any similar incident from happening in the future,"¹ this
11 was not the case. In fact, a second, more comprehensive breach was discovered in January
12 2017, which exposed the data of more than 10,000 of Verity's patients.²

13 9. As a result of Defendant's failure to maintain adequate security measures and
14 timely notify employees of security breaches, Plaintiffs and Class Members' PII has been
15 repeatedly compromised and remain vulnerable. Plaintiffs and Class Members face an
16 imminent risk of identity theft; the most likely and obvious motivation for the hacking is to use
17 PII nefariously or to sell it to someone who would.

18 10. Further, Plaintiffs and Class Members have suffered an ascertainable loss in that
19 they have had tax refunds withheld or otherwise delayed, engaged professional tax, legal or
20 other assistance, and undertook additional security measures (at their own expense) to minimize
21 the risk of future data breaches including, without limitation, changing passwords, security
22 questions and answers, and/or purchasing a security freeze on their credit files or other identity
23 theft prevention services. However, due to Verity's incomplete investigation, Plaintiffs and
24 Class Members have no guarantee that these security measures will in fact adequately protect
25 their personal information. As such, Plaintiffs and other Class Members have an ongoing

26
27 ¹ See NOTICE OF DATA BREACH from Verity Health System, dated July 1, 2016.

28 ² See <http://www.healthcareitnews.com/news/breach-verity-health-system-exposes-data-more-10000-patients> (last visited May 12, 2017).

1 interest in ensuring that their personal information is protected from past and future
2 cybersecurity threats.

3 **THE PARTIES**

4 11. Plaintiff Iris Lara (“Plaintiff Lara”) is a California citizen who resides in Los
5 Angeles, California. During the class period alleged herein, Plaintiff Lara was employed by
6 Defendant Verity Health System of California, Inc.

7 12. Plaintiff Tanya Llera (“Plaintiff Llera”) is a California citizen who resides in
8 Anaheim, California. During the class period alleged herein, Plaintiff Llera was employed by
9 Defendant Verity Health System of California, Inc.

10 13. Plaintiff Jarmaine Johns is a current resident of the County of Los Angeles, and at
11 all times relevant was an employee of Defendant Verity Health System of California, Inc., at its
12 St. Francis Medical Center, located in Lynwood, California.

13 14. Defendant Verity Health System of California, Inc. is a non-profit corporation
14 organized and in existence under the laws of the State of California. Verity’s Corporate
15 Headquarters are located at 26000 Altamont Rd., Los Altos Hills, California, 94022.

16 15. At all relevant times, Defendant was and is engaged in the business of providing
17 healthcare in Los Angeles County and throughout California.

18 **JURISDICTION**

19 16. This Court has jurisdiction over this action pursuant to California Code of Civil
20 Procedure § 410.10. Personal jurisdiction over Verity is proper because Verity is a citizen of
21 California and has purposefully availed itself of the privilege of conducting business activities
22 in California.

23 17. This class action is brought pursuant to California Code of Civil Procedure §
24 382. Plaintiff is a California resident, as are all prospective class members. The monetary
25 damages and restitution sought by Plaintiff and the prospective class members exceed the
26 minimal jurisdiction limits of the Superior Court and will be established according to proof at
27 trial.

VENUE

18. Venue is proper in this Court pursuant to California Code of Civil Procedure §§ 395, 395.5 and California Civil Code § 1780 because Plaintiff Lara resides in the County of Los Angeles, California, and the acts, omissions, and contractual performance alleged herein took place in the County of Los Angeles, California.

FACTUAL ALLEGATIONS

19. Plaintiffs incorporate by reference the foregoing allegations.

20. Plaintiffs and certain Class Members were employed by Verity and were required to provide certain personal information as a condition of employment – including social security number, address, and date of birth. In order to obtain benefits or name beneficiaries, Plaintiffs and Class Members also had to provide this information for dependants and/or other family members.

21. On or before April 27, 2016, Verity unreasonably transmitted the PII of thousands of Class Members in response to an email request from an unknown party (also known as phishing). According to Defendant, “2015 W-2 files, which include employee names, addresses, Social Security numbers, earnings and withholding information, were released. Affected employees include all current and former hospital personnel and Verity Business Services staff employed at any time between January 1, 2015, and December 31, 2015.”

22. On or around June 1, 2016, more than a month after the breach, Defendant mailed notice to current and former employees whose 2015 W-2 data was compromised. In its notice, Defendant stated:

- “None of our systems were breached, and no other information was accessed or obtained”;
- “[W]e are doing everything we can to work with our staff to prevent any similar incident from happening in the future”;
- “We are implementing additional security measures designed to prevent a recurrence of such an event”; and

- “[W]e will notify you if there are any significant developments.”

23. The notice was inadequate because, among other reasons, it failed to warn employees that the PII of their spouses, dependants, and/or beneficiaries was also compromised in the breach. At no time did Defendant inform or notify Plaintiffs and Class Members that dependents and spouses’ PII was also released in the breach, which delayed Plaintiffs and certain Class Members from taking additional action to protect dependents and spouses’ PII.

24. On January 6, 2017, Defendant discovered a second, more comprehensive data breach, which compromised more than 10,000 patient files. According to a news article about the incident, “[t]he breached patient data included names, dates of birth, medical record numbers, addresses, emails, phone numbers and the last four digits of credit card numbers, dated between 2010 and 2014.”

25. The article also stated that the breach occurred when an obsolete company website was left unprotected for more than a year – from October 2015 until discovery of the breach in January 2017. This demonstrates that Defendant had wholly inadequate data security well before, during, and well after the June 1, 2016 notice.

26. While the company told employees that they would be notified “if there are any significant developments,” Verity failed to notify employees of the second breach, even though this should have been a strong indication to Verity that its systems remained vulnerable, and that they had a duty to inform all those foreseeably impacted by the breach, including current and former employees.

27. Defendant was not without warning that cybercriminals were using “phishing scams” to target healthcare companies. In fact, prior to the current data breach, Defendant was or at least should have been aware that two (2) other large healthcare companies (i.e., Magnolia Health Corporation of California and St. Joseph’s Healthcare in New Jersey) were victims of nearly identical scams, which resulted in data breaches in February of 2016, and notice of the “phishing scam,” appeared in national healthcare publications, websites and magazines throughout the entire US. In addition, prior to the current data breach, Defendant had been a

target of another data breach, which should have put them on notice to engage in more reasonable security measures to protect Plaintiffs and Class Members' PII.

28. As a result of Verity's negligent security practices, lack of adequate personnel training, and slow response to the breach, Verity's current and former employees and their family members are subject to an increased and concrete risk of identity theft due to the exposure of their financial and other personal information and they have spent and will have to continue to spend substantial time and money ensuring they can file tax returns and receive refunds, securing their personal information and accounts and protecting their identities.

29. Current and former Verity employees and family members whose PII has been leaked will need to spend time monitoring their financial statements, insurance records, utility bills and credit reports for the rest of their lives.

30. Defendant has offered merely two years of "identity protection services," including credit monitoring and identity theft protection, to former and current employees only but has not offered any such services to dependents and spouses. However, neither the monitoring nor the insurance can prevent identity theft or fraud, even for the two-year period, and it could take years for identity theft to come to light and be detected.

31. Credit monitoring only informs a consumer of instances of fraudulent opening of new accounts. Identity theft insurance only reimburses losses after they have occurred. Neither of those services prevent identity theft or fraud by: (i) detecting sales of PII on underground black market websites before the PII is used to commit identity theft or identity fraud; (ii) monitoring public records, loan data, or criminal records; (iii) flagging existing accounts for fraud in order to thwart identity thieves' use of compromised PII before an unauthorized transaction can be completed; or (iv) freezing credit, which prevents identity thieves' ability to open new accounts with compromised PII.

Plaintiff Lara

32. Plaintiff Lara was hired by Defendant as a clerk in the radiology department of St. Francis Medical Center in 2011, and she still holds that position.

33. In exchange for employment services, Defendant offered to compensate Plaintiff

1 Lara and provide her with other employment benefits. In order to receive compensation and
2 benefits, Defendant required Plaintiff Lara to provide it with her PII, including her full name,
3 homes address, full Social Security number, as well as the same information for the designated
4 beneficiaries of her employment-related benefits through Defendant.

5 34. Plaintiff Lara accepted Defendant's offer of employment and provided
6 Defendant with the required personal information, expecting that Defendant would exercise
7 reasonable care to safeguard and maintain the confidentiality of her information.

8 35. Plaintiff Lara first learned that her identity was stolen when she attempted to file
9 her tax return in mid-February 2017 and learned that a tax return had already been filed using
10 her name and Social Security number. Plaintiff Lara's PII was among that released to
11 cybercriminals by Defendant, and someone fraudulently used her information to file a tax
12 return in her name. The PII of her two sons was also released, and the fraudulent tax return
13 included their names and full social security numbers. When she spoke about her experience at
14 work, Plaintiff Lara learned that many of her coworkers had similar problems with their tax
15 returns.

16 36. As a result of the data breach and subsequent identify theft, both Plaintiff Lara
17 and her former husband were significantly delayed in filing their State and Federal tax returns
18 and receiving their tax refunds, causing financial strain. Plaintiff Lara has spent many hours
19 dealing with the IRS in order to be able to file her State and Federal tax returns and have her
20 account flagged for fraud. She has also lost the convenience of filing her taxes electronically,
21 as the IRS will only accept submissions by mail from her now.

22 37. In addition, the knowledge that identity thieves are in possession of their
23 personal information has caused a great deal of stress and anxiety for Plaintiff Lara and her
24 family, and Plaintiff Lara has spent many hours contacting credit bureaus and reviewing her
25 accounts to attempt to determine the extent of the identify theft.

26 38. Going forward, Plaintiff Lara anticipates spending considerable time and money
27 for the rest of her life in an effort to contain the impact of Verity's data breach on herself and
28 the people designated as beneficiaries on her employment-related benefits.

Plaintiff Llera

39. Plaintiff Llera was hired by Defendant at the St. Francis Medical Center in 1996, and is currently employed as a Licensed Vocational Nurse.

40. In exchange for employment services, Defendant offered to compensate Plaintiff Llera and provide her with other employment benefits. In order to receive compensation and benefits, Defendant required Plaintiff Llera to provide it with her PII, including her full name, homes address, full Social Security number, as well as the same information for the designated beneficiaries of her employment-related benefits through Defendant.

41. Plaintiff Llera accepted Defendant's offer of employment and provided Defendant with the required personal information, expecting that Defendant would exercise reasonable care to safeguard and maintain the confidentiality of her information.

42. On February 9, 2017, Plaintiff Llera first learned that her identity was stolen when her accountant attempted to file her 2016 taxes. Shortly thereafter, she received a letter from the IRS that informed her that a fraudulent tax return was submitted on her behalf and she may be a victim of identity theft. Plaintiff Llera's PII was among that released to cybercriminals by Defendant and was used to fraudulently file a tax return on her behalf.

43. As a result of Defendant's data breach and Plaintiff Llera's subsequent identity theft, Plaintiff Llera experienced significant delays in filing her State and Federal tax returns. Further, Plaintiff Llera has spent numerous hours communicating with the IRS and filing additional tax forms addressing the identity theft. Most recently, the IRS informed Plaintiff Llera that she must visit an IRS office in person to verify her identity in order for them to process her tax return. Plaintiff Llera has suffered extreme financial hardship as a result of the identity theft and, to date, has not received her federal tax refund of several thousand dollars.

44. In addition, the knowledge that identity thieves are in possession of her personal information has caused a great deal of stress and anxiety for Plaintiff Llera and her dependent son, whose information is included on her tax return, and Plaintiff Llera has spent many hours contacting credit bureaus and reviewing her accounts to attempt to determine the extent of the identify theft.

45. Going forward, Plaintiff Lara anticipates spending considerable time and money for the rest of her life in an effort to contain the impact of Verity's data breach on herself and the people designated as beneficiaries on her employment-related benefits.

Plaintiff Johns

46. In or around February 2013, Mr. Johns began employment at St. Francis medical center, operated by Defendant.

47. In exchange for employment services, Defendant offered to compensate Plaintiff Johns and provide him with other employment benefits. In order to receive compensation and benefits, Defendant required Plaintiff Johns to provide it with his PII, including his full name, home address, full Social Security number, as well as the same information for the designated beneficiaries of his employment-related benefits through Defendant.

48. As a result of Defendant's data breach and Plaintiff John's subsequent identity theft, Plaintiff Johns experienced significant delays in filing his State and Federal tax returns. On or about March 24, 2017, Plaintiff was notified that a third person did in fact use his PII, which prevented Plaintiff Johns from filing his taxes online. Plaintiff Johns incurred additional expenses by having a professional tax consultant review and file his taxes manually. Plaintiff believes that the use of his PII was a direct result of Defendant's unauthorized dissemination of Plaintiff's PII to an unknown cybercriminal. Plaintiff is of the opinion that the information was used to impersonate Plaintiff, through the use of his name and social security number, to file a fraudulent tax return.

49. Further, Plaintiff Johns has spent numerous hours communicating with the IRS, his tax professional and filing additional tax forms addressing the identity theft. Plaintiff Johns has suffered financial hardship as a result of the identity theft having his filings delayed and spending additional money to file, review and process his tax filings.

50. In addition, the knowledge that identity thieves are in possession of his PII has caused a great deal of stress and anxiety for Plaintiff Johns.

51. Going forward, Plaintiff Johns anticipates spending considerable time and money for the rest of his life in an effort to contain the impact of Verity's data breach on

herself and the people designated as beneficiaries on her employment-related benefits.

CLASS ALLEGATIONS

52. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all others similarly situated and seeks class certification under California Code of Civil Procedure section 382.

53. All claims alleged herein arise under California law for which Plaintiffs seek relief authorized by California law.

54. Plaintiffs' proposed class consists of and is defined as follows:

All current and former employees of Verity, and their spouses and dependents, whose Personally Identifiable Information was in the possession and control of Verity at any time from January 2015 to the present and was compromised by the Data Breach. (the "Class").

55. Members of the Class will be referred to as "Class Members." Plaintiffs reserve the right to redefine the above Class and add Sub-Classes as appropriate based on investigation, discovery, and the specific theories of liability.

56. There is a well-defined community of interest in the litigation and the class is readily ascertainable:

57. Numerosity: Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court. The Class Members are readily identifiable from information and records in Defendant's possession, custody, or control.

58. Typicality: Plaintiffs' claims are typical of the claims of the Class in that Plaintiffs, like all Class Members, has been damaged by Defendant's misconduct in that they have had to undertake additional security measures, at their own expense, to minimize the risk of future data breaches. Furthermore, the factual bases of Verity's misconduct are common to all Class Members and represent a common thread resulting in injury to all Class Members. Specifically, Plaintiffs' and the Class' claims arise from Verity's failure to adequately train its

1 personnel, to implement and maintain reasonable security measures to protect Plaintiffs' and
2 the Class' personal information, and to timely notify them when the security breach occurred.

3 59. Commonality: There are numerous questions of law and fact common to
4 Plaintiffs and the Class that predominate over any question affecting only individual Class
5 Members. These common legal and factual issues include the following:

- 6 (a) Whether Verity owed a duty of care to Plaintiffs and Class Members with
7 respect to the security of their personal information;
- 8 (b) Whether Verity had a legal and/or contractual duty to use reasonable
9 security measures to protect Plaintiffs' and Class Members' personal
10 information;
- 11 (c) Whether Verity failed to take reasonable steps and measures to safeguard
12 Plaintiffs' and Class Members' personal information;
- 13 (d) Whether Verity breached its duty to exercise reasonable care in handling
14 Plaintiffs' and Class Members' personal information;
- 15 (e) Whether an implied contract existed between Verity and Class Members;
- 16 (f) Whether Defendant's acts and omissions described herein give rise to a
17 claim of negligence;
- 18 (g) Whether Verity's security procedures and practices violated *California*
19 *Business & Professions Code* §§ 17200 et seq.;
- 20 (h) Whether Verity had a duty to promptly notify Class Members that their
21 personal information was, or potentially could be, compromised; and
- 22 (i) Whether Plaintiffs and other Class Members are entitled to damages or
23 equitable relief, including but not limited to a preliminary and/or
24 permanent injunction.

25 60. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Class
26 Members. Plaintiffs have retained attorneys experienced in the prosecution of class actions,
27 including consumer and product defect class actions, and Plaintiffs intend to prosecute this
28 action vigorously.

1 61. Predominance and Superiority: Plaintiffs and Class Members have all suffered
2 and will continue to suffer harm and damages as a result of Defendant's unlawful and
3 wrongful conduct. A class action is superior to other available methods for the fair and
4 efficient adjudication of the controversy. Absent a class action, most Class Members would
5 likely find the cost of litigating their claims prohibitively high and would therefore have no
6 effective remedy at law. Because of the relatively small size of the individual Class
7 Members' claims, it is likely that only a few Class Members could afford to seek legal redress
8 for Defendant's misconduct. Absent a class action, Class Members will continue to incur
9 damages, and Defendant's misconduct will continue without remedy. Class treatment of
10 common questions of law and fact would also be a superior method to multiple individual
11 actions or piecemeal litigation in that class treatment will conserve the resources of the courts
12 and the litigants, and will promote consistency and efficiency of adjudication.

13 **FIRST CAUSE OF ACTION**

14 **(Negligence)**

15 62. Plaintiffs incorporate by reference the allegations contained in each and every
16 paragraph of this Complaint.

17 63. Verity owed a duty to Plaintiffs and Class Members to exercise reasonable care
18 in obtaining, retaining, securing, safeguarding, deleting and protecting the personal
19 information in its possession, including PII that Verity requires from its employees, from
20 being compromised, lost, stolen, accessed and misused by unauthorized persons. This duty
21 included, among other things, designing, implementing, maintaining and testing Defendant's
22 security systems and protocols, consistent with industry standards and requirements, and
23 adequately training its personnel to ensure that Plaintiffs' and Class members' personal
24 information in Verity's possession was adequately secured and protected. Verity further
25 owed a duty to Plaintiffs and Class Members to implement processes that would detect a
26 breach of its security system in a timely manner and to timely act upon warnings and alerts,
27 including those generated by its own security systems.

28 64. Verity owed a duty of care to Plaintiffs and Class Members because they were

1 foreseeable and probable victims of any inadequate security practices. Verity solicited,
2 gathered, and stored the personal data provided by Plaintiffs and Class Members in the
3 regular course of its business. Verity knew that a breach of its systems would cause damages
4 to Plaintiffs and Class Members, and Verity had a duty to adequately protect such sensitive
5 personal information.

6 65. Similarly, Verity owed a duty to Plaintiffs and Class Members to timely disclose
7 any incidents of data breaches, where such breaches compromised the personal information of
8 Plaintiffs and Class Members. Plaintiffs and Class Members were foreseeable and probable
9 victims of any inadequate notice practices. Verity, through its actions and omissions, caused
10 the sensitive personal information of Plaintiffs and Class Members to be compromised and
11 accessed by unauthorized third parties, yet failed to mitigate potential harm to its users by
12 providing timely notice of the security breach, since the security breach was not detected in a
13 timely manner.

14 66. Verity breached its duties owed to Plaintiffs and Class Members by failing to
15 take reasonable steps to prevent the wrongful dissemination of the Class's PII, by failing to
16 exercise reasonable care in the adoption, implementation, and maintenance of adequate
17 security procedures and protocols, by failing to adequately train its personnel, and by failing
18 to timely notify Plaintiffs and Class Members of potential and actual security breaches.
19 Further, Verity's negligence per se is conclusively established by Verity's violation of Cal.
20 Civ. Code section 1798.80, as further alleged below.

21 67. Verity's breach of its duties owed to Plaintiffs and members of the Class caused
22 injuries to Plaintiffs and members of the Class, including but not limited to a) theft of their
23 personal information; b) costs associated with the detection and prevention of identity theft;
24 c) costs associated with time spent and the loss of productivity from taking time to address
25 and attempt to ameliorate and mitigate the actual and future consequences of the
26 aforementioned data breaches, including without limitation finding fraudulent charges,
27 cancelling and reissuing credit cards and bank accounts, interacting with taxing authorities
28 and tax professionals in order to file tax returns and obtain refunds where a cybercriminal had

1 already fraudulently done so, purchasing credit monitoring and identity theft protection, and
2 the stress, nuisance and annoyance of dealing with all issues resulting from the data breaches;
3 d) the imminent and impending injury flowing from potential fraud and identity theft posed
4 by the unauthorized control and use of their personal information by third parties; e) damages
5 to and diminution in value of their personal information entrusted to Verity with the
6 understanding that Verity would safeguard their data against theft and not allow access and
7 misuse of their data by others; and f) the continued risk to their personal information, which
8 remains in the possession of Verity and which is subject to further breaches so long as Verity
9 fails to undertake appropriate and adequate measures to protect data in its possession.

10 68. But for Verity's negligent and wrongful breach of its duties owed to Plaintiffs
11 and Class Members, Plaintiffs and Class Members would not have been harmed.

12 69. Plaintiffs and Class Members are also entitled to damages and reasonable
13 attorneys' fees and costs. Plaintiffs also seek reasonable attorneys' fees and costs under California
14 Code of Civil Procedure § 1021.5.

15 **SECOND CAUSE OF ACTION**

16 **(Breach of Implied Contract)**

17 70. Plaintiffs incorporate by reference the allegations contained in each and every
18 paragraph of this Complaint.

19 71. Plaintiffs bring this cause of action on behalf of themselves and on behalf of the
20 Class.

21 72. Verity offered employment to Plaintiffs and Class Members in exchange for
22 compensation and other employment benefits. To receive compensation and other employment
23 benefits, Verity required Plaintiffs and Class Members to provide their personal information,
24 including names, addresses, Social Security numbers, and other personal information.

25 73. Verity had an implied duty of good faith to ensure that the personal information
26 of Plaintiffs and Class Members in its possession was only used to provide the agreed-upon
27 compensation and other employment benefits from Verity. Verity required and obtained the PII
28 as part of the employment relationship, evincing an implicit promise by Verity to act

1 reasonably to keep the employees' PII safe.

2 74. Verity was therefore required to reasonably safeguard and protect the personal
3 information of Plaintiffs and Class Members from unauthorized uses, and to timely and
4 accurately notify Plaintiffs and Class Members if their personal information was compromised
5 so that Plaintiffs and Class Members could act to mitigate the harm caused by the loss of
6 opportunity to control how their personal information was used.

7 75. Plaintiffs and Class Members accepted Verity's employment offer and fully
8 performed their obligations under the implied contract with Verity by providing their personal
9 information to Verity, among other obligations.

10 76. Plaintiffs and Class Members would not have provided and entrusted their
11 personal information to Verity in the absence of their implied contracts with Verity, and would
12 have instead retained the opportunity to control their personal information for uses other than
13 compensation and other employment benefits from Verity.

14 77. Verity breached the implied contracts with Plaintiffs and Class Members by
15 failing to reasonably safeguard and protect Plaintiffs' and Class Members' personal information
16 and by failing to provide timely and accurate notice to Plaintiffs and Class Members that their
17 personal information was compromised as a result of the data breach.

18 78. As a proximate and direct result of Verity's breach of its implied contracts with
19 Plaintiffs and Class Members, Plaintiffs and Class Members have suffered and will suffer
20 injury, including but not necessarily limited to:

21 (1) the loss of the opportunity to control how their personal information is used;

22 (2) the diminution in the value and/or use of their personal information entrusted to
23 Verity for the purpose of deriving employment from Verity and with the understanding
24 that Verity would safeguard their personal information against theft and not allow
25 access and misuse of their personal information by others;

26 (3) the compromise, publication, and/or theft of their personal information and the
27 personal information of their family members and designated beneficiaries of
28 employment-related benefits through Verity;

(4) out-of-pocket costs associated with the prevention, detection, and recovery from identity theft and/or unauthorized use of financial and medical accounts;

(5) lost opportunity costs associated with effort expended and the loss of productivity addressing and attempting to mitigate the actual and future consequences of the breach, including but not limited to efforts spent researching how to prevent, detect, contest and recover from identity and health care/medical data misuse;

(6) costs associated with the ability to use credit and assets frozen or flagged due to credit misuse, including complete credit denial and/or increased costs to use credit, credit scores, credit reports and assets;

(7) unauthorized use of compromised personal information to open new financial and/or health care or medical accounts;

(8) tax fraud and/or other unauthorized charges to financial, health care or medical accounts and associated lack of access to funds while proper information is confirmed and corrected;

(9) the continued risk to their personal information, and the personal information of their family members and designated beneficiaries of employment-related benefits through Verity, which remain in Verity's possession and are subject to further breaches so long as Verity fails to undertake appropriate and adequate measures to protect the personal information in its possession; and

(10) future costs in terms of time, effort and money that will be expended, to prevent, detect, contest, and repair the impact of the personal information compromised as a result of the data breach for the remainder of the lives of the Class members, their families, and their designated beneficiaries of employment-related benefits through Verity.

THIRD CAUSE OF ACTION

(Violation of the California Customer Records Act,

California Civil Code § 1798.80, *et seq.*)

79. Plaintiffs incorporate by reference the allegations contained in each and every

1 paragraph of this Complaint.

2 80. The California Legislature enacted Civil Code section 1798.81.5 “to ensure that
3 personal information about California residents is protected.” The statute requires that any
4 business that “owns, licenses, or maintains personal information about a California resident ...
5 implement and maintain reasonable security procedures and practices appropriate to the nature of
6 the information, to protect the personal information from unauthorized access, destruction, use,
7 modification, or disclosure.”

8 81. Verity is a “business” as defined by Civil Code section 1798.80(a).

9 82. Each Plaintiff and member of the class is an “individual” as defined by Civil Code
10 section 1798.80(d). The employee information taken in the data breach was “personal
11 information” as defined by Civil Code sections 1798.80(e) and 1798.81.5(d), which includes
12 “information that identifies, relates to, describes, or is capable of being associated with, a
13 particular individual, including, but not limited to, his or her name, signature, Social Security
14 number, physical characteristics or description, address, telephone number, passport number,
15 driver’s license or state identification card number, insurance policy number, education,
16 employment, employment history, bank account number, credit card number, debit card number,
17 or any other financial information, medical information, or health insurance information.”

18 83. The breach of the personal information of thousands of current and former Verity
19 employees was a “breach of the security system” of Verity as defined by Civil Code section
20 1798.82(g).

21 84. By failing to implement reasonable security measures appropriate to the nature of
22 the personal information of its current and former employees, Verity violated Civil Code section
23 1798.81.5.

24 85. In addition, by failing to immediately notify all affected current and former
25 Verity employees that their personal information had been acquired (or was reasonably
26 believed to have been acquired) by unauthorized persons in the data breach, Verity violated
27 Civil Code section 1798.82 of the same title. Verity’s failure to immediately notify employees
28 of the breach caused Class Members to suffer damages because they have lost the opportunity

1 to immediately: (i) buy identity protection, monitoring, and recovery services; (ii) flag asset,
2 credit, and tax accounts for fraud, including reporting the theft of their Social Security numbers
3 to financial institutions, credit agencies, and the Internal Revenue Service; (iii) purchase or
4 otherwise obtain credit reports; (iv) monitor credit, financial, utility, explanation of benefits,
5 and other account statements on a monthly basis for unrecognized credit inquiries, Social
6 Security numbers, home addresses, charges, and/or medical services; (v) place and renew credit
7 fraud alerts on a quarterly basis; (vi) routinely monitor public records, loan data, or criminal
8 records; (vii) contest fraudulent charges and other forms of criminal, financial and medical
9 identity theft, and repair damage to credit and other financial accounts; and (viii) take other
10 steps to protect themselves and recover from identity theft and fraud.

11 86. Because it violated Civil Code sections 1798.81.5 and 1798.82, Verity “may be
12 enjoined” under Civil Code section 1798.84(e).

13 87. Plaintiff requests that the Court enter an injunction requiring Verity to
14 implement and maintain reasonable security procedures to protect its employees’ personal
15 information, including, but not limited to, ordering that Verity:

- 16 (1) engage third party security auditors/penetration testers as well as internal security
17 personnel to conduct testing consistent with prudent industry practices, including
18 simulated attacks, penetration tests, and audits on Verity’s systems on a periodic basis;
- 19 (2) engage third party security auditors and internal personnel to run automated security
20 monitoring consistent with prudent industry practices;
- 21 (3) audit, test, and train its security personnel regarding any new or modified
22 procedures;
- 23 (4) purge, delete and destroy, in a secure manner, employee data not necessary for its
24 business operations;
- 25 (5) conduct regular database scanning and securing checks consistent with prudent
26 industry practices;
- 27 (6) periodically conduct internal training and education to inform internal security
28 personnel how to identify and contain a breach when it occurs and what to do in

1 response to a breach consistent with prudent industry practices;

2 (7) receive periodic compliance audits by a third party regarding the security of the
3 computer systems Verity uses to store the personal information of its current and former
4 employees;

5 (8) meaningfully educate its current and former employees about the threats they face as
6 a result of the loss of their personal information to third parties, as well as the steps they
7 must take to protect themselves; and

8 (9) provide ongoing identity theft protection, monitoring, and recovery services to
9 Plaintiffs and Class Members, as well as their dependents and designated beneficiaries
10 of employment-related benefits through Verity.

11 88. As a result of Verity's violation of Cal. Civ. Code § 1798.81.5, Plaintiffs and
12 Class Members have incurred and will incur damages, including but not necessarily limited to:

13 (1) the loss of the opportunity to control how their personal information is used; (2) the
14 diminution in the value and/or use of their personal information entrusted to Verity for the
15 purpose of deriving employment from Verity and with the understanding that Verity would
16 safeguard their personal information against theft and not allow access and misuse of their
17 personal information by others; (3) the compromise, publication, and/or theft of their personal
18 information and the personal information of their family members and designated beneficiaries
19 of employment-related benefits through Verity; (4) out-of-pocket costs associated with the
20 prevention, detection, and recovery from identity theft and/or unauthorized use of financial and
21 medical accounts; (5) lost opportunity costs associated with effort expended and the loss of
22 productivity addressing and attempting to mitigate the actual and future consequences of the
23 breach, including but not limited to efforts spent researching how to prevent, detect, contest and
24 recover from identity and health care/medical data misuse; (6) costs associated with the ability
25 to use credit and assets frozen or flagged due to credit misuse, including complete credit denial
26 and/or increased costs to use credit, credit scores, credit reports and assets; (7) unauthorized use
27 of compromised personal information to open new financial and/or health care or medical
28 accounts; (8) tax fraud and/or other unauthorized charges to financial, health care or medical

1 accounts and associated lack of access to funds while proper information is confirmed and
2 corrected; (9) the continued risk to their personal information, and the personal information of
3 their family members and designated beneficiaries of employment-related benefits through
4 Verity, which remain in Verity's possession and are subject to further breaches so long as
5 Verity fails to undertake appropriate and adequate measures to protect the personal information
6 in its possession; and (10) future costs in terms of time, effort and money that will be expended,
7 to prevent, detect, contest, and repair the impact of the personal information compromised as a
8 result of the data breach for the remainder of the lives of the Class members, their families, and
9 their designated beneficiaries of employment-related benefits through Verity.

10 89. Plaintiffs seek all remedies available under Civil Code section 1798.84,
11 including actual and statutory damages, equitable relief, and reasonable attorneys' fees.
12 Plaintiffs also seek reasonable attorneys' fees and costs under applicable law including
13 California Code of Civil Procedure § 1021.5.

14 **FOURTH CAUSE OF ACTION**

15 **(Violations of the Confidentiality of Medical Information Act, Civil Code §§ 56 *et seq.*)**

16 90. Plaintiffs incorporate by reference the allegations contained in each and every
17 paragraph of this Complaint.

18 91. Defendant is a provider of health care services with a network of hospitals and
19 offices that span throughout California and are subject to the requirements and mandates of the
20 California Confidentiality of Medical Information Act, Cal. Civ. Code §§ 56, *et seq.* ("CMIA").

21 92. Defendant is and or was the employer of Plaintiff and Class Members at the time
22 Defendant disclosed the Class Members PII.

23 93. Plaintiff and the Class Members are employees of Defendant within the meaning
24 of Civil Code § 56.05(g). Furthermore, Plaintiff and Class Members, as employees of the
25 Defendant had their PII stored within Defendant's network.

26 94. Defendant requested and was provided with Plaintiff's and Class Members' PII
27 and therefore, had a duty to exercise reasonable care in preserving the confidentiality of
28 Plaintiff and Class Members information.

1 95. Under Civil Code section 56.20 an employer who receives medical information
2 shall establish appropriate procedures to ensure the confidentiality and protection from
3 unauthorized use and disclosure of that information.

4 96. Defendant was entrusted with Plaintiff and Class Members' PII as an employer
5 of Plaintiff and Class Members, within the healthcare industry, and therefore also owed a duty
6 of reasonable care to Plaintiff and Class Members to preserve the confidentiality of their PII.

7 97. Under California Civil Code section 56.21, Defendant was required to obtain
8 Plaintiff's and Class Members' authorization prior to disclosing their PII to a third party.

9 98. On or around April 2016, Defendant unlawfully disclosed Plaintiff and Class
10 Members' PII without first obtaining Plaintiff and Class Members' authorization as required by
11 the Confidentiality of Medical Information Act pursuant to Civil Code §§ 56.21. Defendant's
12 disclosure without prior authorization constitutes a violation of Civil Code section 56.20.

13 99. Pursuant to Civil Code section 56.35, In addition to other remedies available at
14 law, a patient whose medical information has been used or disclosed in violation of section
15 56.20 and who has sustained economic loss or personal injury therefrom may recovery
16 compensatory damages, punitive damages, attorneys' fees and the costs of litigation.

17 100. As a direct and proximate result of Defendant's violation of Civil Code section
18 56.20 and 56.21, Plaintiff has sustained economic loss, in an amount to be proven at trial.
19 Accordingly, Plaintiff and the Class seek relief under Civil Code sections 56.35 and 56.36
20 subsection (b).

21 101. Plaintiff and the Class Members seek nominal damages of one thousand dollar
22 (\$1,000) per violation pursuant to Civil Code § 56.36(b)(1), actual damages per violation
23 pursuant to Civil Code section 56.36 subsection (b)(2), punitive damages up to three thousand
24 dollars (\$3,000) per violation pursuant to Civil Code section 56.35.

25 102. Furthermore, Plaintiff and the Class seek recovery of attorney's fees of up to one
26 thousand dollars (\$1,000) per violation pursuant to Civil Code section 56.35 and costs of
27 litigation pursuant to Civil Code section 56.35.

28

FIFTH CAUSE OF ACTION

(Violation of the California Business & Professions Code § 17200, *et seq.*)

103. Plaintiffs incorporate by reference the allegations contained in each and every paragraph of this Complaint.

104. California's Unfair Competition Law (UCL), Business & Professions Code § 17200 prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice."

105. Verity engaged in unlawful, unfair, and fraudulent business practices in violation of the UCL.

106. Verity's acts, omissions and conduct constitute unlawful, unfair, and fraudulent business practices under the UCL, because they were negligent and violated the California Customer Records Act.

107. Verity violated Cal. Civ. Code § 1798.81.5(b) by failing to implement adequate security procedures and protocols to protect Plaintiffs' and Class Members' personal information.

108. Verity violated Cal. Civ. Code § 1798.82 by failing to promptly notify Plaintiffs and Class Members of potential and actual security threats.

109. Verity's acts, omissions, and conduct also constitute "unfair" business acts or practices because they offend public policy and constitute immoral, unethical, and unscrupulous activities that caused substantial injury, including to Plaintiffs and Class Members. The gravity of harm resulting from Verity's conduct outweighs any potential benefits attributable to the conduct and there were reasonably available alternatives to further Verity's legitimate business interests. Verity's conduct also undermines public policy as reflected in statutes like the Information Practices Act of 1977, Cal. Civ. 22 Code § 1798, *et seq.*, and the California Customer Records Act, which were enacted to protect individuals' personal data and ensure that entities who solicit or are entrusted with personal data use reasonable security measures.

110. Verity has engaged in fraudulent business practices by making material misrepresentations and by failing to disclose material information regarding Verity's deficient

1 security policies and practices, the security of the personal information of Plaintiffs and Class
2 Members, and the data breach.

3 111. Verity had exclusive knowledge of material information regarding its deficient
4 security policies and practices, and regarding the security of the personal information of Plaintiffs
5 and Class Members.

6 112. Verity failed to disclose, and actively concealed, the material information it had
7 regarding Verity's deficient security policies and practices, and regarding the security of the
8 personal information of Plaintiffs and Class Members.

9 113. Verity also has made material affirmative misrepresentations about Verity's
10 security policies and practices and the security of the personal information of Plaintiffs and
11 Class Members. For example, in a notice sent by mail on June 1, 2016 to affected employees,
12 Verity made the following statements:

- 13 • "None of our systems were breached, and no other information was accessed or
14 obtained";
- 15 • "[W]e are doing everything we can to work with our staff to prevent any similar
16 incident from happening in the future";
- 17 • "We are implementing additional security measures designed to prevent a recurrence of
18 such an event"; and
- 19 • "[W]e will notify you if there are any significant developments."

20 114. In fact, contrary to these representations, Verity failed to invest the resources
21 necessary to bring its security practices in line with industry standards, as is evidenced by the
22 discovery of another, more comprehensive data breach in January of 2017, where patient data
23 was compromised. Verity failed to notify Plaintiffs and Class Members of the subsequent
24 breach. Defendant was well aware of the need to properly train and instruct Defendant's agent
25 on the handling, dissemination, protection, restricting access and storing of employees' PII.
26 However, in an effort to cut cost and gain an advantage over its competitors, Defendant failed
27 to properly train, instruct and /or implement the necessary security measures to prevent the
28 Data Breach in this matter.

115. Defendant should have been well aware of phishing scams, as they were prevalent in the healthcare industry, prior to this Data Breach. Defendant's choice to not incur additional costs and expenditures by properly training its staff/agents, and/or providing instruction on securing, restricting access and/or taking affirmative steps to prevent the unauthorized dissemination of Class Members' PII, was the direct cause of Plaintiffs and Class Members' harm.

116. Furthermore, Verity was under a duty to Plaintiffs and Class Members to protect its users' personal information and promptly notify users of potential and actual security threats, and other omitted facts alleged herein, because:

(a) Verity was in a superior position to know the specifics of a potential or actual security breach; and

(b) Verity actively concealed information known to it regarding potential and actual security breaches affecting user account information.

117. The facts Verity concealed from or did not disclose to Plaintiffs and Class Members are material. But for Verity's misrepresentations and omissions, Plaintiffs would not have provided the personal information that they provided to Verity (regarding themselves and their family members) and would have insisted that their personal information be more securely protected and/or removed from Verity's systems promptly after their employment ended. They also would have taken additional steps to protect their identities and to protect themselves from the sort of harm that could flow from Verity's lax security measures.

118. As a direct and proximate result of Verity's unfair and deceptive practices, Plaintiffs and Class Members will continue to suffer actual damages.

119. Verity has been unjustly enriched and should be required to make restitution to Plaintiffs and Class Members pursuant to §§ 17203 and 17204 of the California Business & Professions Code.

120. As a result of Verity's violations of the UCL, Plaintiffs and members of the class are entitled to injunctive relief, including, but not limited to an order that Verity: (1) engage third party security auditors/penetration testers as well as internal security personnel to conduct testing

consistent with prudent industry practices, including simulated attacks, penetration tests, and audits on Verity's systems on a periodic basis; (2) engage third party security auditors and internal personnel to run automated security monitoring consistent with prudent industry practices; (3) audit, test, and train its security personnel regarding any new or modified procedures; (4) purge, delete and destroy, in a secure manner, employee data not necessary for its business operations; (5) conduct regular database scanning and securing checks consistent with prudent industry practices; (6) periodically conduct internal training and education to inform internal security personnel how to identify and contain a breach when it occurs and what to do in response to a breach consistent with prudent industry practices; (7) receive periodic compliance audits by a third party regarding the security of the computer systems Verity uses to store the personal information of its current and former employees; (8) meaningfully educate its current and former employees about the threats they face as a result of the loss of their personal information to third parties, as well as the steps they must take to protect themselves; and (9) provide ongoing identity theft protection, monitoring, and recovery services, to Plaintiffs and Class Members, as well as their dependents and designated beneficiaries of employment-related benefits through Verity.

121. Because of Verity's unlawful, unfair, and fraudulent business practices, Plaintiffs and the class are entitled to relief, including attorneys' fees and costs, restitution, declaratory relief, and a permanent injunction enjoining Verity from its unlawful and unfair practices. Plaintiffs also seek reasonable attorneys' fees and costs under California Code of Civil Procedure § 1021.5.

SIXTH CAUSE OF ACTION

(Invasion of Privacy)

122. Plaintiffs and Class Members incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

123. Defendant invaded Plaintiffs and Class Members' right to privacy by intentionally emailing Plaintiffs and Class Members confidential and sensitive PII, specifically his wages, financial earnings and tax withholdings to unauthorized third-parties.

124. The intrusion was offensive, objectionable and a serious invasion of Plaintiffs

1 and Class Members' privacy. Defendant, as a major healthcare organization understands the
2 importance of maintaining the confidentiality of patients and employees. Defendant was
3 responsible for protecting and keeping confidential Plaintiffs and Class Members' PII and was
4 further required to seek authorization prior to any disclosure, however, no such authorization
5 was sought and no such authorization was granted by Plaintiffs or Class Members.

6 125. The intrusion was into a place or thing which was private and is entitled to be
7 private, due to the nature of the information and the nature by which Defendant had obtained
8 the. Furthermore, Plaintiffs had a reasonable belief that Defendant would keep their PII
9 confidential, including their wages, financial earnings and tax withholdings.

10 126. Moreover, because emails are so susceptible to easy and thoughtless forwarding
11 to a larger audience, the medium Defendant used to disseminate Plaintiffs' PII acts as a public
12 disclosure, because Plaintiffs' information was susceptible to being sent all over the world in
13 perpetuity.

14 127. As a proximate result of Defendant's acts as stated above, Plaintiffs and Class
15 Members' private and confidential PII, financial information, social security numbers, wages
16 and tax withholdings was accessed and used by persons without the authorization of Plaintiffs
17 and Class Members. The unauthorized disclosure of Plaintiffs and Class Members' PII has
18 caused them to suffer general damages in an amount to be determined at trial according to
19 proof.

20 128. Defendant is guilty of oppression, fraud, or malice by intentionally disclosing
21 Plaintiffs and the Class Members' PII with a willful and conscious disregard of Plaintiffs and
22 Class Members' right to privacy.

23 129. Unless and until enjoined, and restrained by order of this Court, Defendant's
24 conduct will continue to cause Plaintiffs and Class Members irreparable harm. Plaintiff and
25 Class Members have no adequate remedy of law for the injuries in that a judgment for the
26 monetary damages will not end the invasion of privacy for Plaintiffs and the Class.

SEVENTH CAUSE OF ACTION

(For Unjust Enrichment)

130. Plaintiffs incorporate by reference the allegations contained in each and every paragraph of this Complaint.

131. Plaintiffs bring this cause of action on behalf of themselves and on behalf of the Class against Defendant.

132. As a direct and proximate result of Defendant's omissions and affirmative actions, Defendant knowingly and deliberately enriched itself by saving the costs it reasonably and contractually should have expended on data security measures to secure Plaintiffs' and Class Members' PII.

133. Instead of providing for a reasonable level of security that would have prevented the disclosures, consisting of firewalls, data security trainings, and PII retention and destruction policies and procedures – as is common practice among companies entrusted with such sensitive personal information – Defendant instead consciously and opportunistically calculated to increase its own profits at the expense of Plaintiffs and Class Members.

134. Nevertheless, Defendant continued to obtain the benefits conferred on it by Plaintiffs' and Class Members' employment, mainly from the labor contracted to in employment agreements between the parties.

135. Conversely, Plaintiffs and Class Members suffered as a direct and proximate result of Defendant's actions and inactions. As a result of Defendant's decision to profit rather than provide reasonable and requisite security, and Defendant's resulting disclosures of Plaintiffs and Class Members' PII, Plaintiffs and Class Members suffered and continue to suffer considerable injuries in the forms of attempted identity theft, time and expenses mitigating harms, diminished value of PII, loss of privacy, and increased risk of harm.

136. Defendant has therefore been unjustly enriched due to the known omissions and affirmative actions that resulted in Defendant's profits at the expense of Plaintiffs and Class Members. As a result of the Defendant's unjust enrichment, Plaintiffs and Class Members have suffered damages.

REQUEST FOR JURY TRIAL

Plaintiffs request trial by jury.

PRAYER FOR RELIEF

Plaintiffs, on behalf of themselves, and all others similarly situated, request the Court to enter judgment against Defendant, as follows:

- (a) An order certifying the proposed Class, designating Plaintiffs as named representative of the Class, and designating the undersigned as Class Counsel;
- (b) An order enjoining Defendant from further unfair and deceptive business practices regarding the maintenance and protection of its employees' personal information;
- (c) An award to Plaintiffs and the Class for compensatory, exemplary, and statutory damages, including interest, in an amount to be proven at trial;
- (d) A declaration that Defendant must disgorge, for the benefit of the Class, all or part of the ill-gotten revenues it collected from its conduct alleged herein, or make full restitution to Plaintiffs and Class Members;
- (e) An award of attorneys' fees and costs, as allowed by law;
- (f) An award of attorneys' fees and costs pursuant to California Code of Civil Procedure § 1021.5;
- (g) An award of pre-judgment and post-judgment interest, as provided by law; and
- (h) Such other relief as may be appropriate under the circumstances.

1
2 Dated: June 8, 2018

Respectfully submitted,

CAPSTONE LAW APC

3
4
5 By: /s/

Jordan Lurie
Tarek Zohdy
Cody Padgett
Trisha K. Monesi

Attorneys for Plaintiffs Iris Lara and Tanya Llera

6
7
8
9 Dated: June 8, 2018

MAHONEY LAW GROUP, APC

10
11 By: /s/

Kevin Mahoney
Treana L. Allen

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13 Attorneys for Plaintiff Jarmaine Johns
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

On June 21, 2018, I served the documents described as: **CONSOLIDATED CLASS ACTION COMPLAINT** on the interested parties in this action by sending on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list.

- ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.
- ☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.
- ☒ **BY CASE ANYWHERE:** I hereby certify that a true and correct copy of this document was electronically served on counsel of record by transmission to Case Anywhere.
- ☐ **BY PERSONAL SERVICE:** I caused to be delivered by messenger such envelope(s) by hand to the office of the addressee(s).
- ☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed June 21, 2018 at Los Angeles, California.



Pounesh Porooshani

SERVICE LIST

Via Case Anywhere Jesus (Jesse) M. Jauregui Samuel J. Park Alston & Bird LLP 333 South Hope Street, Sixteenth Floor Los Angeles, CA 90071 Telephone: (213) 576-1000 Facsimile: (213) 576-1100	Attorneys for Defendant Verity Health System of California, Inc.
By Mail Kevin Mahoney Treana L. Allen MAHONEY LAW GROUP, APC 249 E. Ocean Blvd., Ste. 814 Long Beach, CA 90802	Attorneys for Plaintiff Jarmaine Johns

EXHIBIT B

Fill in this information to identify the case:

Debtor name Verity Health System of California, Inc.
United States Bankruptcy Court for the: Central District of California
(State)
Case number (If known): _____

☐ Check if this is an amended filing

Official Form 204

Chapter 11 or Chapter 9 Cases: List of Consolidated Creditors Who Have the 50 Largest Unsecured Claims and Are Not Insiders

12/15

A list of creditors holding the 50 largest unsecured claims must be filed in a Chapter 11 or Chapter 9 case. Include claims which the debtor disputes. Do not include claims by any person or entity who is an *insider*, as defined in 11 U.S.C. § 101(31). Also, do not include claims by secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 50 largest unsecured claims.

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
1. Waheed Wahidi, et al	Law office of Kevin T Barnes 1635 Pontius Avenue 2nd Floor Los Angeles, CA 90025 Attn: Kevin T Barnes Tel: (323) 549-9100 Email: barnes@kbarnes.com	Litigation	Contingent & Disputed			\$150,000,000
2. Verity Health System Retirement Plan A	John Hancock Retirement Plan Services 690 Canton Street Westwood, MA 02090 Attn: Dawn Florio Tel: (781) 619-2249 Email: dflorio@jhancock.com	Pension	Contingent & Disputed			\$102,100,000
3. Retirement Plan For Hospital Employees	Board of Trustees Retirement Plan For Hospital Employees Retirement Plan Office P.O. Box 2949 San Francisco, CA 94126-2949 Attn: Larry Reid Tel: (415) 352-1080 Email: larry@rpo-sf.com	Pension	Contingent & Disputed			\$43,300,000
4. Department of Health Care Services (DHCS)	Department of Health Care Services Mail Stop 1101 1501 Capital Avenue Suite 71.2048 Sacramento, CA 95814-5005 Attn: Brian Clausse Tel: (916) 323-0039 Email: Brian.Clausse@dhcs.ca.gov	Due to Government				\$30,066,431

Debtor: Verity Health System of California, Inc.
Name

Case number (if known) _____

5.	Aetna Life Insurance Company	Aetna Legal Department 1425 Union Meeting Rd. Blue Bell, PA 19422 Attn: Paul Weller Tel: (215) 775-0788 Email: PDWELLER@AETNA.COM	Guarantee	Contingent & Unliquidated			\$14,533,333
6.	Ivonne Engelman	One Wilshire Blvd Suite 2200 Los Angeles, CA 90017 Attn: Renee L. Campbell Tel: (310) 732-0658 Email: reneecampbell.law@gmail.com	Litigation	Contingent & Disputed			\$12,000,000
7.	Iris Lara, Tanya Lara, Jarmaine Jonhs	Capstone Law APC 1875 Century Park East Suite 1000 Los Angeles, CA 90067 Attn: Jordan Lurie Tarek Zohdy Tel: (310) 556-4811 Email: Jordan.Lurie@capstonelawyers.com and Mahoney Law Group 249 E. Ocean Blvd Suite 814 Long Beach, CA 90802 Attn: Kevin Mahoney Treana Allen - Mahoney Tel: (562) 590-8400 Email: kmahoney@mahoney-law.net	Litigation	Contingent & Disputed			\$5,000,00
8.	Josefina Robles	2600 Michelson Drive Suite 1700 Irvine, CA 92612 Attn: Yolanda M. Medina Tel: (949) 852-3750 Email: ymedina@actslaw.com	Litigation	Contingent & Disputed			\$4,000,000
9.	Diane Nguyen	Otkupman Law Firm 28632 Roadside Dr. Suite 203 Agoura Hills, CA 91301 Attn: Roman Otkupman Tel: (818) 293-5623 Email: roman@OLFLA.com	Litigation	Contingent & Disputed			\$3,500,000
10.	Allscripts Healthcare LLC	305 Church at North Hill St. Raleigh, NC 27609 Attn: John Sage Tel: (919) 800-5692 Email: John.Sage@allscripts.com	Trade Claim				\$3,372,586
11.	Medline Industries, Inc.	Three Lakes Drive Northfield, IL 60093 Attn: Mike Ogden Tel: (760) 815-7052 Email: mogden@medline.com	Trade Claim				\$3,124,756
12.	Sodexo (Biomed Services)	C/O Hunton Andrews Kurth 50 California Street STE 1700 San Francisco, CA 94111 Attn: Susan Joo Tel: (415) 975-3700 Email: sjoo@huntonak.com	Trade Claim	Contingent & Unliquidated & Disputed			\$3,081,902

EXHIBIT C

Fill in this information to identify the case:

Debtor 1 Verity Health System of California, Inc.

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: Central District of California

Case number 18-20151

65 of 84

Official Form 410

Proof of Claim

12/15

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Iris Lara and Tanya Llera, individually and on behalf of all others similarly situated</u> Name of the current creditor (the person or entity to be paid for this claim)		
	Other names the creditor used with the debtor _____		
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____		
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>Mark Ozzello, Esq.</u> Name <u>1875 Century Park East, Suite 1000</u> Number Street <u>Los Angeles</u> <u>CA</u> <u>90067</u> City State ZIP Code Contact phone <u>(310) 556-4811</u> Contact email <u>Mark.Ozzello@capstonelawyers.com</u>	Where should payments to the creditor be sent? (if different) Name Number Street City State ZIP Code Contact phone Contact email	
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____			
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY		
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____		

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____
7. How much is the claim?	\$ <u>Currently unliquidated</u> . Does this amount include interest or other charges? <input type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. <u>Employee claims based on a data breach that occurred in April 2016</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. Nature of property: <input type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____ Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ _____ Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)? A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.	<input checked="" type="checkbox"/> No	
	<input type="checkbox"/> Yes. Check all that apply:	Amount entitled to priority
	<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
	<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
	<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
	<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.	\$ _____	
* Amounts are subject to adjustment on 4/01/16 and every 3 years after that for cases begun on or after the date of adjustment.		

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

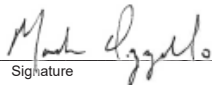
- ☐ I am the creditor.
☒ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/01/2019
MM / DD / YYYY


Signature

Print the name of the person who is completing and signing this claim:

Name	<u>Mark Ozzello</u>		
	First name	Middle name	Last name
Title	<u>Attorney for claimants and proposed attorney for class</u>		
Company	<u>Capstone Law APC</u>		
	Identify the corporate servicer as the company if the authorized agent is a servicer.		
Address	<u>1875 Century Park East, Suite 1000</u>		
	Number	Street	
	<u>Los Angeles</u>	<u>CA</u>	<u>90067</u>
	City	State	ZIP Code
Contact phone	<u>(310) 556-4811</u>	Email	<u>Mark.Ozzello@capstonelawyers.</u>

ATTACHMENT TO PROOF OF CLAIM

On May 12, 2017, Claimants, individually and on behalf of all other employees similarly situated, filed a complaint against Verity Health System of California, Inc. (the “Debtor”) in the Superior Court of the State of California for the County of Los Angeles (the “Superior Court”), Case No. BC661000, alleging negligence, breach of implied contract, violation of the California Customer Records Act, and violation of section 17200 *et seq.* of the California Business & Professions Code. The action was consolidated with a similar action and a consolidated complaint was filed on June 21, 2018. A copy of the consolidated complaint is attached as Exhibit A.

In summary, the complaint alleges that on or before April 27, 2016, the Debtor was targeted in a “phishing” scam, whereby cybercriminals contacted the Debtor’s HR department and requested that employee W-2 files and other information be sent to the cybercriminals via email. The Debtor responded by sending the requested information, which included the names, addresses, and full Social Security numbers of thousands of current and former employees, as well as the personally identifiable information (“PII”) of beneficiaries designated by those employees for certain of their employment benefits. Claimants were employees of the Debtor at the time of the data breach.

The cybercriminals were able to perpetrate this breach because the Debtor failed to maintain reasonable and adequate security measures to protect the employees’ information from access and disclosure, and failed to properly train those with access to employee PII. The Debtor was obligated to protect employee information that was in its control, yet failed to do so.

Further, due to the Debtor’s substandard cybersecurity protocols, this breach was not discovered until May 22, 2016, nearly four weeks after employee PII was released to criminals, and written notification to those affected was not sent until June 1, 2016, more than a month after the breach.

As a result of the Debtor’s failure to maintain adequate security measures and timely notify employees of security breaches, the Debtor’s employees have suffered an ascertainable loss in that they have had tax refunds withheld or otherwise delayed, engaged professional tax, legal or other assistance, and undertook additional security measures (at their own expense) to minimize the risk of future data breaches including, without limitation, changing passwords, security questions and answers, and/or purchasing a security freeze on their credit files. However, due to the Debtor’s incomplete investigation, the Debtor’s employees have no guarantee that these security

measures will in fact adequately protect their personal information. As such, the Debtor's employees have an ongoing interest in ensuring that their personal information is protected from past and future cybersecurity threats.

Claimants assert unliquidated unsecured claims based on the allegations set forth in the complaint. Claimants also assert a claim on behalf of all other employees similarly situated, as set forth in the complaint. The amount of the class claim is currently unliquidated.

Claimants reserve the right to amend or supplement this proof of claim at any time for any reason.

EXHIBIT D

Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: _____ District of _____

Case number _____

71 of 84

Official Form 410

Proof of Claim

12/15

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?		Name of the current creditor (the person or entity to be paid for this claim) _____	
		Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?		<input type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent?		Where should payments to the creditor be sent? (if different)
	Name _____		Name _____
	Number _____ Street _____		Number _____ Street _____
	City _____ State _____ ZIP Code _____		City _____ State _____ ZIP Code _____
	Contact phone _____		Contact phone _____
	Contact email _____		Contact email _____
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		
4. Does this claim amend one already filed?		<input type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?		<input type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	<input type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____
7. How much is the claim?	<div>\$ <u>Currently unliquidated</u></div> <div>Does this amount include interest or other charges? <input type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).</div>
8. What is the basis of the claim?	<div>Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.</div> <div>Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).</div> <div>Limit disclosing information that is entitled to privacy, such as health care information.</div> <div>_____</div>
9. Is all or part of the claim secured?	<div><input type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property.</div> <div>Nature of property: <input type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i>. <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____</div> <div>Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)</div> <div>Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)</div> <div>Amount necessary to cure any default as of the date of the petition: \$ _____</div> <div>Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable</div>
10. Is this claim based on a lease?	<div><input type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____</div>
11. Is this claim subject to a right of setoff?	<div><input type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____</div>

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☒ No

☐ Yes. Check all that apply:

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

☐ Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

☐ Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Amount entitled to priority

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/16 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/01/2019
MM / DD / YYYY



Signature

Print the name of the person who is completing and signing this claim:

Name Kevin Mahoney
First name Middle name Last name

Title Attorney for claimant and proposed attorney for class

Company Mahoney Law Group, APC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 249 E. Ocean Blvd. Suite 814
Number Street

Long Beach CA 90802
City State ZIP Code

Contact phone (562) 590-5550 Email kmahoney@mahoney-law.net

ATTACHMENT TO PROOF OF CLAIM

On May 19, 2017, Claimant, individually and on behalf of all other employees similarly situated, filed a complaint against Verity Health System of California, Inc. (the “Debtor”) in the Superior Court of the State of California for the County of San Mateo (the “Superior Court”), Case No. 17CIV02216, alleging violation of the California Confidentiality of Medical Information Act (California Civil Code, §§ 56 *et seq.*), invasion of privacy, breach of contract, negligence, and breach of implied contract. The action was consolidated with a similar action and a consolidated complaint was filed on June 21, 2018. A copy of the consolidated complaint is attached as Exhibit A.

In summary, the complaint alleges that on or before April 27, 2016, the Debtor was targeted in a “phishing” scam, whereby cybercriminals contacted the Debtor’s HR department and requested that employee W-2 files and other information be sent to the cybercriminals via email. The Debtor responded by sending the requested information, which included the names, addresses, and full Social Security numbers of thousands of current and former employees, as well as the personally identifiable information (“PII”) of beneficiaries designated by those employees for certain of their employment benefits. Claimant was an employee of the Debtor at the time of the data breach.

The cybercriminals were able to perpetrate this breach because the Debtor failed to maintain reasonable and adequate security measures to protect the employees’ information from access and disclosure, and failed to properly train those with access to employee PII. The Debtor was obligated to protect employee information that was in its control, yet failed to do so.

Further, due to the Debtor’s substandard cybersecurity protocols, this breach was not discovered until May 22, 2016, nearly four weeks after employee PII was released to criminals, and written notification to those affected was not sent until June 1, 2016, more than a month after the breach.

As a result of the Debtor’s failure to maintain adequate security measures and timely notify employees of security breaches, the Debtor’s employees have suffered an ascertainable loss in that they have had tax refunds withheld or otherwise delayed, engaged professional tax, legal or other assistance, and undertook additional security measures (at their own expense) to minimize the risk of future data breaches including, without limitation, changing passwords, security questions and answers, and/or purchasing a security freeze on their credit files. However, due to the Debtor’s incomplete investigation, the Debtor’s employees have no guarantee that these security

measures will in fact adequately protect their personal information. As such, the Debtor's employees have an ongoing interest in ensuring that their personal information is protected from past and future cybersecurity threats.

Claimant assert an unliquidated unsecured claim based on the allegations set forth in the complaint. Claimant also assert a claim on behalf of all other employees similarly situated, as set forth in the complaint. The amount of the class claim is currently unliquidated.

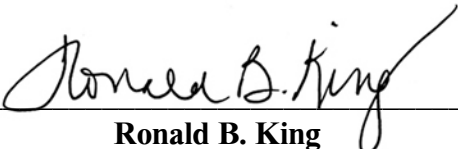
Claimant reserves the right to amend or supplement this proof of claim at any time for any reason.

EXHIBIT E



The relief described hereinbelow is **SO ORDERED**.

Signed January 31, 2017.



Ronald B. King
Chief United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

In re:	§ Chapter 11
	§
BUFFETS, LLC, et al.	§ Case No. 16-50557-RBK
	§
Debtors.	§ Jointly Administered

AMENDED

ORDER PURSUANT TO 11 U.S.C. § 362(d)
MODIFYING THE AUTOMATIC STAY IMPOSED BY 11 U.S.C. § 362(a)

Upon the motion of Movants Lynn Walter, Lynn Brown, and Kathlene Abston, individually and on behalf of all others similarly situated (“Movants”) for an order, pursuant to 11 U.S.C. § 362(d), modifying the automatic stay in effect in this case under 11 U.S.C. § 362(a) to permit Movants to enforce the notice order in a pending civil action in the United States District Court of South Carolina Civil Action No. 6:13-cv-02995-JMC, against the Debtor

Buffets, Inc. d/b/a Ovation Brands (“Debtor”), and there being due and sufficient notice of the Motion; the Court having heard from the Parties and interested Third Parties; and, after due deliberation, good and sufficient cause appearing, it is hereby

ORDERED, that Notice shall issue to a class of all persons who have worked for Buffets, Inc., also known as Ovation Brands, and its successors as servers between July 18, 2012, and the date of final judgment in this matter who worked as tipped employees earning a sub-minimum, tip credit wage; and it is further

ORDERED, that within 10 days following this Court order authorizing notice, Debtors will produce a list of all putative class members including their last known address and the dates of employment since July 18, 2012, in a manipulable format that allows for effective and efficient Notice such as Microsoft Excel or .csv (the “Class List”) to Plaintiffs’ counsel for delivery to Donlin Recano; The list will include the name and last known mailing address of all putative class members; and it is further

ORDERED, that Notice will be sent via first class mail and include only the Court-approved notice and consent form. No additional enclosures will be included; and it is further

ORDERED, that the Notice shall be sent by Donlin Recano & Company, Inc. within 15 days of receiving the Class List and the costs of notice shall be borne by the Debtors; and it is further

ORDERED, that the form of Notice to issue will be that previously agreed to by Plaintiffs and Buffets, Inc., ordered by the U.S. District Court for the District of South Carolina, and on file at Dkt. No. 1512-4. Any reference on the Notice, including the Consent to Sue, to Walter et al., v. Buffets, Inc., Civil Action Number 6:13-cv-02995-JMC, United States District Court, District of South Carolina shall be changed to In re: Buffets, LLC, et al, Case No. 16-

50557-RBK, U.S. Bankruptcy Court for the Western District of Texas, San Antonio Division;
and it is further

ORDERED, that all persons receiving the notice will have thirty (30) days from the time Notice issues to return an executed Consent to Sue form to Plaintiffs' counsel. All consents to sue must be received or postmarked within 30 days of the date notice issues (the "Opt-In Period"); and it is further

ORDERED, Plaintiffs' counsel will use best efforts to file claims in this action on behalf of any class member who returns an executed Consent to Sue within thirty (30) days of receiving the Consent to Sue. In any case, all claims will be filed within thirty (30) days of the end of the opt-in period. No Consents to Sue will be filed in the U.S. District Court for the District of South Carolina.

#

Prepared and submitted, with the consent of Debtors, by:

Michael J.D. Sweeney, (*Pro Hac Vice*)
New York State Bar No. 2954923
Getman, Sweeney & Dunn, PLLC
9 Paradies Lane
New Paltz, NY 12561
Tel. 845-255-9370
Fax 845-255-8649

COUNSEL FOR MOVANTS

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is

SHEMANOLAW
1801 Century Park East, Suite 1600
Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled **NOTICE OF MOTION AND MOTION OF IRIS LARA, TANYA LLERA, AND JARMAINE JOHNS FOR AUTHORIZATION TO FILE A CLASS PROOF OF CLAIM ON BEHALF OF CLAIMANTS SIMILARLY SITUATED** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On April 3, 2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Melinda Alonzo ml7829@att.com
- Robert N Amkraut ramkraut@foxrothschild.com
- Kyra E Andrassy kandrassy@swelawfirm.com,
lgarrett@swelawfirm.com;gcruz@swelawfirm.com;jchung@swelawfirm.com
- Simon Aron saron@wrslawyers.com
- Lauren T Attard lattard@bakerlaw.com, abalian@bakerlaw.com
- Allison R Axenrod allison@claimsrecoveryllc.com
- Keith Patrick Banner kbanner@greenbergglusker.com,
sharper@greenbergglusker.com;calendar@greenbergglusker.com
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- Steven M Berman sberman@slk-law.com
- Alicia K Berry Alicia.Berry@doj.ca.gov
- Stephen F Biegenzahn efile@sfbllaw.com
- Karl E Block kblock@loeb.com, jvazquez@loeb.com;ladoocket@loeb.com
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llp.com
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- Florice Hoffman fhoffman@socal.rr.com, floricehoffman@gmail.com
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nd.com
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- Jeff D Kahane jkahane@duanemorris.com, dmartinez@duanemorris.com
- Steven J Kahn skahn@pszyjw.com
- Cameo M Kaisler salembier.cameo@pbgc.gov, efile@pbgc.gov
- Ivan L Kallick ikallick@manatt.com, ihernandez@manatt.com
- Ori Katz okatz@sheppardmullin.com, cshulman@sheppardmullin.com;ezisholtz@sheppardmullin.com
- Payam Khodadadi pkhodadadi@mcguirewoods.com, dkiker@mcguirewoods.com
- Jane Kim jkim@kellerbenvenuti.com
- Monica Y Kim myk@lnrb.com, myk@ecf.inforuptcy.com
- Gary E Klausner gek@lnbyb.com
- Joseph A Kohanski jkohanski@bushgottlieb.com, kprestegard@bushgottlieb.com

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

- Jeffrey C Krause jkrause@gibsondunn.com, dtrujillo@gibsondunn.com; jstern@gibsondunn.com
- Darryl S Laddin bkrfilings@agg.com
- Robert S Lampl advocate45@aol.com, rlisarobinsonr@aol.com
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- Kevin H Morse kevin.morse@saul.com, rmarcus@AttorneyMM.com; sean.williams@saul.com
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2. SERVED BY UNITED STATES MAIL:

On April 3, 2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Honorable Ernest M. Robles
United States Bankruptcy Court
Edward R. Roybal Federal Building
255 E. Temple Street, Suite 1560
Los Angeles, CA 90012

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

April 3, 2019

Date

David B. Shemano

Printed Name

/s David B. Shemano

Signature