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9 **UNITED STATES BANKRUPTCY COURT**  
 10 **NORTHERN DISTRICT OF CALIFORNIA**  
 11 **OAKLAND DIVISION**

13 In re  
 14 GALILEO LEARNING, LLC<sup>1</sup>,  
 15 Debtor.

Case No.  
 Chapter 11

**MOTION OF DEBTOR GALILEO LEARNING, LLC FOR ENTRY OF ORDER APPROVING SETTLEMENT WITH CERTAIN CUSTOMER/CREDITORS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

Date:  
 Time:  
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22  
 23 Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (“**FRBP**”),  
 24 Debtor Galileo Learning, LLC (variously, “**Galileo**” or “**Debtor**”) respectfully requests that  
 25 the Court enter an order (“**Order**”), in the form attached hereto as **Exhibit A**, approving  
 26 proposed settlements (“**Proposed Settlements**” and, with respect to any individual  
 27 \_\_\_\_\_

28 <sup>1</sup> The last four digits of the Debtor’s federal tax identification number are 9453. The mailing address for the Debtor is 1021 Third Street, Oakland, California 94607.

1 proposed settlement, a “**Proposed Settlement**”) with Customer/Creditors, as defined  
2 below. Under the Proposed Settlements, those Customer/Creditors *who choose to do*  
3 so, may elect to receive one of two benefit packages in exchange for their claims. The  
4 two options that would be made available to Customer/Creditors as part of the Proposed  
5 Settlements are as follows:

6 **Option 1 (the “110% Credit Option”)**. For the next five (5) years,  
7 Customer/Creditors may elect to apply a credit equal to one hundred ten percent (110%)  
8 of the amount of their prepetition claims to the purchase of (a) any “virtual,” “on-line”  
9 camp programs (the “**Virtual Programs**”) that Galileo is currently developing and expects  
10 to roll out within the next two weeks, or (b) *any other Galileo programs*, whether such  
11 programs are virtual or not. The Virtual Programs that will shortly be offered by Galileo  
12 will include not only virtual one-week camps, but one-hour, online, classes led by Galileo  
13 instructors. Customer/Creditors that elect this option may transfer the credit to other  
14 parties, including relatives and friends.

15 **Option 2 (the “50% Discount Coupon Option”)**. Customer/Creditors may elect  
16 to receive a five (5) year, fifty percent (50%) off “coupon” for any Galileo product or  
17 products, including but not limited to Virtual Programs. This 50%-off coupon may be  
18 used by and for any and all siblings within the family.

19 A Customer/Creditor who wishes to avail herself or himself of one of these options  
20 must elect to do so within thirty (30) days of receipt of notice of entry of the Order, so that  
21 Galileo will know not merely the number and size of the Customer/Creditor class, but the  
22 value of outstanding credits and coupons, in developing its plan of reorganization and  
23 preparing its disclosure statement.

24 In support of this Motion of Debtor Galileo Learning, LLC for Entry of Order  
25 Approving Settlement with Certain Customer/Creditors, Galileo relies upon the  
26 accompanying Memorandum of Points and Authorities and the Declaration of Glen Tripp  
27 in Support of “First Day Motions” (“**Tripp Declaration**”) that has been filed  
28 simultaneously herewith.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION AND BACKGROUND

3 Since 2002, Galileo has provided innovative, creative, educational camp  
4 experiences to hundreds of thousands of campers. Those campers have ranged from  
5 pre-kindergarteners to tenth graders. In September of 2019, Galileo began preparing for  
6 an expected 2020 enrollment of 45,000 children, covering approximately 89,000 “camper  
7 weeks” (on average, two weeks per child) on 70 campuses located in three states --  
8 California, Illinois, and Colorado.

9 In March of this year, due to the previously unimaginable onset of the COVID  
10 pandemic, everything stopped. The uncertain duration of the pandemic and government-  
11 issued "shelter-in-place" orders, and the need of its customer families to plan to make  
12 reliable arrangements for Summer child care, effectively compelled Galileo to cancel all  
13 of this Summer’s programs. By then, some 10,585 families (the “**Customer/Creditors**”)  
14 had paid, in the aggregate, approximately \$11,636,780 (“**2020 Camp Revenue**”) in  
15 “tuition” for this Summer’s programs. The 2020 Camp Revenue figure represents about  
16 one-third of the expected 2020 revenue for which Galileo had been planning.  
17 Customarily, two-thirds of Galileo’s revenue comes in between March and July of each  
18 year.

19 For Galileo, the COVID pandemic could not have been more badly timed.  
20 Regrettably, at the time of cancellation of the 2020 camp season, in accordance with its  
21 customary and time-proven business plan, Galileo had spent a large percentage of the  
22 collected tuition on wages for approximately 140 employees, rent for two offices and a  
23 large, 32,000-square foot, warehouse, educational supplies and equipment, and other  
24 items (such as T- shirts) that would be distributed to campers or otherwise used during  
25 the anticipated Summer programs. As a result of the truncated business season, and, in  
26 particular, the timing of the arrival of the COVID pandemic, Galileo could not provide full  
27 refunds to its Customer/Creditors. Indeed, the payment of even large-percentage, partial  
28 refunds to Customer/Creditors would drive Galileo out of business.

1           Instead, Galileo has offered credits to its Customer/Creditors. Based upon a  
2 survey conducted within the past two weeks by Galileo, that was sent to *all*  
3 Customer/Creditors, the Debtor believes that a significant percentage of its  
4 Customer/Creditors would elect to apply a credit equal to one hundred ten percent  
5 (110%) of the amount of their prepetition claims to the purchase of the Virtual Programs  
6 or other programs, virtual or otherwise, that Galileo will be offering now and within the  
7 next five years. Customer/Creditors electing the 110% Credit Option would also enjoy  
8 the right to transfer the credit to other parties, including relatives and friends.

9           Galileo has also created a second option, that has not previously been addressed  
10 in communications with Customer/Creditors, to be offered to Customer/Creditors in  
11 connection with the Proposed Settlement. Under this second option, the 50% Discount  
12 Coupon Option, Customer/Creditors could elect to receive a five (5) year, fifty percent  
13 (50%) off “coupon” for any Galileo product or products, including but not limited to Virtual  
14 Programs. This 50%-off coupon may be used by and for any and all siblings within the  
15 family.

16           Galileo now seeks court authority to make these two options *immediately available*  
17 to those Customer/Creditors who choose to avail themselves of the opportunity. **We**  
18 ***must emphasize that no Customer/Creditor will be compelled to avail himself or***  
19 ***herself of the Proposed Settlement or to elect between the two options.***

20           In determining the appropriateness of and legal justification for the first of the two  
21 listed options, the Court should know that the 110% Credit Option is utterly consistent  
22 with Galileo’s credit policy. Subject to availability, since the 2019 camp season, Galileo’s  
23 customers have been afforded, without penalty, the right to trade one product (camp,  
24 camp week, or camp site) for another. The only aspect of the first option that is unique or  
25 different is the 110% feature. We respectfully submit that, but for this added bonus to  
26 Customer/Creditors, Galileo would not even need to apply for Bankruptcy Court authority  
27 to offer the first option. Having said this, we hasten to add that, as we explain more fully  
28 ///



1           **Among the benefits to the Estate are the following:**

2           A.     The election by Customer/Creditors to use these credits or discount  
3 coupons will reduce the aggregate amount of claims against the Estate, thereby leaving a  
4 greater percentage of the Estate for non-electing Customer/Creditors and other creditors  
5 of the Estate.

6           B.     The election by a Customer/Creditor to avail herself or himself of the 110%  
7 Credit Option will produce essentially no marginal cost to the Estate. Galileo will be  
8 offering the same products to its customers, at essentially the same cost to Galileo,  
9 regardless of the number of Customer/Creditors who elect to avail themselves of those  
10 products through the use of credits.

11          C.     The marginal cost to Galileo of an election by a Customer/Creditor to avail  
12 himself or herself of the 50% Discount Coupon Option also will be covered.

13          D.     The ability of Galileo, at this unprecedented and economically perilous time,  
14 to introduce and offer its innovative, new line of products, the Virtual Programs, to  
15 customers is likely to foster goodwill and enhance the Galileo brand.

16          E.     Similarly, while the Proposed Settlements may not restore all of the goodwill  
17 that Galileo has lost as a result of its inability to immediately pay cash refunds, Galileo's  
18 offering of a 110% credit or 50% discount coupon to Customer/Creditors will help to  
19 restore at least some of the goodwill that has been lost during the past two months.

20           On a motion by the [debtor in possession] after notice and a hearing, the court  
21 may approve a compromise or settlement under Fed. R. Bankr. P. 9019(a) upon a finding  
22 that it is "fair and equitable" to creditors. *Woodson v. Fireman's Fund Ins. Co. (In re*  
23 *Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988). Compromises and settlements have long  
24 been an inherent component of the bankruptcy process. *See Protective Comm. for Indep.*  
25 *Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968).  
26 Compromises are favored in bankruptcy and "approval of a settlement is committed to  
27 the court's sound discretion." *In re Commercial Loan Corp.*, 316 B.R. 690, 697 (Bankr.  
28 N.D. Ill. 2004). The court's proper role is "to canvas the issues and see whether the

1 settlement falls below the lowest point in the range of reasonableness.” *In re Jayampath*  
2 *P. Dharmasuriya*, Case No. 09-bk-28606, 2014 WL 845991, at \*3 (C.D. Cal. Mar. 4,  
3 2014) citing *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 493, 496-97 (Bankr.  
4 S.D.N.Y. 1991). The bankruptcy court need not conduct an exhaustive investigation or a  
5 mini-trial on the validity or merits of the claims sought to be compromised. *U.S. v. Alaska*  
6 *Nat’l Bank (In re Walsh Const., Inc.)*, 669 F.2d 1325, 1328 (9th Cir. 1982).

7 The Ninth Circuit has directed the courts to consider the following criteria when  
8 determining the fairness, reasonableness and adequacy of a proposed settlement: (a) the  
9 probability of success in the litigation; (b) the difficulties, if any, to be encountered in the  
10 matter of collection; (c) the complexity of the litigation involved, and the expense,  
11 inconvenience and delay necessarily attending it; and (d) the paramount interest of the  
12 creditors and a proper deference to their reasonable views in the premises. *Martin v.*  
13 *Kane (In re A& C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986); *Woodson v.*  
14 *Fireman’s Fund Insurance Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988).  
15 Moreover, a court should generally give deference to a trustee’s exercise of business  
16 judgment. *In re Mickey Thompson Entertainment Group, Inc.*, 292 B.R. 415, 420 (9th Cir.  
17 BAP 2003).

18 In the instant case, all of the *relevant Martin v. Kane* factors support approval of  
19 the Proposed Settlement:

20 (a) Probability of Success in the Litigation. This factor is  
21 ***irrelevant*** in the case at bar. Although one of the Customer/Creditors  
22 recently commenced a class action lawsuit against the Debtors in the  
23 United States District Court for the Northern District of California, the  
24 Proposed Settlement does not settle, or purport to settle, any existing  
25 litigation.

26 (b) Collection Difficulties. This factor also is ***irrelevant*** in the case  
27 at bar insofar as the Debtor is concerned. From the standpoint of the  
28 Customer/Creditors, however, this factor is highly relevant. The Proposed

1 Settlements allow Customer/Creditors to recover 110% of the amount of  
2 their claims, a result they may not achieve in the Debtor's chapter 11 case.

3 (c) Complexity, Expense, Inconvenience, and Delay. For a  
4 Customer/Creditor that elects to accept the either of the offered options, the  
5 Proposed Settlement totally avoids the complexities, expense,  
6 inconvenience, and delay associated with the chapter 11 case. As we note  
7 above, an electing Customer/Creditor can immediately begin using credits  
8 for on-line offerings. She or he will no longer have to follow, much less  
9 involve herself or himself, in the chapter 11 case.

10 (d) Paramount Interest of Creditors. As we note above, the  
11 interest of creditors will be greatly served by the Proposed Settlement. The  
12 proposed settlement is highly beneficial to the Estate.

13 **III. NOTICE**

14 The Debtor will serve notice of this Motion upon: (i) the Office of the United States  
15 Trustee; (ii) the Debtor's list of creditors holding the thirty (30) largest unsecured claims;  
16 (iii) the Internal Revenue Service; (iv) the United States Attorney's Office for the Northern  
17 District of California; (v) the Small Business Administration; and (vi) all parties who have  
18 formally appeared in this Chapter 11 Case and requested service pursuant to Bankruptcy  
19 Rule 2002. In light of the nature of the relief requested, the Debtor submits that no other  
20 or further notice is necessary.

21 No previous request for the relief sought herein has been made by the Debtors to  
22 this or any other court.

23 WHEREFORE, for the foregoing reasons, Galileo respectfully requests that the  
24 Court enter an order, in the form attached hereto as **Exhibit A**, approving the Proposed  
25 Settlement.

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DATED: May 6, 2020

Respectfully submitted,

HANSON BRIDGETT LLP

By:           /s/ Neal L. Wolf          

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10 **NORTHERN DISTRICT OF CALIFORNIA**  
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12  
13 In re  
14 GALILEO LEARNING, LLC<sup>1</sup>,  
15 Debtor.

Case No.

Chapter 11

16 **[PROPOSED] ORDER GRANTING**  
17 **MOTION OF DEBTOR GALILEO**  
18 **LEARNING, LLC FOR ENTRY OF**  
19 **ORDER APPROVING SETTLEMENT**  
20 **WITH CERTAIN**  
21 **CUSTOMER/CREDITORS**

22 The above captioned Debtor having filed the Motion of Debtor Galileo Learning, LLC  
23 for Entry of Order Approving Settlement with Certain Customer/Creditors (the "**Motion**");  
24 and the Court having considered the Motion, the *Declaration of Glen E. Tripp in Support of*  
25 *Debtor's "First Day Motions,"* and the arguments of counsel and evidence introduced at the  
26 hearing conducted by the Court on May \_\_\_\_, 2020; and the Court having jurisdiction over  
27 this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Order Referring Bankruptcy*

28 <sup>1</sup> The last four digits of the Debtor's federal tax identification number are 9453. The  
mailing address for the Debtor is 1021 Third Street, Oakland, California 94607.

1 *Cases and Proceedings to Bankruptcy Judges, General Order 24* (N.D. Cal. Feb. 22,  
2 2016), and Rule 5011-1(a) of the Bankruptcy Local Rules for the United States District  
3 Court for the Northern District of California (the “**Bankruptcy Local Rules**”); and this  
4 matter being a core proceeding pursuant to 28 U.S.C. § 157; and venue of this Chapter 11  
5 Case and the Motion are proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and  
6 it appearing that notice of the Motion was good and sufficient under the circumstances,  
7 particularly in light of the fact that the "Proposed Settlements," as defined in the Motion,  
8 are utterly voluntary and that Customer/Creditors, as defined in the Motion, in their sole  
9 discretion, may elect to avail themselves of the offered settlement options or to decline to  
10 accept such options and that the relief requested in the Motion is fair and reasonable and  
11 in the best interests of the Debtor, its Estate, and its Customer/Creditors; and for the  
12 reasons more fully stated by the Court in open Court; and good and sufficient cause  
13 appearing therefor,

14 **IT IS HEREBY ORDERED THAT:**

- 15 1. The Motion is granted.
- 16 2. Customer/Creditors may elect, but are not obligated, to receive one of two  
17 benefit packages in exchange for their claims.
- 18 3. The two options that will be made available to Customer/Creditors as part of  
19 the Proposed Settlements are as follows:

20 (a) **Option 1 (the “110% Credit Option”)**. For the next five (5)  
21 years, Customer/Creditors may elect to apply a credit equal to one hundred  
22 ten percent (110%) of the amount of their prepetition claims to the purchase  
23 of (a) any “virtual,” “on-line” camp programs (the “**Virtual Programs**”) that  
24 Galileo is currently developing and expects to roll out within the next two  
25 weeks, or (b) any other Galileo programs, whether such programs are  
26 virtual or not. The Virtual Programs that will shortly be offered by Galileo  
27 will include not only virtual one-week camps, but one-hour, online, classes  
28 led by Galileo instructors. Customer/Creditors that elect this option may

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transfer the credit to other parties, including relatives and friends.

(b) **Option 2 (the “50% Discount Coupon Option”)**.

Customer/Creditors may elect to receive a five (5) year, fifty percent (50%) off “coupon” for any Galileo product or products, including but not limited to Virtual Programs. This 50%-off coupon may be used by and for any and all siblings within the family. Customer/Creditors that elect the second option may use the 50%-discount coupon as many times as they like, for as many products as they like, and for as many siblings as they like.

4. A Customer/Creditor who wishes to avail herself or himself of one of these options must elect to do so within thirty (30) days of receipt of notice of entry of the Order.

5. The Proposed Settlement is utterly voluntary. No Customer/Creditor is required to avail himself or herself of either option.

6. The Debtor is authorized to take any and all actions necessary to effectuate the relief granted herein.

7. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

\*\*\* END OF ORDER \*\*\*