HAHN & HAHN LLP
DEAN G. RALLIS JR., State Bar No. 94266
E-Mail: drallis@hahnlawyers.com
MATTHEW D. PHAM, State Bar No. 287704
E-Mail: mpham@hahnlawyers.com
301 E. COLORADO BLVD., NINTH FLOOR
PASADENA, CALIFORNIA 91101-1977
Telephone: (626) 796-9123
Facsimile: (626) 449-7357

AIMAN-SMITH & MARCY, P.C.
JOHN LOFTON, State Bar No. 222259
E-Mail: jal@asmlawyers.com
7677 OAKPORT STREET, SUITE 1150
OAKLAND, CALIFORNIA 94621
Telephone: (510) 817-2711
Facsimile: (510) 562-6830

Attorneys for Nanette Kearney, Krister Johnson, and Sandra Shorago, Creditors and Class Representatives

HANSON BRIDGETT LLP
NEAL L. WOLF, State Bar No. 202129
E-Mail: nwolf@hansonbridgett.com
ANTHONY J. DUTRA, State Bar No. 277706
E-Mail: adutra@hansonbridgett.com
425 MARKET STREET, 26TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105
Telephone: (415) 995-5015
Facsimile: (415) 541-9366

Attorney for Galileo Learning, LLC, Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

In re

GALILEO LEARNING, LLC,

Debtor.[1]

In re

GALILEO LEARNING FRANCHISING LLC,

Debtor.

☒ Affects GALILEO LEARNING, LLC

☐ Affects GALILEO LEARNING FRANCHISING LLC,

Case Nos. 20-40857 (RLE)
20-40858 (RLE)

Chapter 11

(Jointly Administered)

JOINT MOTION BY CLASS REPRESENTATIVES AND DEBTOR FOR ORDER GRANTING FINAL APPROVAL OF CLASS SETTLEMENT AGREEMENT AND RELATED RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES

Final Approval Hearing:
Date: February 9, 2021
Time: 10:00 a.m.

[1] These cases are being jointly administered, and all documents for either case should be filed in lead case number 20-40857 (RLE). The last four digits of each Debtor's federal tax identification number are as follows: Galileo Learning, LLC (9453) and Galileo Learning Franchising LLC (5638). The mailing address for the Debtors is 1021 3rd Street, Oakland, California 94607.

1 The creditors and class representatives Nanette Kearney, Krister Johnson, and Sandra
2 Shorago (collectively, the "Customer Class Representatives"), on behalf of themselves and the
3 class of individuals certified pursuant to the Court's order of November 9, 2020 (the "Customer
4 Class," and the members of the Customer Class, the "Customer Class Members"), and the debtor
5 and debtor in possession Galileo Learning, LLC (the "Debtor," and together, with the Customer
6 Class Representatives, the "Parties") hereby jointly move (the "Joint Motion"), pursuant to
7 11 U.S.C. § 105(a), Rule 23 of the Federal Rules of Civil Procedure, and Rules 7023, 9014, and
8 9019 of the Federal Rules of Bankruptcy Procedure, for entry of an order finally approving the
9 settlement between the Customer Class and the Debtor memorialized by that certain *Class*
10 *Settlement Agreement* dated December 2, 2020 (the "Settlement Agreement" or "Settlement"),[2]
11 including, among other things, (1) the compensation to Atticus Administration, LLC as the
12 settlement administrator under the Settlement (the "Settlement Administrator"), (2) the award of
13 attorneys' fees to Aiman-Smith & Marcy, P.C. and Hahn & Hahn LLP, as the appointed co-
14 counsel for the Customer Class (together, the "Class Counsel"), (3) the service awards to the
15 Customer Class Representatives, as the designated representatives of the Customer Class, and
16 (4) the Disbursement Priority Scheme (as that term is defined in the Settlement) of the funds to be
17 disbursed to the Settlement Administrator, Class Counsel, Customer Class Representatives, and
18 applicable Customer Class Members pursuant to the Settlement Agreement, and granting related
19 relief.
20 The Parties' Joint Motion is based on the exhibit attached hereto, the accompanying
21 memorandum of points and authorities, the concurrently filed declarations of John A. Lofton,
22 Dean G. Rallis Jr., Keith Bencher, Chris Longley, and Angela Tsai, the pleadings and papers on
23 file in the above-captioned chapter 11 cases, and any further evidence or argument presented at the
24 hearing on the Joint Motion.
25 / / /
26
27 [2] The executed copy of the Settlement Agreement is attached as **Exhibit 1** to the *Notice of Filing of Executed Version of Class Settlement Agreement Dated December 2, 2020*, which was filed
28 on December 29, 2020, at docket no. 269.

WHEREFORE, the Parties respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit 1**, granting the Joint Motion and providing for such other and further relief that this Court deems appropriate under the circumstances.

Respectfully submitted,

DATED: January 12, 2021

AIMAN-SMITH & MARCY, P.C.

By: /s/ John A. Lofton
John A. Lofton
Attorneys for Nanette Kearney, Krister Johnson, and Sandra Shorago, Creditors and Class Representatives

DATED: January 12, 2021

HAHN & HAHN LLP

By: /s/ Dean G. Rallis Jr.
Dean G. Rallis Jr.
Attorneys for Nanette Kearney, Krister Johnson, and Sandra Shorago, Creditors and Class Representatives

DATED: January 12, 2021

HANSON BRIDGETT LLP

By: /s/ Anthony Dutra
Anthony Dutra
Attorneys for Galileo Learning, LLC, Debtor and Debtor in Possession

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MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to § 105(a) of title 11 of the United States Code (the "Bankruptcy Code" or "Code"), Rule 23 of the Federal Rules of Civil Procedure (the "Civil Rules"), and Rules 7023, 9014, and 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the creditors and class representatives Nanette Kearney, Krister Johnson, and Sandra Shorago (collectively, the "Customer Class Representatives"), on behalf of themselves and the class of individuals certified pursuant to the Court's order of November 9, 2020 (the "Customer Class," and the members of the Customer Class, the "Customer Class Members"), and the debtor and debtor in possession Galileo Learning, LLC (the "Debtor," and together, with the Customer Class Representatives, the "Parties") jointly move (the "Joint Motion") for entry of an order finally approving the settlement between the Customer Class and the Debtor memorialized by that certain *Class Settlement Agreement* dated December 2, 2020 (the "Settlement Agreement" or "Settlement"), including, among other things, (1) the compensation to Atticus Administration, LLC ("Atticus") as the settlement administrator under the Settlement (the "Settlement Administrator"), (2) the award of attorneys' fees to Aiman-Smith & Marcy, P.C. ("Aiman-Smith & Marcy") and Hahn & Hahn LLP ("Hahn & Hahn"), as the appointed co-counsel for the Customer Class (together, the "Class Counsel"), (3) the service awards to the Customer Class Representatives, as the designated representatives of the Customer Class, and (4) the Disbursement Priority Scheme (as that term is defined in the Settlement) of the funds to be disbursed to the Settlement Administrator, Class Counsel, Customer Class Representatives, and applicable Customer Class Members pursuant to the Settlement Agreement, and granting related relief.

The Parties' Joint Motion is supported by this memorandum, as well as the concurrently filed declarations of John A. Lofton (the "Lofton Declaration"), Dean G. Rallis Jr. (the "Rallis Declaration"), Keith Bencher (the "Bencher Declaration"), Chris Longley (the "Longley Declaration"), and Angela Tsai (the "Tsai Declaration").

1. PRELIMINARY STATEMENT

By the Joint Motion, the Customer Class Representatives and the Debtor jointly seek final

approval of their proposed settlement to resolve the claims of the Customer Class Members. After extended arms'-length negotiations, the Parties have reached a fair and reasonable settlement that adequately compensates the Customer Class, while also benefitting the Debtor and its other unsecured creditors. Specifically, the Settlement provides that all Customer Class Members (who did not already elect to receive a credit or coupon) will, by default, receive payments effectively totaling 100% of their claims, with interest, over five years. Alternatively, in lieu of receiving cash payments, a Customer Class Member could also opt to immediately receive a credit or coupon similar to what had been previously offered by the Debtor, which can be used for future camp programs. The Settlement takes into consideration the Debtor's current and projected financial condition, allowing the company to continue operating and return to profitability so that it can pay the Customer Class Members' priority claims, as well as the claims of other unsecured creditors, over time. Given the circumstances, the Parties believe that the Settlement is fair, reasonable, and adequate to the Customer Class Members and now request that the Court grant the Joint Motion and finally approve the Settlement.

2. STATEMENT OF THE CASE

2.1 Factual and Procedural Background.

From late 2019 to early 2020, thousands of customers paid money to or for the benefit of the Debtor as deposits for the Debtor's in-person camp programs scheduled for 2020 and other goods and services offered in connection with those camp programs. Bencher Decl. ¶ 3. However, due to the Covid-19 pandemic and the governmental orders and directives in response thereto, in April 2020, the Debtor canceled all of its camp programs and was unable to, and did not, provide refunds to any customers. *Id.*

On April 23, 2020, Ms. Kearney, on behalf of herself and others similarly situated, filed a class action complaint against the Debtor, its affiliate Galileo Learning Franchising LLC, and its principal Glen Tripp in the United States District Court for the Northern District of California, commencing the civil case captioned as *Kearney v. Galileo Learning, LLC, et al.* and bearing Case No. 3:20-cv-02807-JCS (the "Civil Case"). Lofton Decl. ¶ 3.

On May 6, 2020 (the "Petition Date"), the Debtor filed a voluntary petition under

1 chapter 11 of the Bankruptcy Code in this Court, commencing this chapter 11 case, which is being
2 jointly administered with the chapter 11 case of Galileo Learning Franchising LLC. The Civil
3 Case remains pending but has been stayed due to the automatic stay. *Id.* ¶ 4.

4 At the outset of its case, as a preliminary measure to compromise with some of its
5 customers who had paid deposits, the Debtor sought the Court's approval to offer two treatment
6 options to customers. After extensive negotiations between the Debtor's counsel and the then-
7 putative Class Counsel regarding the terms of those options, the Court entered the *Order Granting*
8 *Motion of Debtor Galileo Learning, LLC for Entry of Order Approving Settlement with Certain*
9 *Customer/Creditors* (the "Summer 2020 Settlement Order"), at docket no. 48. The Summer 2020
10 Settlement Order authorized the Debtor to present an offer to a customer to elect one of two
11 treatment options (the "Summer 2020 Settlement Offer"): (1) a credit equal to 110% of the
12 customer's claim, which could be used to purchase any of the Debtor's camp programs, products,
13 or services over a roughly five-year period (the "110% Credit Option"), or (2) a coupon providing
14 the customer with a 50% discount off of any of the Debtor's camp programs, products, or services,
15 which could be redeemed an unlimited amount of times over a roughly five-year period (the "50%
16 Coupon Option"). A customer could also make no election in response to the Summer 2020
17 Settlement Offer. The Debtor estimated that, as of November 13, 2020, (1) 4,054 customers
18 holding claims totaling $4,497,008.15 elected the 110% Credit Option, (2) 1,090 customers
19 holding claims totaling $1,075,299.29 elected the 50% Coupon Option, and (3) 4,106 customers
20 holding claims totaling $4,351,274.86 made no election and continue to retain their monetary
21 claim against the Debtor. Bencher Decl. ¶ 5.

22 On August 5, 2020, Ms. Kearney, on behalf of herself and others similarly situated, filed
23 the *Class Representative's Motion for Order Applying Civil Rule 23 to Claims Administration*
24 *Process and Authorizing Filing of Class Proof of Claim* (the "Class Certification Motion"), at
25 docket no. 148. On October 13, 2020, Ms. Kearney, Mr. Johnson, and Ms. Shorago, on behalf of
26 themselves and others similarly situated, filed the *Supplement to Class Representative's Motion*
27 *for Order Applying Civil Rule 23 to Claims Administration Process and Authorizing Filing of*
28 *Class Proof of Claim* (the "Class Certification Supplement"), at docket no. 202. No parties in

interest filed an opposition to the Class Certification Motion or to the Class Certification Supplement.

On November 9, 2020, the Court entered the *Order Granting Class Representative's Motion for Order Applying Civil Rule 23 to Claims Administration Process and Authorizing Filing of Class Proof of Claim* (the "Class Certification Order"), at docket no. 226, which (1) made Civil Rule 23, via Bankruptcy Rule 7023, via Bankruptcy Rule 9014(c), applicable to the claims administration process in the Debtor's chapter 11 case, (2) certified the Customer Class as a "mandatory" class under Civil Rule 23(b)(1)(B), (3) designated the three Customer Class Representatives as the representatives of the Customer Class, (4) appointed Aiman-Smith & Marcy and Hahn & Hahn as co-counsel for the Customer Class, and (5) authorized the Customer Class Representatives to file a class proof of claim on behalf of the Customer Class. Pursuant to the Class Certification Order, the Customer Class is defined as follows:

> All individuals who paid money to Galileo, prior to the filing of its chapter 11 petition, as a deposit for its since-canceled in-person camp programs and related goods and services scheduled for 2020, but excluding any individual who received a refund via credit card chargeback or otherwise.

On November 11, 2020, the Customer Class Representatives filed a class proof of claim, which asserts a claim in the amount of $9,923,582.30 on behalf of the Customer Class (the "Customer Class Representative Claim"), of which $9,740,318.10 is asserted to be a priority unsecured claim under § 507(a)(7) of the Bankruptcy Code and $183,264.20 is asserted to be a nonpriority unsecured claim. Pursuant to the definition of the Customer Class, the Customer Class Representative Claim includes claims held by those individuals who previously elected the Credit Option or Coupon Option under the Summer 2020 Settlement Offer.

On December 2, 2020, the Parties filed their joint motion seeking the Court's preliminary approval of the Settlement (the "Preliminary Approval Motion"), at docket no. 239. Following hearings on the Preliminary Approval Motion on December 22 and 23, the Court entered its order preliminarily approving the Settlement (the "Preliminary Approval Order") on December 28, 2020, at docket no. 266. In addition, under the Preliminary Approval Order, the Court, among other things, appointed Atticus as the Settlement Administrator, approved the form

and manner of the notice to the Customer Class Members (including the forms of the notice regarding the Settlement (the "Customer Class Notice") and of the response form regarding the Settlement (the "Settlement Response Form")), and scheduled the hearing on final approval of the Settlement for February 9, 2021.

On December 29, 2020, the Settlement Administrator published the settlement website located at https://www.galileosettlement.com (the "Settlement Website"). Longley Decl. ¶ 3. By visiting the Settlement Website, any Customer Class Member could (1) review what the Debtor's records reflected to be the amount of their claim against the Debtor (including whether they had obtained a chargeback), their election under the Summer 2020 Settlement Offer, if any, and their contact information; (2) complete and submit the online version of the Settlement Response Form; (3) update their contact information; and (4) download the Settlement Agreement, Customer Class Notice, and other relevant documents and filings. *Id.*

That same day, Stretto, the Debtor's claims and noticing agent, sent an email to 9,401 Customer Class Members that contained links to the Customer Class Notice, Settlement Response Form, and other required documents. *See* Tsai Decl. ¶ 3. Those 9,401 Customer Class Members represented all of the presumed members of the Customer Class and did not include any customers who otherwise received a full chargeback (and would be excluded from the Customer Class). *See id.* The following day, Stretto sent a follow-up email to the same 9,401 Customer Class Members, notifying them that the Settlement Website, after experiencing some initial functionality issues, was now fully operational. *See id.* ¶ 4. From those emails, Stretto received "bounced-back" emails that had been sent to 29 undeliverable email addresses, and for those 29 corresponding Customer Class Members, Stretto served the Customer Class Notice, Settlement Response Form, and other required documents, along with printouts of its two emails, on them by first-class mail to their respective physical addresses that the Debtor had on file. *See id.* ¶ 5.

Since December 29, 2020, the Class Counsel has promptly responded to emails and phone calls from over 50 Customer Class Members, answering their questions about the Debtor's chapter 11 case and the Settlement and assisting them with completing the Settlement Response Form and otherwise. Lofton Decl. ¶ 11.

As of January 8, 2021, approximately 1,050 Customer Class Members have submitted the Settlement Response Form to the Settlement Administrator. Longley Decl. ¶ 4. The Settlement Response Form allows a Customer Class Member to (1) assert their claim against the Debtor; (2) if eligible, elect the New Credit Option, New Coupon Option, or Deferred Cash Payment Option (as those terms are defined below); and (3) opt out of the releases contained in the Settlement. From the 1,050 submitted Settlement Response Forms, the elections of the various treatment options by the Customer Class Members can be broken down as follows:

Election	Number
Prior election of the 110% Credit Option under the Summer 2020 Settlement Offer	157
Prior election of the 50% Coupon Option under the Summer 2020 Settlement Offer	47
Election of the New Credit Option	104
Election of the New Coupon Option	26
Election of the Deferred Cash Payment Option	710
No election made (deemed to elect the Deferred Cash Payment Option)	6
	1,050

Id. Pursuant to the Preliminary Approval Order, the Customer Class Members have until January 26, 2021, to return the Settlement Response Form to the Settlement Administrator, and the Settlement Administrator has until February 2, 2021, to file its summary of the returned Settlement Response Forms.

2.2 Settlement Negotiations.

From May to December 2020, the Class Counsel negotiated extensively with the Debtor's counsel. Lofton Decl. ¶ 6. The Debtor provided the Class Counsel with substantial informal discovery in the form of financial documents detailing the Debtor's present financial condition, as well as its financial projections under a variety of potential settlement scenarios. *Id.*

At the start of the case, the Parties worked together to allow the Debtor to offer the 110% Credit Option and 50% Coupon Option to the Customer Class Members under the Summer 2020 Settlement Offer, in order to reduce the amount of debt that would need to be repaid under a plan and allow the Customer Class Members an early means to recover value on account

of their claims. *Id.* ¶ 7. Since then, the Class Counsel and the Debtor's counsel have been able to negotiate creative solutions and an amicable class settlement within the bankruptcy case under unusual time pressures. *Id.* The product of those negotiations is the Settlement Agreement. *Id.*

3. SUMMARY OF THE PROPOSED SETTLEMENT

3.1 Effectiveness of the Settlement.

Even if finally approved by the Court, the proposed Settlement will become effective and binding on the Debtor and the Customer Class only upon the occurrence of certain other conditions, the most significant being the entry of a final order confirming the Debtor's plan of reorganization (the "Plan"). *See* Settlement Agreement § 3.2.1. As the Settlement Agreement sets forth the treatment to be provided to the Customer Class Members, the Debtor has incorporated the Settlement Agreement into the Plan.

Given the interdependency between the Settlement and the Plan, the Parties are seeking the final approval of the Settlement and the confirmation of the Plan on parallel tracks.

3.2 Treatment Provided to the Customer Class Members.

Under section 3.3.1 of the Settlement Agreement, the Customer Class Members who previously elected the 110% Credit Option or the 50% Coupon Option in response to the Summer 2020 Settlement Offer will continue to receive and retain the rights and benefits under their elected treatment option, the terms and conditions of which remain governed by the Summer 2020 Settlement Order. Such Customer Class Members are not entitled to switch their election to a different treatment option now offered under the Settlement.

For those other Customer Class Members who did not make any election in response to the Summer 2020 Settlement Offer, section 3.3.2 of the Settlement Agreement provides them with opportunity to elect one of the following three treatment options: (1) a credit that can be used to purchase any of the Debtor's camp programs, products, or services over a roughly five-year period (the "New Credit Option"), (2) a discount coupon that can be redeemed an unlimited amount of times over a roughly five-year period (the "New Coupon Option"), or (3) deferred payments of cash, plus accrued interest, paid over a period not to exceed roughly five years (the "Deferred Cash Payment Option"). If an eligible Customer Class Member does not make an election, they

are deemed to have elected the Deferred Cash Payment Option. The basic terms of these three treatment options are summarized further below.

Under the Settlement, (1) those electing the New Credit Option would otherwise be receiving a credit having a dollar value equal to 110% of their claim (like under the 110% Credit Option), (2) those electing the New Coupon Option would otherwise be receiving a coupon providing a 50% discount (like under the 50% Coupon Option), and (3) those electing the Deferred Cash Payment Option would otherwise be receiving payments totaling 100% of their claim, plus accrued interest; *however*, the value of the rights and benefits under each of these three treatment options has been reduced under the Settlement by approximately 16% to cover the Customer Class Member's proportionate share of the Administrative Costs, the Class Counsel Fee Award, and the Service Awards (each defined below) (collectively, the "Class Expenses").

3.2.1 The New Credit Option.

Any Customer Class Member who elects the New Credit Option would receive a credit issued by the Debtor, the basic terms of which are as follows:

- The dollar value of the credit is equal to (a) 92.4% of the Customer Class Member's claim against the Debtor, or (b) if the Customer Class Member was a 2020 scholarship recipient, 92.4% of the full retail price of their previously purchased 2020 camp programs, products, and services;[3]
- The Customer Class Member may use the credit to purchase any of the Debtor's in-person camp programs, online or virtual camp programs, or other products or services;
- The Customer Class Member may transfer the credit one time to any third party, including a family member or friend; and
- The credit is valid until December 31, 2025.

The Debtor will also offer limited priority enrollment to and initially freeze the retail prices for certain camp programs for the Customer Class Member eligible to use the credit. And if, for

[3] For the percentage rate used to determine the dollar value of the credit, the initial percentage rate of 110% was reduced by 1/6.25 (or 16%) to the final percentage rate of 92.4%.

whatever reason, the Debtor fails to offer an age-appropriate, local camp program within two years of the Effective Date, the Customer Class Member may elect to switch from the New Credit Option to the Deferred Cash Payment Option. The complete terms and conditions of the New Credit Option are set forth in **Exhibit B** to the Settlement Agreement.

3.2.2 The New Coupon Option.

Any Customer Class Member who elects the New Coupon Option would receive a coupon issued by the Debtor, the basic terms of which are as follows:

- The coupon provides a 42% discount off of the retail price of any of the Debtor's in-person camp programs, online or virtual camp programs, or other products or services;[4]
- The Customer Class Member may redeem the coupon an unlimited amount of times (while the coupon remains valid);
- The Customer Class Member may not transfer the coupon to a third party, but the coupon may be used for the benefit of any child in the Customer Class Member's family; and
- The coupon is valid until December 31, 2025.

The Debtor will also offer limited priority enrollment to and initially freeze the retail prices for certain camp programs for the Customer Class Member eligible to redeem the coupon. And if, for whatever reason, the Debtor fails to offer an age-appropriate, local camp program within two years of the Effective Date, the Customer Class Member may elect to switch from the New Coupon Option to the Deferred Cash Payment Option. The complete terms and conditions of the New Coupon Option are set forth in **Exhibit C** to the Settlement Agreement.

3.2.3 The Deferred Cash Payment Option.

Any Customer Class Member who elects (or is deemed to have elected) the Deferred Cash Payment Option would receive deferred payments of cash funded by the Debtor, the basic terms of which are as follows:

- The total amount of the payments due to the Customer Class Member will be equal to no less

[4] For the discount percentage rate of the coupon, the initial percentage rate of 50% was reduced by 1/6.25 (or 16%) to the final percentage rate of 42%.

than 84% of their claim against the Debtor, plus the interest that accrues on their claim (accruing at a 5% annual rate, beginning on the Effective Date).[5]

- Generally, the Customer Class Member will receive payments of varying amounts once or twice a year until no later than April 30, 2025, at which point they will have received the total amount due to them. When they will begin receiving payments and how much each payment will be are determined by the Disbursement Schedule and the Disbursement Priority Scheme and depend on several factors, including (a) the amount of their claim, (b) the total amount of the claims of the Customer Class Members who similarly elect (or are deemed to have elected) the Deferred Cash Payment Option, (c) the Debtor's net income for 2022 and 2023, and (d) the approved amounts of the Administrative Costs, Fee Award, and Service Awards.

At any time through August 15, 2021, the Customer Class Member may elect to switch from the Deferred Cash Payment Option to the New Credit Option or New Coupon Option. The complete terms and conditions of the Deferred Cash Payment Option are set forth in **Exhibit D** to the Settlement Agreement.

3.3 The Class Expenses.

The Settlement provides for the Class Expenses to be funded by the Debtor, but the Class Expenses are effectively being deducted from the value of the rights and benefits received by those Customer Class Members who elect the New Credit Option, New Coupon Option, or Deferred Cash Payment Option. The Class Expenses include the following:

- The Settlement Administrator's reasonable fees, costs, and expenses charged or incurred in connection with administering the Settlement (the "Administrative Costs");
- The Class Counsel's monetary award of attorneys' fees compensating them for their services as the appointed co-counsel for the Customer Class (the "Class Counsel Fee Award"); and
- The Customer Class Representatives' monetary awards compensating them for their services as a designated representative of the Customer Class (the "Service Awards").

[5] For the percentage rate of the minimum dollar recovery, the initial percentage rate of 100% was reduced by 1/6.25 (or 16%) to a final percentage rate of 84%.

As discussed below, the Parties request that (1) the maximum compensation paid to the Settlement Administrator on account of its Administrative Costs be set at **$100,000**, (2) the Class Counsel Fee Award be approved in the amount of **$600,000**, and (3) the three Service Awards be approved in the aggregate amount of **$20,000**. If approved as requested, the Class Expenses would total no more than **$720,000**, which represents approximately 7% of the $9,923,582.30 in claims held by all Customer Class Members and approximately 16% of the $4,351,274.86 in claims held by those Customer Class Members eligible to elect one of the three treatment options now offered under the Settlement.

3.4 The Disbursement Schedule and Disbursement Priority Scheme.

The Debtor is required to fund all of the payments under the Settlement, including the payments on account of the Class Expenses and the payments to the Customer Class Members who elect the Deferred Cash Payment Option. To do so, the Debtor must deliver funds to the Settlement Administrator on certain dates and in certain amounts according to the Disbursement Schedule established under the Settlement. *See* Settlement Agreement §§ 3.8.2, 3.8.4. Upon receipt of the funds, the Settlement Administrator must allocate those funds according to the Disbursement Priority Scheme established under the Settlement and then issue checks to the appropriate recipients in the appropriate amounts. *See id.* § 3.8.5.

Under the Settlement, the Debtor must deliver funds on the following dates and in the following amounts:

Date	Amount
Effective Date (est. early March 2021)	(a) 6% of the pool of claims of all Customer Class Members who elected the Deferred Cash Payment Option, or (b) $200,000, whichever amount is greater
mid-September 2021	(a) 12.5% of the pool of claims of all Customer Class Members who elected the Deferred Cash Payment Option, or (b) $375,000, whichever amount is greater
mid-September 2022	(a) 12.5% of the pool of claims of all Customer Class Members who elected the Deferred Cash Payment Option, or (b) $375,000, whichever amount is greater
mid-April 2023	(a) 20% of the Debtor's 2022 net income, but only if such net income is greater than $1,750,000, or (b) $0, if Debtor's 2022 net income is less than or equal to $1,750,000
mid-September 2023	(a) 12.5% of the pool of claims of all Customer Class Members who elected the Deferred Cash Payment Option, or (b) $425,000, whichever amount is greater

Date	Amount
mid-April 2024	(a) 20% of the Debtor's 2023 net income, but only if such net income is greater than $1,750,000, or (b) $0, if the Debtor's 2023 net income is less than or equal to $1,750,000
mid-September 2024	The remaining amount needed for all Customer Class Members who elected the Deferred Cash Payment Option to each receive at least 84% of their claim in the aggregate, plus the accrued Administrative Costs as of such date
mid-April 2025	All interest that accrued on the pool of claims of all Customer Class Members who elected the Deferred Cash Payment Option, plus the accrued Administrative Costs as of such date

Upon receipt of funds from the Debtor, the Settlement Administrator then allocates the funds by the following priority:

- **First**, for the payments due to the Settlement Administrator, in the amount of the accrued Administrative Costs as of the payment date;
- **Second**, for the payments due to the Class Counsel, in the amount of (a) the balance of the Class Counsel Fee Award or (b) the remaining funds, whichever is less;
- **Third**, for the payments due to the Customer Class Representatives, in the amount of (a) the balance of the Service Awards or (b) the remaining funds, whichever is less; and
- **Fourth**, for the payments due to the Customer Class Members who elected the Deferred Cash Payment Option, with each Customer Class Member entitled to receive their pro rata share of the remaining funds.

An example of how the Disbursement Schedule and the Disbursement Priority Scheme work was provided in section 5 of the Customer Class Notice.

3.5 Right to Object; No Right to Opt Out.

The Customer Class Members have the right to object to the Settlement. To object, section 3.11.4 of the Settlement Agreement requires the Customer Class Member to file and serve an objection that meets the following criteria:

- Be in writing;
- Contain their full name, address, telephone number, email address, and last four digits of their Social Security number;

- Provide a clear statement that they object to this Agreement, along with the legal and factual grounds on which their objection is based;
- State whether they intend to appear at the Final Approval Hearing, and if so, whether it will be on their own behalf or through counsel;
- Identify every case, action, or proceeding in which they (or their counsel) have objected to a class action settlement by the name of the court, the name and docket number of the case, the date of the objection, and any docket number assigned to the objection;
- Attach any evidence to support their objection and any other documents they wish the Court to consider; and
- Be signed by the Customer Class Member so objecting or by their counsel.

Because the Customer Class was certified as a mandatory, no-opt-out class under Civil Rule 23(b)(1)(B), the Customer Class Members may not opt out of the Customer Class or the Settlement. However, pursuant to section 3.13.1 of the Settlement Agreement, the Customer Class Members may opt out of the general releases contained in the Settlement by following the instructions provided in the Customer Class Notice and Settlement Response Form.

The Customer Class Members (and other parties in interest) have until January 26, 2021, to object to the final approval of the Settlement. At this time, no objections to the Settlement have been filed, and the Class Counsel is not aware of any Customer Class Members who intend to object or have expressed any interest in objecting to the Settlement. *See* Lofton Decl. ¶ 12.

3.6 Settlement Administration.

Under the Settlement, the Settlement Administrator is responsible for various duties and services, including the following:

- Establishing and maintaining the Settlement Website for five years;
- Responding to inquiries from the Customer Class Members, as appropriate;
- Receiving the Settlement Response Forms from the Customer Class Members, tabulating the responses made in the Settlement Response Forms, and preparing a summary of the returned Settlement Response Forms;
- Receiving and processing the funds from the Debtor and issuing and delivering the checks to

the appropriate recipients and in the appropriate amounts; and

- Assisting the Debtor in preparing the periodic reports required under the Settlement.

In the Preliminary Approval Order, the Court approved Atticus as the Settlement Administrator and preliminarily set $100,000 as the maximum compensation that the Settlement Administrator is entitled to receive under the Settlement on account of its Administrative Costs. Since then, Atticus has been diligently performing its duties as the Settlement Administrator, including, publishing and updating the Settlement Website, responding to inquiries from the Customer Class Members, receiving the Customer Class Members' Settlement Response Forms and tabulating the responses made therein, and working closely with the Class Counsel and the Debtor's counsel regarding any administration-related issues. Longley Decl. ¶ 6.

3.7 General Releases.

Under the Settlement, the Customer Class Representatives will grant general releases to the Debtor and related persons or entities as follows:

> Except for the rights arising out of, provided for, or reserved in this Agreement, upon the Effective Date, the Customer Class Representatives, and all persons or entities claiming by and through them, and each of them (collectively, the "Representative Releasing Parties"), release and forever discharge the Debtor, the Estate, and their parents, subsidiaries, affiliates, related entities, predecessors, successors, assigns, employees, officers, directors, insurers, agents, representatives, professionals, attorneys, and other persons or entities claiming by or through them, and each of them (collectively, the "Released Parties") from any and all liabilities, claims, debts, demands, controversies, rights of recovery, rights to payment, suits, actions, causes of action, complaints, obligations, damages, liquidated damages, losses, injuries, penalties, attorneys' fees, expenses, and costs, of any kind or nature whatsoever, in law or equity, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, asserted or not asserted, subject to dispute or otherwise, from the beginning of time through their respective execution of this Agreement, which the Representative Releasing Parties, or any of them, may have had or held, now have or hold, or may hereafter purport to have or hold against the Released Parties, or any of them, with respect to any matters concerning, arising out of, related to, or in connection with their respective Customer Class Member Claims, the subject matter of the Civil Case, or the subject matter of the Chapter 11 Case relating to the Customer Class Representative Claim (collectively, the "Representative Released Claims").

Settlement Agreement § 3.12.2. Ms. Kearney will also dismiss the Civil Case within 28 days of the Effective Date. *See id.* § 3.13.6.

Similarly, those Customer Class Members who have timely returned their Settlement Response Form and have not elected to opt out of the releases will also grant general releases to

the Debtor and related persons or entities as follows:

> Except for the rights arising out of, provided for, or reserved in this Agreement, upon the Effective Date, the Customer Class Members who (a) have timely returned their Settlement Response Form to the Settlement Administrator and (b) did not elect to "opt out" of the releases by marking the appropriate box on the Settlement Response Form, and all persons or entities claiming by and through them, and each of them (collectively, the "Member Releasing Parties," and together, with the Representative Releasing Parties, the "Releasing Parties"), release and forever discharge the Released Parties from any and all liabilities, claims, debts, demands, controversies, rights of recovery, rights to payment, suits, actions, causes of action, complaints, obligations, damages, liquidated damages, losses, injuries, penalties, attorneys' fees, expenses, and costs, of any kind or nature whatsoever, in law or equity, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, asserted or not asserted, subject to dispute or otherwise, from the beginning of time through their respective execution of the Settlement Response Form, which the Member Releasing Parties, or any of them, may have had or held, now have or hold, or may hereafter purport to have or hold against the Released Parties, or any of them, with respect to any matters concerning, arising out of, related to, or in connection with their respective Customer Class Member Claims, the subject matter of the Civil Case, or the subject matter of the Chapter 11 Case relating to the Customer Class Representative Claim (collectively, the "Member Released Claims," and together, with the Representative Released Claims, the "Released Claims").

Id. § 3.13.3.

The Customer Class Members who have given the general releases described above will also be releasing all unknown claims waiving the benefits of California Civil Code section 1542. *See id.* § 3.13.4.

As of January 8, 2021, out of the 1,050 Customer Class Members who have submitted their Settlement Response Forms, 267 have opted out of the releases contained in the Settlement. Longley Decl. ¶ 5.

4. ARGUMENT

4.1 The Settlement Is Fair, Reasonable, and Adequate Under Civil Rule 23.

The Court should finally approve the Settlement Agreement under Civil Rule 23 as the Settlement is fair, reasonable, and adequate.

A class action settlement requires the approval of the court, *see* Fed. R. Civ. P. 23(e), and such approval may be given "only after a hearing and only on finding that [the settlement] is fair, reasonable, and adequate," Fed. R. Civ. P. 23(e)(1)(2); *accord In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1040 (N.D. Cal. 2008) (citing *Staton v. Boeing Co.*, 327 F.2d 938, 959 (9th Cir.

2003)). "[S]ettlements are afforded a presumption of fairness if the negotiations occurred at arms' length." *Corson v. Toyota Motor Sales U.S.A., Inc.*, Case No. CV 12-8499-JGB (VBKx), 2016 WL 1375838, at *7 (C.D. Cal. Apr. 4, 2016) (citing 4 Alba Conte & Herbert B. Newberg, Newberg on Class Actions § 11.41 (4th ed. 2002)). Likewise, "[w]here a settlement agreement enjoys overwhelming support from the class, this lends weight to a finding that the settlement agreement is fair, adequate, and reasonable." *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 448 (E.D. Cal. 2013) (citing *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) ("It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members.")).

As provided above, the Settlement Agreement—to which there have been no objections to date—was only reached by experienced counsel with sufficient discovery and after extensive arms'-length negotiations. Accordingly, the Court's analysis of the Settlement should be examined with a presumption that the Settlement is fair.

Furthermore, a strong judicial policy exists that favors the voluntary conciliation and settlement of complex class-action litigation. *See Pilkington v. Cardinal Health, Inc. (In re Syncor ERISA Litig.)*, 516 F.3d 1095, 1101 (9th Cir. 2008) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982)). While the court has discretion regarding the approval of a proposed settlement, it should give proper deference to the "private consensual agreement negotiated between the parties." *Officers for Justice*, 688 F.2d at 625. Ultimately, the court's role is to ensure that the settlement is fundamentally fair, reasonable, and adequate. *See* Fed. R. Civ. P. 23(e)(2); *Syncor*, 516 F.3d at 1100.

In this case, after extended arms' length negotiations, the Customer Class Representatives, through the Class Counsel, were able to negotiate effectively a 100% return to the Customer Class Members of their claims. Specifically, eligible Customer Class Members will, by default, receive cash payments over time, with interest, without the need to submit the Settlement Response Form or a proof of claim (but only to the extent that the Debtor's records reflect the Customer Class Member as holding a claim). Alternatively, the Customer Class Members may opt to receive a

credit or an unlimited-use coupon, both of which are valid for roughly five years. Against substantial odds, the Parties have found a way to repay the Customer Class Members the full amount of their claims while allowing the Debtor to emerge from bankruptcy as a going concern.

This is not a case of a defendant committing malicious, wrongful acts, and there is no basis to seek fraud or punitive damages. All indications are that the Debtor acted in good faith here but was unable to refund its customers due to the global pandemic.

Because the Customer Class Members hold priority claims entitled to certain treatment in a chapter 11 plan, they could have individually insisted on payment in full on the effective date of any confirmed plan. *See* 11 U.S.C. §§ 507(a)(7), 1129(a)(9)(C). If enough Customer Class Members were to insist on immediate payment, the Debtor would be unable to confirm a plan of reorganization and be forced into a chapter 7 liquidation, to the detriment of all Customer Class Members, not to mention the Debtor's general unsecured creditors.

This Settlement provides the maximum benefit to the Customer Class Members, allows the Debtor to avoid liquidation, and benefits general unsecured creditors who would otherwise receive nothing in a chapter 7 case. As such, the Settlement is fair, reasonable, and adequate, and the Court should grant final approval thereof under Civil Rule 23.

4.2 The Settlement Meets the Criteria Under Bankruptcy Rule 9019.

Bankruptcy Rule 9019 allows a court to "approve a compromise or settlement" upon a "motion by the [debtor in possession] and after notice and hearing." Fed. R. Bankr. P. 9019(a). The approval or rejection of a settlement rests within the sound discretion of the court. *See Woodson v. Fireman's Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988) ("The bankruptcy court has great latitude in approving compromise agreements."); *Cavic v. Wolfe (In re Cavic)*, Case No. CC-08-1220-PaDC, 2009 WL 7809925, at *7 (B.A.P. 9th Cir. Mar. 2, 2009) ("[T]he bankruptcy court is vested with considerable discretion in approving compromises and settlements." (citations omitted) (internal quotations omitted)).

Settlements are generally favored in bankruptcy proceedings in order "to allow the [debtor in possession] and the creditors to avoid the expenses and burdens associated with litigating sharply contested and dubious claims." *Martin v. Kane (In re A & C Props.)*, 784 F.2d 1377,

1380–81 (9th Cir. 1986); *see also Port O'Call Inv. Co. v. Blair (In re Blair)*, 538 F.2d 849, 851 (9th Cir. 1976) (providing that consideration must be given to the principle that the law favors compromise and not litigation for its own sake). Accordingly, in considering a proposed compromise, the court "need not conduct an exhaustive investigation nor a mini-trial on the validity or merits of the claims sought to be compromised." *In re Dharmasuriya*, Case No. 2:09-bk-28606-PC, 2014 WL 845991, at *3 (Bankr. C.D. Cal. Mar. 4, 2014); *see also United States v. Alaska Nat'l Bank of the N. (In re Walsh Constr., Inc.)*, 669 F.2d 1325, 1328 (9th Cir. 1982); *Burton v. Ulrich (In re Schmitt)*, 215 B.R. 417, 423 (B.A.P. 9th Cir. 1997).

Rather, the court should "canvas the issues and see whether the settlement falls below the lowest point in the range of reasonableness." *Dharmasuriya*, 2014 WL 845991, at *3 (quoting *In re Drexel Burnham Lambert Grp., Inc.*, 134 B.R. 493, 496–97 (Bankr. S.D.N.Y. 1991)); *see also A & C Props.*, 784 F.2d at 1381 (deeming it sufficient for the bankruptcy court to find that a compromise was negotiated in good faith and is reasonable, fair, and equitable).

In determining the fairness, reasonableness, and adequacy of a proposed settlement, the Ninth Circuit has directed bankruptcy courts to consider the following factors: "(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessary in attending it; and (d) the paramount interest of the creditors and proper deference to their reasonable views in the premises." *Woodson*, 839 F.2d at 620 (quoting *A & C Props.*, 784 F.2d at 1381). The court "generally should give deference to a [debtor in possession]'s exercise of business judgment" in entering into the proposed settlement. *Dharmasuriya*, 2014 WL 845991, at *3; *see also Goodwin v. Mickey Thompson Entm't Grp., Inc. (In re Mickey Thompson Entm't Grp., Inc.)*, 292 B.R. 415, 420 (B.A.P. 9th Cir. BAP 2003) (same).

All four *A & C* factors weigh in favor of granting the Parties' Joint Motion here.

4.2.1 The Debtor's Probability of Success on the Merits.

In examining the first factor, the Court "must estimate both the value of the proposed settlement and the likely outcome of litigating the claims proposed in the settlement." *Dharmasuriya*, 2014 WL 845991, at *4.

In this case, the Customer Class Members, whether acting individually or collectively, hold undisputed priority claims. From the inception of this chapter 11 case, the Debtor has acknowledged that the Customer Class Members' prepetition payments to the Debtor were deposits for its summer camp programs, which constitute claims entitled to priority under § 507(a)(7) of the Bankruptcy Code. At no point has the Debtor challenged the priority of those debts. Thus, the likelihood of the Customer Class Members succeeding in having their claims allowed as priority claims has never been in doubt. And if that is the case, the Debtor's ability to confirm a plan of reorganization is questionable. If the Debtor was unable to obtain any kind of consent from the Customer Class regarding the plan treatment of the Customer Class Members' claims, the chances of the Debtor successfully confirming a plan that properly treats the Customer Class Members' priority claims in accordance with § 1129(a)(9)(C) of the Code (i.e., payment in full on the plan's effective date) would be essentially zero. Thus, the Debtor's probability of success (i.e., exiting bankruptcy), without a resolution with the Customer Class, is highly unlikely.

Furthermore, the value of the Settlement compares favorably against the potential outcome of a contested confirmation battle and a possible conversion to chapter 7. Obtaining a settlement with the Customer Class means that the Debtor has removed a significant roadblock in confirming a plan. While the Debtor is effectively required to repay certain Customer Class Members in full over time under the Settlement—a significant financial burden—the Settlement allows the Debtor to continue operating its business, preserve its going concern value, and avoid the liquidation of its assets, which will likely yield next to nothing for unsecured creditors.

4.2.2 The Debtor's Difficulties of Collection.

The second *A & C* factor, regarding the Debtor's difficulties to be encountered in the matter of collection, is inapplicable in this context.

4.2.3 The Complexity, Expense, Inconvenience, and Delay of Litigation.

The third *A & C* factor also weighs in favor of approving the Settlement. While the issues are not particularly complex, the procedural framework for how a mandatory class functions within a chapter 11 case is unusual. Nevertheless, even if those issues are ultimately resolvable, the Debtor would nevertheless face significant expense and delays in litigating with the Customer

Class on more substantive issues (e.g., treatment of the claims of the Customer Class Members) that would jeopardize the Debtor's ability to quickly and successfully exit bankruptcy.

Additional litigation would serve only to further deplete the Debtor's already-limited cash and delay the Debtor's ability to successfully reorganize. Most immediately, approval of the Settlement will reduce the attorneys' fees that the Debtor must incur in its chapter 11 case, including any potential fees that would need to be incurred in connection with a confirmation proceeding contested by the Customer Class. In addition, any further delays in the Debtor exiting bankruptcy may have an adverse effect on the Debtor's ability to return to its previous levels of business and revenue and, as a result, its ability to perform under a confirmed plan. More specifically, the Debtor's customers may be less willing to enroll in its 2021 camp programs while the Debtor remains in bankruptcy, and if the Debtor remains in bankruptcy for an extended period of time due to extended litigation, it may lose out on anticipated revenue from customers moving onto other camp providers.

4.2.4 The Paramount Interests of Creditors.

The last factor similarly favors the Court approving the Settlement. Here, the Customer Class is comprised of the single largest group of the Debtor's creditors by far. And there is no dispute that the Settlement benefits the Customer Class Members by offering them various treatment options on account of their claims that allow them to be made whole again. And without a settlement that wholly affects this sizeable group of creditors, the Debtor faces insurmountable obstacles to confirming a plan.

In addition to benefiting the Customer Class Members, the Settlement also benefits the general unsecured creditors who are not otherwise part of the Customer Class in the following ways: (1) the Settlement decreases the aggregate amount of money that the Debtor would need to pay to the Customer Class Members on account of their priority claims by allowing them to elect a credit or coupon in lieu of cash payments, thereby freeing up funds that can be used to pay general unsecured creditors down the line, and (2) the Settlement creates a path for the Debtor to confirm a plan and avoid a conversion of its case to chapter 7, where general unsecured creditors will almost certainly recover nothing on account of their claims.

For these reasons, the Parties submit that approving the Settlement Agreement is in the best interests of the Debtor's estate and all of its creditors.

4.3 The Class Expenses Are Fair and Reasonable.

The Class Expenses, in the form of the Administrative Costs, the Service Awards, and the Class Counsel Fee Award, are fair and reasonable under the circumstances.

4.3.1 Administrative Costs of the Settlement Administrator.

The Parties request that the Court confirm **$100,000** as the maximum compensation that the Settlement Administrator is entitled to receive under the Settlement on account of its Administrative Costs, which was previously approved by the Court in the Preliminary Approval Order. As discussed in the Preliminary Approval Motion, Atticus's bid in the amount of $64,317.00 is an estimate that includes assumptions of certain unknown factors, such as the number of Customer Class Members who will elect the Deferred Cash Payment Option and the number of rounds of payments that the Debtor must make. In any case, the $100,000 cap should be sufficient to cover these factors and other potential contingencies.

4.3.2 Service Awards for the Customer Class Representatives.

In consideration for the Customer Class Representatives' considerable proactive service in this case on behalf of the Customer Class, the Parties request that the Court finally approve the Service Awards to the Customer Class Representatives in the amounts of (1) **$10,000** to Ms. Kearney, (2) **$5,000** to Mr. Johnson, and (3) **$5,000** to Sandi Shorago.

"[N]amed plaintiffs, as opposed to designated class members who are not named plaintiffs, are eligible for reasonable incentive awards." *Knight v. Red Door Salons, Inc.*, Case No. 08-01520 SC, 2009 WL 248367, at *7 (N.D. Cal. Feb. 2, 2009) (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003)). The court has discretion to approve any incentive award and should consider relevant factors, including (1) the actions the plaintiff has taken to protect the interests of the class; (2) the degree to which the class benefited from those actions; and (3) the amount of time and effort the plaintiff expended in pursuing the litigation. *See Staton*, 327 F.3d at 977. Federal courts have recognized the appropriateness of incentive awards in similar actions. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (approving $5,000 incentive award to two

class representatives in settlement of $1,725,000); *see also In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (approving $2,000 incentive awards to five class representatives in settlement of $3,000,000 to the class).

In this case, the requested Service Awards fall below the average enhancement award according to one study. *See* Theodore Eisenberg & Geoffrey P. Miller, Incentive Awards to Class Action Plaintiffs: An Empirical Study 53 UCLA L. Rev. 1303, 1308 (2006) (concluding the average award per class representative was $15,992).

Ms. Kearney was instrumental in initiating the Civil Case and acting promptly to protect the Customer Class's interests in this bankruptcy case. Lofton Decl. ¶ 8. Ms. Kearney has expended significant efforts researching the Debtor's business practices, seeking out the Class Counsel, assisting in the preparation of the complaint in the Civil Case, finding and producing documents to assist in the litigation, and contacting witnesses who also provided valuable discovery to the Class Counsel. *Id.*

Mr. Johnson and Ms. Shorago joined Ms. Kearney as class representatives in this bankruptcy case. *Id.* ¶ 9. All three Customer Class Representatives (1) took a financial risk (and will suffer actual detriment) by refraining from seeking chargebacks in order to represent the Customer Class in this case; (2) met with and communicated with the Class Counsel on numerous occasions; (3) detailed their experiences with the Debtor; (4) reviewed and commented on the documents prepared by the Class Counsel; (5) reviewed the terms of and signed the Settlement Agreement; and (6) assisted in the preparation of the Joint Motion. *Id.* Throughout this process, the Customer Class Representatives have zealously advocated for the best interests of the Customer Class, and there is no question that the Customer Class has benefited from results of their efforts. *Id.*

In light of the work that the Customer Class Representatives have performed on behalf of the Customer Class, the risks undertaken by them, and the results achieved through their efforts, the requested Service Awards of $10,000 and $5,000, respectively, are reasonable and appropriate.

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4.3.3 Class Counsel Fee Award for the Class Counsel.

The Class Counsel requests that the Court finally approve the Class Counsel Fee Award in the amount of **$600,000** for their work performed in this matter benefiting the Customer Class.

The Class Counsel is responsible for preserving approximately $9,923,582.30 in value for the Customer Class, a figure which represents the aggregate amount of the claims held by approximately 9,250 Customer Class Members. Out of that monetary figure, approximately $4,351,274.86 represents the claims of those 4,106 Customer Class Members who are eligible to elect the New Credit Option, New Coupon Option, or Deferred Cash Payment Option. To put the requested Class Counsel Fee Award in context, $600,000 represents approximately 6.05% of the $9,923,582.30 in claims held by all Customer Class Members and approximately 13.79% of the $4,351,274.86 in claims held by those Customer Class Members eligible to elect one of the three treatment options now offered under the Settlement.

"The percentage method [of calculating reasonable attorneys' fees] is particularly appropriate in common fund cases where 'the benefit to the class is easily quantified.'" *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 260 (9th Cir. 2015) (citing *Ontiveros v. Zamora*, 303 F.R.D. 356, 372 (E.D. Cal. 2014)). And "[t]he Ninth Circuit has permitted courts to award attorney's fees using this method 'in lieu of the often more time-consuming task of calculating the lodestar.'" *Ontiveros*, 303 F.R.D. at 372 (citing *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011)).

In the Ninth Circuit, a 25% award is the "benchmark" amount of attorneys' fees, but courts may adjust this figure upwards or downwards if the record shows "'special circumstances' justifying a departure." *Bellinghausen*, 306 F.R.D. at 260 (quoting *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990)). Such circumstances may include taking into account the equities of the case. *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1296 (9th Cir. 1994) (quoting *Six Mexican Workers*, 904 F.2d at 1311); *see also In re Oracle Sec. Litig.*, 852 F. Supp. 1437, 1450 (N.D. Cal. 1994) ("[T]he Ninth Circuit has made clear that courts may adjust a percentage fee award upward or downward to take into account any equities created by the attorney time and effort devoted to the case.").

To start, the fee percentages represented by the Class Counsel Fee Award sought by the Class Counsel are far below the 25% benchmark in class-action cases in the Ninth Circuit. *See Torrisi v. Tucson Electric Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993); *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002) (citing *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989)).

The fee award the Class Counsel now seeks is appropriate compensation for the effort and risk involved in obtaining the results achieved. The Class Counsel obtained an exceptional result for the Customer Class. From the Debtor's initial position in April 2020 that it would not refund *anything* to the Customer Class Members, the Class Counsel have negotiated a settlement under which a Customer Class Member now has the option of being effectively repaid 100% of their claim. While that claim will be paid over time, the Customer Class Member will be entitled to receive 5% annual interest until that claim has been paid. Nevertheless, it is questionable whether, without the involvement of the Class Counsel, a Customer Class Member would have been able to protect its rights as a holder of a priority claim that is entitled to preferential treatment. In addition, through the Class Counsel's efforts, a Customer Class Member also had or will have the voluntary opportunity to select an immediately available credit or unlimited-use coupon—the latter of which could result in the Customer Class Member recovering a value that potentially exceeds the value of their claim.

The risks involved in this case have been substantial given the contingent nature of the Class Counsel's fees. The Class Counsel initiated this litigation in the Civil Case, which led to Debtor initiating this bankruptcy case. With class certification being an unusual issue in bankruptcy cases and the Customer Class not being certified until six months into the bankruptcy case, the Class Counsel could well have gone uncompensated for the extensive work performed with no guarantee of recovering their fees.

Additional work was available to the Class Counsel that they had to forgo to devote the time necessary to represent the Customer Class in this litigation. *See* Lofton Decl. ¶ 10; Rallis Decl. ¶ 3. The Class Counsel also anticipates additional work will be required in this matter for the next five years in connection with the administration of the Settlement, essentially until the

reorganized Debtor has completed all payment obligations under the Settlement. Lofton Decl. ¶ 10; Rallis Decl. ¶ 3. For example, following the entry of the Preliminary Approval Order, the Class Counsel has undertaken significant work in finalizing the final/service versions of the Customer Class Notice and Settlement Response Form, assisting the Settlement Administrator on the contents of the Settlement Website, and fielding numerous inquiries from the Customer Class Members. Lofton Decl. ¶ 10; Rallis Decl. ¶ 3.

The work submitted by the Class Counsel speaks for itself in terms of its quality and the results it achieved. The quality of opposing counsel is also important to evaluating the quality of the work done by the Class Counsel. Here, Hanson Bridgett LLP, a sizeable law firm with extensive experience in handling complex litigation and bankruptcy matters, represented the Debtor, and Levene Neale Bender Yoo & Brill, LLP, a boutique insolvency law firm with highly reputable credentials, represented the Official Committee of Unsecured Creditors.

In the end, the quality of the results obtained, the contingent nature of the case, the other work foregone by the Class Counsel, the complexity and potential duration of the case, and the presence of experienced and resourceful opposition collectively weigh in favor of allowing the Class Counsel Fee Award as requested.

4.3.4 The Disbursement Priority Scheme.

In addition to approving the amounts of the Administrative Costs, the Class Counsel Fee Award, and the Service Awards, the Parties further request that the Court give final approval of the Disbursement Priority Scheme established under the Settlement, which addresses the priority that funds are to be disbursed to the Settlement Administrator, Class Counsel, Customer Class Representatives, and Customer Class Members who elected the Deferred Cash Payment Option. In particular, the Disbursement Priority Scheme effectively provides that the Customer Class Members who elect the Deferred Cash Payment Option will not begin receiving any payments until all payments due to the Class Counsel and Customer Class Representatives (i.e., on account of the Class Counsel Fee Award and Service Awards, respectively) have been made.

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Such a priority scheme is appropriate under the circumstances given that the amounts to be paid by the Debtor in the initial rounds of payments under the Settlement are smaller amounts that would result in the Customer Class Members receiving checks of nominal amounts.

5. CONCLUSION

For the foregoing reasons, the Parties respectfully request that the Court enter an order, substantially in the form attached as **Exhibit 1** to the Joint Motion, granting the Joint Motion and providing for such other and further relief that this Court deems appropriate under the circumstances.

Respectfully submitted,

DATED: January 12, 2021

AIMAN-SMITH & MARCY, P.C.

By: /s/ John A. Lofton
John A. Lofton
Attorneys for Nanette Kearney, Krister Johnson, and Sandra Shorago, Creditors and Class Representatives

DATED: January 12, 2021

HAHN & HAHN LLP

By: /s/ Dean G. Rallis Jr.
Dean G. Rallis Jr.
Attorneys for Nanette Kearney, Krister Johnson, and Sandra Shorago, Creditors and Class Representatives

DATED: January 12, 2021

HANSON BRIDGETT LLP

By: /s/ Anthony Dutra
Anthony Dutra
Attorneys for Galileo Learning, LLC, Debtor and Debtor in Possession

EXHIBIT 1

HAHN & HAHN LLP
DEAN G. RALLIS JR., State Bar No. 94266
E-Mail: drallis@hahnlawyers.com
MATTHEW D. PHAM, State Bar No. 287704
E-Mail: mpham@hahnlawyers.com
301 E. COLORADO BLVD., NINTH FLOOR
PASADENA, CALIFORNIA 91101-1977
Telephone: (626) 796-9123
Facsimile: (626) 449-7357

AIMAN-SMITH & MARCY, P.C.
JOHN LOFTON, State Bar No. 222259
E-Mail: jal@asmlawyers.com
7677 OAKPORT STREET, SUITE 1150
OAKLAND, CALIFORNIA 94621
Telephone: (510) 817-2711
Facsimile: (510) 562-6830

Attorneys for Nanette Kearney, Krister Johnson, and Sandra Shorago, Creditors and Class Representatives

HANSON BRIDGETT LLP
NEAL L. WOLF, State Bar No. 202129
E-Mail: nwolf@hansonbridgett.com
ANTHONY J. DUTRA, State Bar No. 277706
E-Mail: adutra@hansonbridgett.com
425 MARKET STREET, 26TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105
Telephone: (415) 995-5015
Facsimile: (415) 541-9366

Attorney for Galileo Learning, LLC, Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

In re

GALILEO LEARNING, LLC,

Debtor.[1]

In re

GALILEO LEARNING FRANCHISING LLC,

Debtor.

☒ Affects GALILEO LEARNING, LLC

☐ Affects GALILEO LEARNING FRANCHISING LLC,

Case Nos. 20-40857 (RLE)
20-40858 (RLE)

Chapter 11

(Jointly Administered)

[PROPOSED] ORDER GRANTING JOINT MOTION BY CLASS REPRESENTATIVES AND DEBTOR FOR ORDER GRANTING FINAL APPROVAL OF CLASS SETTLEMENT AGREEMENT AND RELATED RELIEF

Final Approval Hearing:
Date: February 9, 2021
Time: 10:00 a.m.

[1] These cases are being jointly administered, and all documents for either case should be filed in lead case number 20-40857 (RLE). The last four digits of each Debtor's federal tax identification number are as follows: Galileo Learning, LLC (9453) and Galileo Learning Franchising LLC (5638). The mailing address for the Debtors is 1021 3rd Street, Oakland, California 94607.

1 The Court has considered the joint motion (the "Joint Motion"), at docket no. ###, by the
2 creditors and class representatives Nanette Kearney, Krister Johnson, and Sandra Shorago
3 (collectively, the "Customer Class Representatives"), on behalf of themselves and the class of
4 individuals certified pursuant to the Court's order of November 9, 2020 (the "Customer Class,"
5 and the members of the Customer Class, the "Customer Class Members"), and the debtor and
6 debtor in possession Galileo Learning, LLC (the "Debtor," and together, with the Customer Class
7 Representatives, the "Parties") for entry of an order granting final approval of the settlement
8 between the Customer Class and the Debtor memorialized by that certain *Class Settlement*
9 *Agreement* dated December 2, 2020 (the "Settlement Agreement" or "Settlement").

10 The Court held hearings on the Joint Motion on February 9, 2021, at 10:00 a.m.
11 Appearances are as noted on the record.

12 In addition to the findings of fact and conclusions of law made by the Court on the record
13 at the hearings, the Court further finds and concludes the following:

14 1. The Settlement Agreement, the executed copy of which is attached as **Exhibit 1** to
15 the *Notice of Filing of Executed Version of Class Settlement Agreement Dated December 2, 2020*,
16 at docket no. 269, is fair, reasonable, and adequate.[2] The Settlement Agreement is the result of
17 arms' length negotiations between experienced attorneys familiar with the legal and factual issues
18 of this case. All Customer Class Members are treated fairly under the Settlement Agreement. The
19 Settlement Agreement meets all applicable requirements of law, including Rule 23(c) and (e) of
20 the Federal Rules of Civil Procedure and Rule 9019 of the Federal Rules of Bankruptcy
21 Procedure. And based on the range of possible outcomes and the cost, delay, and uncertainty
22 associated with further litigation, the Settlement Agreement is reasonable and cost-effective, and
23 final approval is warranted.

24 2. This chapter 11 case does not constitute a "class action" within the meaning of
25 28 U.S.C. § 1711(2), and as a result, the notice requirements under 28 U.S.C. § 1715 are not
26
27
28

[2] Unless otherwise separately defined herein, all capitalized terms used in this Order shall have the same respective meanings assigned to them in the Settlement Agreement.

applicable to this chapter 11 case.

3. Sufficient notice regarding the Settlement, in the form of the Customer Class Notice, was disseminated to the Customer Class Members. Notice was sent to approximately 9,372 Customer Class Members by email and to approximately 29 Customer Class Members by first-class mail. Additionally, notice was also provided on the settlement website located at https://www.galileosettlement.com that is maintained by the Settlement Administrator.

4. Other good and sufficient cause exists for granting the relief requested in the Joint Motion.

THEREFORE, IT IS HEREBY ORDERED that

1. The Joint Motion is granted as set forth herein.

2. The Settlement Agreement is approved on a final basis.

3. Atticus Administration, LLC ("Atticus") is approved on a final basis to be compensated for all reasonable fees, expenses, and costs charged or incurred by Atticus, in its capacity as the Settlement Administrator, on account of its duties and services performed in connection with administering the Settlement through the date on which all Settlement Disbursements have been made under the Settlement Agreement (collectively, the "Administrative Costs"); provided, however, that in no event shall the aggregate compensation paid to Atticus under the Settlement Agreement on account of the Administrative Costs exceed **$100,000**.

4. The Class Counsel Fee Award to Aiman-Smith & Marcy, P.C. and Hahn & Hahn LLP in the amount of **$600,000** is approved on a final basis.

5. The Service Awards to (a) Nanette Kearney in the amount of **$10,000**, (b) Krister Johnson in the amount of **$5,000**, and (c) Sandra Shorago in the amount of **$5,000** are approved on a final basis.

6. This Court retains jurisdiction over any matter regarding the interpretation, implementation, or enforcement of the Settlement Agreement or this Order.

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