UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

ELVA BENSON, on behalf of herself and on behalf of all others similarly-situated,

Plaintiff,

v. **CASE NO.: 6:20-cv-891-Orl-37LRH**

ENTERPRISE HOLDINGS, INC., and ENTERPRISE LEASING COMPANY OF ORLANDO, LLC,

Defendants.
_____/

PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Class Representative, Elva Benson ("Plaintiff"), pursuant to Fed.R.Civ.P. 23, files this Unopposed Motion for Preliminary Approval of the Parties' Class Action Settlement (the "Motion"), with incorporated Memorandum of Law, and seeks an Order: (1) preliminarily approving the Settlement Agreement between the Named Plaintiff, the certified class, and Defendant; (2) approving the form and manner of notice to the class; (3) scheduling a fairness hearing for the final consideration and approval of the Parties' settlement; and, finally, (4) approving the settlement in a subsequent Order. In support of this Motion, Plaintiff respectfully submits the following:

I. BRIEF OVERVIEW.

A. Procedural Overview of the Litigation.

Before the settlement was reached, both sides extensively litigated this case for nearly 1.5 years, including at the Eleventh Circuit Court of Appeals. This action commenced on May 27, 2020, when Plaintiff filed her class action complaint, *Benson, et al., v. Enterprise Holdings, Inc. et al.,* Case No. 6:20-cv-891, in the United States District Court for the Middle District of Florida, Orlando Division. (Doc. 1 - the "Action"). In the Complaint, Plaintiff alleged that Enterprise Holdings, Inc. ("EHI") and Enterprise Leasing Company of Orlando, LLC ("Enterprise Orlando"), (collectively referred to as "Defendants" or "Enterprise") violated the WARN Act by terminating her and the class members without sufficient notice. Defendants have, at all times, denied Plaintiff's allegations and denied that it violated the WARN Act.

Defendants filed a Motion to Dismiss (*see* Doc. 32) the Complaint on August 3, 2020, disputing that Plaintiff had pled the three named Defendants constituted a "single employer" under the WARN Act. Additionally, Defendants argued that even if Plaintiff had pled the identity of her employer and sufficient facts to conclude that it was subject to the WARN Act and had engaged in a plant closing or mass layoff—Defendants were excused from the WARN Act's notice requirement under both the unforeseeable business circumstance defense and natural disaster exception to the WARN Act's notice requirement.

Plaintiff filed her Amended Complaint (*see* Doc. 35) on August 17, 2020, which mooted the first Motion to Dismiss. (*See* Doc. 36). Plaintiff's First Amended Complaint added as Named Plaintiffs Patrina Moore and Elizabeth Daggs. Both Daggs and Moore were later voluntarily dismissed (*see* Docs. 53 and 62) because it was later determined they worked at Enterprise facilities not covered by the WARN Act.

Defendants moved to dismiss (*see* Doc. 42) the First Amended Complaint on September 14, 2020, raising many of the same arguments and defenses included in its prior Motion to Dismiss—along with some others.

Defendants also filed a Motion to Stay discovery pending resolution of the Motion to Dismiss the First Amended Complaint. (Doc. 45). The Court denied the Motion to Stay Discovery on October 29, 2020. (Doc. 52). The Parties then engaged in extensive discovery efforts—and continued doing so throughout this litigation. Both sides propounded interrogatories and requests for production. Additionally, Plaintiff sought leave to (and the Court permitted her to pursue) jurisdictional discovery from Defendants. (Doc. 75). Both sides also took multiple depositions, including as to both the Parties and relevant witnesses. The Parties' extensive discovery efforts allowed both sides to fully develop the record in this case for both class certification purposes and, ultimately, to help ensure a well-informed settlement was reached.

In the interim, on January 4, 2021, the Court denied Defendants' Motion to Dismiss the First Amended Complaint. (Doc. 61). Defendants filed a Motion (*see*

Doc. 69) to Certify for Interlocutory Review the Court's Order denying the Defendants' Motion to Dismiss the First Amended Complaint, which the Court granted by Order dated February 4, 2021. (Doc. 77). The Court certified the following question under § 1292(b): "What causal standard is required to establish that a plant closing or mass layoff is "due to any form of natural disaster" under the WARN Act's natural disaster exception, 29 U.S.C. § 2102(b)(2)(B)."

Defendants filed their 28 U.S.C. § 1292(b) Petition with this Court on February 12, 2021. This Court granted the Defendants' petition on June 4, 2021. On July 14, 2021, Defendants filed their Initial Brief with the Eleventh Circuit Court of Appeals. Additionally, the Defendants' brief was supported by several amici groups. Benson filed her Opposition Brief with the Eleventh Circuit on September 10, 2021. Benson also filed responses in opposition to each amicus brief filed in support of Defendants with the Eleventh Circuit.

Meanwhile, in these underlying District Court proceedings, Benson filed her Motion for Class Certification under Rule 23 on January 12, 2021. (Doc. 64). Defendants opposed Plaintiff's Motion for Class Certification (*see* Docs. 81-93), and also filed a Motion to Strike (*see* Doc. 80) the sworn declaration filed by Benson in support of her Motion for Class Certification. The Court denied the Motion to Strike filed by Defendants on March 15, 2021. (Doc. 101).

The Court heard oral argument on Plaintiff's Motion for Class Certification on April 1, 2021. (Doc. 106). On May 11, 2021, the Court granted Plaintiff's Motion for Class Certification and certified a nationwide class of approximately 964

persons who worked at various Enterprise locations around the country. Specifically, the Court certified (*see* Doc. 114, p. 26) the following class:

> All Enterprise employees who worked at or reported to Enterprise facilities in the United States and were terminated without cause on or about April 24, 2020, or within 14 days of April 24, 2020, or in anticipation of, or as the foreseeable consequence of, the mass layoff or plant closing ordered on or about April 24, 2020, and who are affected employees, within the meaning of 29 U.S.C. § 2101(a)(5), who do not file a timely request to opt-out of the class, and who also did not sign a severance agreement with Enterprise.

On May 25, 2021, Defendants filed their Petition for permission to appeal pursuant to 23(f) with the Eleventh Circuit Court of Appeals the District Court's Order granting Plaintiff's Motion for Class Certification. Plaintiff opposed Enterprise's Rule 23(f) Petition. The Eleventh Circuit denied Defendants' Rule 23(f) Petition on June 23, 2021.

On September 14, 2021, the Parties participated in a Court-Ordered mediation with highly-respected mediator Carlos J. Burruezo. During mediation, and with Mr. Burruezo's assistance, the Parties were able to reach a settlement on a class basis, contingent upon this final agreement and the Parties' class action settlement being approved by the Court. (*See* Docs. 121, 122).

If approved here, the settlement provides for immediate relief to approximately 964 Settlement Class Members. Defendant will make available the gross sum of $175,000.00 into a common fund. That amount will be allocated among the approximately 964 class members equally on a pro rata basis based on the number of valid claim forms filed by class members after the cost of

administration costs and litigation costs are deducted. No money from the Settlement Fund shall revert to Enterprise. For example, if the Net Settlement Fund is $150,000.00 and 120 Settlement Class Members timely submit claims, the individualized Settlement Payment shall be $1,250.00.

In sum, based on the extensive record developed in this case, coupled with the experience and judgment of experienced class counsel, Ms. Benson and her counsel respectfully submit that the terms and conditions of this Agreement are fair, reasonable, and adequate. Thus, Plaintiff respectfully asks that this settlement be approved.

B. Mediation And Settlement Agreement.

As explained above, on September 14, 2021, the Parties mediated this case with the assistance of mediator, Carlos J. Burruezo. The Parties' efforts culminated in a class-wide resolution that, if approved, will resolve the claims of each of the 964 Class Members. Importantly, the 964 class members who comprise the settlement class are the same class members who make up the Class Certified by this Court's order granting Plaintiff's Motion for Class Certification. The Parties' Class Settlement Agreement is attached to this motion as Exhibit A (the "Agreement"). The settlement class is defined as follows:

> **Settlement Class:**
> All Enterprise employees who worked at or reported to Enterprise facilities in the United States and were terminated without cause on or about April 24, 2020, or within 14 days of April 24, 2020, or in anticipation of, or as the foreseeable consequence of, the mass layoff or plant closing ordered on or about April 24, 2020, and who are affected employees, within the meaning of 29 U.S.C. § 2101(a)(5), who

do not file a timely request to opt-out of the class, and who also did not sign a severance agreement with Enterprise.

The Agreement, subject to Court approval, provides for settlement under the following key terms:

- Enterprise agrees to make available a gross Settlement Fund in the amount of $175,000.00;

- Every Settlement Class Member who timely submits a claim will receive a payment from the Settlement Fund. The Settlement Payment shall be determined by dividing the amount in the Net Settlement Fund by the number of Settlement Class Members that have filed a Claim Form. For example, if the Net Settlement Fund is $150,000.00 and 120 Settlement Class Members timely submit claims, the individualized Settlement Payment shall be $1,250.00;

- Payment from the Settlement Fund of the cost of notice and administration of approximately $16,500 and Class Counsel's reasonable litigation costs in an amount of $7,185.40; and, finally,

- An additional but separate payment by Defendants of Class Counsel's attorneys' fees, subject to Court approval, up to $250,000.00.

II. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED.

A. The Law Governing Preliminary Approval of Class Action Settlements.

The Eleventh Circuit has recognized that "[p]ublic policy strongly favors the pretrial settlement of class action lawsuits." *In re United States Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992); *see also Gevaerts v. TD Bank, N.A.*, 2015 WL 6751061, at *4 (S.D. Fla. Nov. 5, 2015) ("Federal courts have long recognized a strong policy and presumption in favor of class action settlements."). Settlement "has special importance in class actions with their notable uncertainty, difficulties of proof, and length. Settlements of complex cases contribute greatly to the

efficient utilization of scarce judicial resources and achieve the speedy resolution of justice...." *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 538 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990) (citations omitted). As a general matter, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." 4 Alba Conte & Herbert Newberg, Newberg on Class Actions §11.50, at 155 (4th ed. 2002).

"At the preliminary approval stage, the Court's task is to evaluate whether the Settlement is within the 'range of reasonableness.'" 4 Newberg on Class Actions § 11.26 (4th ed. 2010). "Preliminary approval is appropriate where the proposed settlement is the result of the parties' good faith negotiations, there are no obvious deficiencies, and the settlement falls within the range of reason." *Smith v. Wm. Wrigley Jr. Co.,* 2010 WL 2401149, at *2 (S.D. Fla. Jun. 15, 2010)." *Almanzar v. Select Portfolio Servicing, Inc.*, 2015 WL 10857401, at *1 (S.D. Fla. Oct. 15, 2015). This district has set forth the following process for preliminary approval of a class action settlement:

> Rule 23(e), Federal Rules of Civil Procedure, permits approval of a class action settlement if the settlement is "fair, reasonable, and adequate." *See Strube v. Am. Equity Inv. Life Ins. Co.,* 226 F.R.D. 688, 697 (M.D.Fla.2005) (Fawsett, J.). Approval is generally a two-step process in which a "preliminary determination on the fairness, reasonableness, and adequacy of the proposed settlement terms" is reached. *See* DAVID F. HERR, ANNOTATED MANUAL FOR COMPLEX LITIGATION § 21.632 (4th ed.2008). The factors considered are (1) the influence of fraud or collusion on the parties' reaching a settlement, (2) "the likelihood of success at trial," (3) "the range of possible recovery," (4) "the complexity, expense[,] and duration of litigation," (5) "the substance and amount of opposition to the settlement," and (6) "the stage of proceedings at which the

> settlement was achieved." *Bennet v. Behring Corp.,* 737 F.2d 982, 986 (11th Cir.1984).

Holman v. Student Loan Xpress, Inc., 2009 WL 4015573, at *4 (M.D. Fla. Nov. 19, 2009) (Merryday, J.).

The fact that the parties agreed to a "claims-made" settlement does not render its terms unreasonable. In fact, this Court approved a similar settlement recently in a non-WARN Act class action case styled *Bermudez v. Westgate Resorts, Inc. et al.*, Case No. 6:19-cv-01847-RBD-DCI (M.D. Fla. Nov. 23, 2020, Doc. 65, approving claims made settlement). Notably, the *Bermudez* settlement approved by this Court included a reversion of any unclaimed funds to the *Bermudez* defendant. Here no such reversion exists; no settlement funds in this case revert to Enterprise. If this settlement is approved by the Court, all funds will either be paid to the class members or to a *cy pres* recipient. *See also Atkinson v. Wal-Mart Stores, Inc.*, No. 08-cv-691-T-30TBM, 2011 WL 6846747, at *5 (M.D. Fla. Dec. 29, 2011) (approving claims-made settlement with full reversion).[1]

[1] *See also Saccoccio*, 297 F.R.D. at 696 (overruling objections to claims-made process because "[t]here is nothing inherently suspect about requiring class members to submit claim forms in order to receive payment."); *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) (discussing claims-made settlement and affirming contingency fee award based on total possible recovery); *Shames v. Hertz Corp.*, 07-cv-2174, 2012 WL 5392159 (S.D. Cal. Nov. 5, 2012) (approving claims-made settlement over objections because "there is nothing inherently objectionable with a claims-submission process, as class action settlements often include this process, and courts routinely approve claims-made settlements") (citations omitted); *Lemus v. H & R Block Enters. LLC,* No. 09-cv-3179, 2012 WL 3638550 (N.D. Cal. Aug. 22, 2012) (approving claims-made settlement where unclaimed funds reverted to the defendants).

1. The Settlement Is Not the Product of Fraud or Collusion.

In assessing this first factor, courts respect the integrity of counsel and presume the absence of fraud or collusion in negotiating the settlement, unless evidence to the contrary is offered. *Dorado v. Bank of Am., N.A.*, No. 1:16-CV-21147-UU, 2017 WL 5241042, at *5 (S.D. Fla. Mar. 24, 2017). There is no evidence of fraud or collusion here. The proposed settlement resulted from arm's length negotiations between Plaintiff and Defendants conducted by capable, experienced attorneys and with the assistance of a seasoned and respected mediator, Carlos Burruezo. "Where the parties have negotiated at arm's length, the Court should find that the settlement is not the product of collusion." *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 692 (S.D. Fla. 2014).

In fact, courts have consistently held that the presence of an independent mediator negates any suggestion of fraud or collusion. *See, e.g., Montoya v. PNC Bank, N.A.*, 2016 WL 1529902, at *8 (S.D. Fla. Apr. 13, 2016) (use of mediator indicates there is "no suggestion of fraud or collusion"); *Hall v. Bank of Am., N.A.*, 2014 WL 7184039, at *6 (S.D. Fla. Dec. 17, 2014). There was no fraud or collusion in reaching the Settlement. During this process, the parties thoroughly evaluated their claims and defenses, allowing class counsel to negotiate what they believe is the most optimal settlement on behalf of the settlement class.

The absence of fraud and collusion is evidenced by a settlement reached after 1.5 years of heavy litigation at both the District Court and Eleventh Circuit,

including extensive motion practice, substantive and meaningful discovery on both the merits and as to the class, and also at the conclusion of lengthy mediation session.

Additionally, there is no evidence that Plaintiff sacrificed the interests of the Settlement Class for her own financial gain. Under the settlement, Plaintiff will receive the same settlement payment as the other members of the Settlement Class. There is no service award being sought by Benson.

In sum, the proposed settlement reached by Plaintiff and Defendants resulted from concessions and compromise by both sides. The settlement is a product of the functioning adversarial and negotiations processes, not fraud or collusion. Accordingly, the first factor supports approval of the settlement.

2. Litigating this Case Through Trial Would Continue to be Complex, Expensive, and Time-Consuming.

To be sure, this case has been enormously time-intensive and expensive for both sides already. Future litigation costs, including at both the District Court and Eleventh Circuit, cannot be predicted with certainty. There is no doubt if the litigation is to continue, Plaintiff and Defendants will vigorously advocate for their respective positions on various legal and factual issues, leading to continued significant motion practice and a likely trial. Trial and a potential of post-trial appeals further increases the costs and prolongs resolution.

Absent settlement, the resolution of factual issues relevant to each class member's claims would result in protracted litigation. The proposed settlement

will save considerable time and resources that would otherwise be spent litigating disputes resolved by the proposed settlement. Thus, this factor weighs in favor of approving the settlement proposed in the Stipulation of Settlement. *See Bennett,* 737 F.2d at 986 ("In addition, our judgment is informed by the strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement."); *Ayers v. Thompson*, 358 F.3d 356, 2369 (5th Cir. 2004) (holding that settlement would avoid risks and burdens of potentially protracted litigation weighed in favor of approving settlement).

3. Class Counsel Has Sufficient Discovery and Other Information to Realistically Value the Claims.

The parties possess "ample information with which to evaluate the merits of the competing positions." *Ayers*, 358 F.3d at 369. Specifically, Plaintiff has obtained sufficient discovery from Defendants to allow a well-informed and comprehensive settlement of the Class, including the thousands of documents produced by Defendants in this case along with deposition testimony of high-ranking Enterprise personnel. Plaintiff and Defendants have reviewed Defendants' records and discovery responses for the relevant time period, as well as the Class List, and determined that the Class consists of approximately 964 individuals, including Plaintiff. Defendant also identified and produced copies of documents, policies, and procedures that pertain to the allegations in the Amended Complaint.

In addition to the discovery described above, the parties have extensively analyzed legal authorities regarding WARN Act claims on a nationwide basis, particularly those involving the natural disaster exception under the WARN Act. Counsel for the parties have discussed their claims and defenses with each other.

As such, the parties believe that they have sufficient and meaningful information to reach a fair, reasonable, and adequate settlement. The Stipulation of Settlement was negotiated based on the parties' realistic, independent assessments of the merits of the claims and defenses in this case and should be approved.

4. Ultimate Success on the Merits of the Claims is Uncertain Given the Risks of Litigation.

When evaluating a proposed class action settlement, the court must balance the benefits of a certain and immediate recovery through settlement against the inherent risks of litigation. See *Bennett v. Behring Corp.,* 737 F.2d 982, 986 (11th Cir. 1984); *Reed v. General Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983). Here, recovery under the Stipulation of Settlement is favorable for the 964 Class Members given the general uncertainty surrounding all litigation and the risks specific to this case.

If this litigation proceeds, Defendants intend to continue to vigorously defend the claims, and Plaintiff and the Settlement Class will face legal challenges by Defendants, including challenges to merits of their claims, a possible motion for decertification of the certified class and, of course, a Motion for Summary

Judgment. Any one of these challenges could significantly prolong the litigation at considerable expense to the parties and potentially result in no recovery for the class members. Each of these phases of litigation presents uncertainty and risks, which the settlement allows the parties to avoid.

Although Defendants denies liability and have asserted affirmative defenses to the claims, Defendants nevertheless recognize, as Plaintiff does, the costs and risks inherent in proceeding to trial.

A negotiated settlement that provides immediate relief is preferable to protracted litigation and an uncertain result in the future. Weighed against the risks associated with litigation, the proposed settlement is fair, reasonable, and adequate.

5. The Settlement is Fair in Light of the Possible Range of Recovery and Certainty of Damages.

The Stipulation of Settlement should be approved because the proposed settlement compares favorably to the limited range of damages available under the WARN Act that could potentially be recovered at trial. In her Complaint, Plaintiff seeks to recover 60 days' wages and benefits pursuant the WARN Act, 29 U.S.C. § 2104 (a)(1)(A). Public sources estimate that Enterprise Rent-A-Car employees earn $38,000 annually on average,[2] or $18 per hour. Using simple arithmetic the average class member's claim for 60-days wages is equivalent to approximately

[2] https://www.careerbliss.com/enterprise-rent-a-car/salaries/.

$5,900.00 if the person worked full-time.[3] Notably, most of the class members in this case only worked part time. Thus, this number would likely be reduced as a result. Moreover, while Plaintiff would argue that she and the class members are entitled to recover the full 60-days of wages made available under the WARN Act, Defendants would have argued that, instead, at most Plaintiff and the putative class were entitled to recover their back wages for the time notice should have been sent under the circumstances—in particular the uncertainty surrounding Covid-19 and related government closures and effects on the economy in early 2020. If accepted by the Court, this argument by Defendants could have reduced any back-pay award to Plaintiff and the Class Members to somewhere between just a few days' pay up to 30 days.

On the other hand, the settlement proposed in the Stipulation of Settlement secures a monetary payment estimated to be around $1,389.84 to each Settlement Class Member who timely submits a proper Claim Form, or more. This estimate is based on the average claims participation rate in class actions claims filing in consumer class actions "....where, using a similar notice and claims process, claims filing rates average 10% of the class." *Fla. Educ. Ass'n v. Dep't of Educ.*, 447 F. Supp. 3d 1269, 1275 (N.D. Fla. 2020) (citing *Consumers and Class Actions: A Retrospective and Analysis of Settlement Campaigns, Federal Trade Commission*, 2019, at page 11). If this Motion is granted, net payments would be

[3] $38,000 annual salary / 52 weeks per year = $730.77 per week x 8 weeks (60 days' pay) = $5,846.15.

computed and total as follows: $175,000 gross settlement fund - $33,000 for claims administrator costs - $7,185.40 in litigation costs = $151,131.46 / 97 timely claims = $1,389.84 paid per timely claim form submitted.

The settlement proposed in the Stipulation of Settlement falls within the reasonable range of possible recovery for members of the settlement classes. For example, recently in a case styled *In re The Hertz Corporation, et al.*, Del. Bkt. Ct. Case No.: 20-11218-MFW (Doc. 5862), the United States Bankruptcy Court for the District Court of Delaware approved a WARN Act class action settlement for an amount per class member similar to that here. Similar to this case, the *Hertz* WARN Act litigation also revolved around a mass layoff engaged in by a rental car company around the time COVID-19 began. Also, just like in this case, in *Hertz* the two core defenses included the natural disaster exception and the unforeseeable business circumstance defense to the WARN Act's notice provision.

In sum, this is a fair settlement when taking in consideration the uncertainty of the underlying factors and elements critical to this case, establishing EHI and its operating groups collectively operated as a "single employer" as defined by the WARN Act, whether Enterprise would prevail on either the natural disaster exception and/or unforeseeable business circumstance (or both), and, of course, whether Plaintiff and the class members could establish liability. Indeed, "[a] proposed settlement need not obtain the largest conceivable recovery for the class to be worthy of approval; it must simply be fair and adequate considering all the relevant circumstances." *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 649 (N.D. Tex.

2010). For these reasons, this factor also weighs in favor of the Court granting preliminary approval of the Parties' class action settlement.

6. Class Counsel and the Parties Support the Settlement.

As evidenced by the Stipulation itself and the fact this Motion is unopposed, the terms of the Settlement Agreement as proposed have the obvious support of Plaintiff, Class Counsel, and Defendant. Plaintiff and Defendant believe, based on their independent assessments, that settlement is in their respective best interest. Plaintiff and Class Counsel have likewise concluded that the proposed Settlement is in the best interest of the Class.

Furthermore, the parties anticipate that the Settlement will receive broad support from putative class members, especially considering that each individual member who timely files a claim will receive a settlement check that is reasonable and consistent in the context of class action litigation.

Importantly, the claims being released under the agreement are limited to WARN Act claims, or state law analogous WARN Act claims. It is unlikely that settlement class members will oppose releasing their WARN Act claims which, in reasonable probability they never intended to bring individually—or, possibly still, were unaware existed. Even if any class members do not agree with the terms of the proposed settlement, he or she is protected by the right to opt out of the proposed class settlement, which is made clear in the settlement agreement and the notice forms. They may also object to the settlement and ask the Court to address any concerns they wish to raise.

The Parties believe that the Stipulation of Settlement represents a fair, reasonable, and adequate settlement. Consequently, the support of Plaintiff, Class Counsel, the class members (thus far), and Defendant weighs in favor of approving the settlement.

IV. The Notice of Class Action Settlement Should be Approved Because the Form and Manner of the Notice Satisfies the Requirements of Rule 23 and Due Process.

The Notice of Class Action Settlement to be mailed to the Settlement Class is appended to the Stipulation of Settlement as Exhibit "2." *See attached,* Exhibit "A," Stipulation of Settlement, Exhibit "2." The notice in this case is very similar to the manner and form of notice this Court approved in *Bermudez v. Westgate Resorts, Inc. et al.*, Case No. 6:19-cv-01847-RBD-DCI (M.D. Fla. August 3, 2020, Doc. 49, pp. 3-4). The content of the proposed class notice and the method for notifying members of each settlement class satisfy the requirements of Federal Rules of Civil Procedure 23(c)(2)(B) and (e)(1) and comport with due process. Additionally, a website will be posted containing additional information about the Settlement and a portal through which claims may be filed.

Under Rule 23(e)(1), when approving a class action settlement, the court "must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). In addition, for classes certified under Rule 23(b)(3), courts "must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Rule

23(c)(2)(B) also sets out the required contents of the class notice. *Id.* The notice provisions and notification procedures described in the Stipulation of Settlement comply with these Rules.

The proposed notice plan is reasonable and provides the best notice practicable to the respective settlement classes. *See Bermudez v. Westgate Resorts, Inc. et al.*, Case No. 6:19-cv-01847-RBD-DCI (M.D. Fla. August 3, 2020, Doc. 49, pp. 3-4, approving similar notice plan). Under the Stipulation of Settlement, the Notice of Proposed Class Action Settlement will be sent to each class member via first class mail to the last known addresses of class members based on information contained in Defendants' records or obtained by the third-party Settlement Administrator. *See* Exhibit "A," Stipulation of Settlement. Notice by mail is recognized as sufficient to provide due process to known affected persons as long as the notice is "reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *DeHoyos*, 240 F.R.D. at 296 (sending notice by mail is preferred when all or most class members can be identified). The Stipulation of Settlement also includes provisions to ensure that a reasonable effort is made to locate members whose notices are returned undelivered and to re-send the Notice of Proposed Class Action Settlement to these persons to the extent possible. *See* Exhibit "1," Stipulation of Settlement.

The content of the Notice of Proposed Class Action Settlement satisfies Rule 23(c)(2)(B) and due process requirements. "A settlement notice need only satisfy

the broad reasonableness standards imposed by due process." *In re Katrina Canal Breaches Litigation,* 628 F.3d 185, 197 (5th Cir. 2010). Due process is satisfied if the notice provides class members with "information reasonably necessary for them to make a decision whether to object to the settlement." *Id.*

The Notice of Proposed Class Action Settlement is written in language that is easy to understand. The Notice informs members of the Class of the nature of the case, the definition of the settlement class, and the claims and defenses. The Notice of Proposed Class Action Settlement also contain information regarding the right to retain their own attorney, their right to request exclusion from the class, the time and manner for requesting exclusion, and the binding effect of the class judgment. *See* Exhibit "A," Stipulation of Settlement, Exhibit "2," Notice; *see also* Fed. R. Civ. P. 23(c)(2)(B). Because the Notice of Proposed Class Action Settlement communicates the essential terms of the proposed settlement in a manner that complies with Rule 23(c)(2)(B) and due process, the Court should approve its distribution to the respective settlement classes.

V. THE COURT SHOULD APPROVE A SCHEDULE AND PROCEDURES FOR A FAIRNESS HEARING, FILING CLAIMS, OPTING OUT, OBJECTING, AND FILING A MOTION FOR ATTORNEYS' FEES AND COSTS.

Plaintiff requests that, in conjunction with preliminarily approving the Settlement, the Court schedule a fairness hearing to determine whether to finally approve the Settlement. Plaintiff also requests that the Court approve the deadlines and procedures the Stipulation of Settlement provides for filing claims,

opting out, objecting, and filing a motion for attorney's fees and costs, and class settlement administration costs. Under the Stipulation of Settlement, the schedule would be as follows:

Defendant provides Class List to Settlement Administrator Settlement Administrator establishes Settlement Website Settlement Administrator mails Notice ("Notice Date")	No later than 7 days after Preliminary Approval Order is issued No later than 7 days after Preliminary Approval Order is issued No later than 7 days after receiving Class List
Deadline for Filing Claim	60 Days after Notice is mailed by Settlement Administrator
Deadline for Objections	60 days after Notice is mailed by Settlement Administrator
Deadline for Opt Outs (Exclusion Requests)	60 days after Notice is mailed by Settlement Administrator
Deadline for Motion for Attorney's Fees and Costs, Class Settlement Administration Costs	30 days after Notice is mailed to the Class
Deadline for Motion for Final Approval	45 days after the Response Deadline (i.e., 105 days after notice is mailed)
Fairness Hearing	TBD by Court
Defendants deposit the full Settlement Fund	7 days after Final Approval Date
Defendants deposit Court-approved attorneys' fees	7 days after the Final Approval Date

The procedures for opting out, objecting, and submitting claim forms are set forth in detail in the Stipulation of Settlement. Notably, this is a similar timeline

the Court approved in *Bermudez v. Westgate Resorts, Inc. et al.*, Case No. 6:19-cv-01847-RBD-DCI (M.D. Fla. August 3, 2020, Doc. 49, p. 6). Similarly, the procedures for filing a motion for attorney's fees and costs, and class settlement administration costs, are also included in the Stipulation of Settlement. Plaintiff respectfully requests that opt out and objection procedures be included in the Preliminary Approval Order. *See Johnson*, 2017 WL 6060778, at **2-3; *See also Almanzar*, 2015 WL 10857401, at **4-5. The Claim Form, which is attached as Exhibit "1" to the Stipulation of Settlement, requires only limited information (name, address, phone number, Claim Number) and a statement that the person submitting the form was in fact a job applicant included in the class definition. In total, the claims process is relatively simple and requires only minimal effort relative to the award that can be obtained.

VI. CONCLUSION.

In sum, the Court should certify the settlement class and approve the Stipulation of Settlement on a preliminary basis because the proposed settlement is fair, reasonable, and adequate. Class counsel's attorneys' fees and costs are appropriate under Rule 23 for settlement purposes. The Notice of Proposed Class Action Settlement should be approved for distribution to the Settlement Class because it meets the requirements of Rule 23 and due process.

WHEREFORE, Plaintiff, Elva Benson, for herself and on behalf of the Class, moves the Court to approve Plaintiff's Unopposed Motion for Preliminary

Approval of Class Action Settlement and enter an Order of preliminary approval. A proposed Order is attached as Exhibit B.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 3.01(G)

The undersigned counsel conferred with counsel for Defendant regarding this Motion, and Defendant's counsel has no objection to the relief requested herein.

Dated: November 29, 2021.

/s/ Brandon J. Hill

LUIS A. CABASSA
Florida Bar No.: 053643
BRANDON J. HILL
Florida Bar No.: 37061
WENZEL FENTON CABASSA, P.A.
1110 North Florida Ave., Suite 300
Tampa, Florida 33602
Main No.: 813-224-0431
Facsimile: 813-229-8712
Email: lcabassa@wfclaw.com
Email: bhill@wfclaw.com
Email: gnichols@wfclaw.com

Attorneys for Plaintiff and the Class

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of November, 2021, the foregoing was electronically filed using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Brandon J. Hill
BRANDON J. HILL

EXHIBIT A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

ELVA BENSON, on behalf of herself and on behalf of all others similarly-situated,

Plaintiff,

v. **CASE NO.: 6:20-cv-891-Orl-37LRH**

ENTERPRISE HOLDINGS, INC., and ENTERPRISE LEASING COMPANY OF ORLANDO, LLC,

Defendants.
_____/

CLASS SETTLEMENT AGREEMENT AND RELEASE

Class Representative, Elva Benson ("Plaintiff"), individually and on behalf of the class of individuals that she represents pursuant to the Court's May 11, 2021 order (*see* Doc. 114), on the one hand, and Defendants, Enterprise Holdings, Inc. and Enterprise Leasing Company of Orlando, LLC, on the on the other hand, enter into this Settlement Agreement and Release ("Agreement") to settle the issues between them asserted in this action. This Agreement shall become effective upon entry by the Court of a Final Approval Order and Judgement approving the Agreement under the procedures set forth in this Agreement.

I. RECITALS

This Agreement was reached pursuant to extensive, arms-length negotiations

between the Parties over the course of this Litigation, including a full-day mediation facilitated by mediator Carlos J. Burruezo on September 14, 2021.

1. On May 27, 2020, Plaintiff filed her class action complaint, *Benson, et al., v. Enterprise Holdings, Inc. et al.,* Case No. 6:20-cv-891, in the United States District Court for the Middle District of Florida, Orlando Division. (Doc. 1 - the "Action").

2. In the Complaint, Plaintiff alleged that Defendants and former named Defendant Enterprise Leasing Company of Florida, LLC, violated the WARN Act by terminating her and the class members without sufficient notice.

3. Defendants have, at all times, denied Plaintiff's allegations and continue to deny they have any liability in the Action.

4. Defendants filed a Motion to Dismiss (*see* Doc. 32) the Complaint on August 3, 2020, disputing that Plaintiff had pled the three named Defendants constituted a "single employer" under the WARN Act. Additionally, Defendants argued that even if Plaintiff had pled the identity of her employer and sufficient facts to conclude that it was subject to the WARN Act and had engaged in a plant closing or mass layoff—Defendants were excused from the WARN Act's notice requirement under both the unforeseeable business circumstance defense and natural disaster exception to the WARN Act's notice requirement.

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5. Plaintiff filed her Amended Complaint (*see* Doc. 35) on August 17,

2020, which mooted the first Motion to Dismiss. (*See* Doc. 36). Plaintiff's Amended Complaint added as Named Plaintiffs Patrina Moore and Elizabeth Daggs and also included Enterprise Leasing Company of Florida, LLC as a named Defendant. Both Daggs and Moore later voluntarily dismissed their claims (*see* Docs. 53 and 62) because it was determined that they had worked at Enterprise facilities not covered by the WARN Act. Enterprise Leasing Company of Florida, LLC was dismissed as a named party when Moore dismissed her claim.

6. Defendants moved to dismiss (*see* Doc. 42) the First Amended Complaint on September 14, 2020, raising many of the same arguments and defenses included in their prior Motion to Dismiss—along with some others.

7. Defendants also filed a Motion to Stay discovery pending resolution of the Motion to Dismiss the First Amended Complaint. (Doc. 45). The Court denied the Motion to Stay Discovery on October 29, 2020. (Doc. 52).

8. The Parties then engaged in extensive discovery efforts—and continued doing so throughout this litigation. Both sides propounded interrogatories and requests for production. Both sides also took multiple depositions, including as to both the Parties and relevant witnesses. The Parties' extensive discovery efforts allowed both sides to fully develop the record in this case for class certification purposes and, ultimately, to help ensure a well-informed settlement was reached.

9. In the interim, on January 4, 2021, the Court denied Defendants'

Motion to Dismiss the First Amended Complaint. (Doc. 61).

10. Defendants filed a Motion (*see* Doc. 69) to Certify for Interlocutory Review the Court's Order denying the Defendants' Motion to Dismiss the First Amended Complaint, which the Court granted by Order dated February 4, 2021. (Doc. 77). The Court certified the following question under § 1292(b): "What causal standard is required to establish that a plant closing or mass layoff is 'due to any form of natural disaster' under the WARN Act's natural disaster exception, 29 U.S.C. § 2102(b)(2)(B)." Doc. 77 at 15.

11. Defendants filed their 28 U.S.C. § 1292(b) Petition in the United States Court of Appeals for the Eleventh Circuit on February 12, 2021. (USCA11 Case 21-90008). Plaintiff opposed the Petition on February 22, 2021. The Eleventh Circuit granted the Defendants' Petition for interlocutory appeal on June 4, 2021. On July 14, 2021, Defendants filed their Initial Brief with the Eleventh Circuit Court of Appeals. (USCA11 Case 21-11911). Plaintiff filed her Opposition Brief with the Eleventh Circuit on September 10, 2021.

12. Meanwhile, in the underlying District Court proceedings, Benson filed her Motion for Class Certification under Rule 23 on January 12, 2021. (Doc. 64). Defendants opposed Plaintiff's Motion for Class Certification. (Doc. 81).

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13. The Court heard oral argument on Plaintiff's Motion for Class Certification on April 1, 2021. (Doc. 106).

14. On May 11, 2021, the Court granted, in part, Plaintiff's Motion for Class Certification and certified a nationwide class of approximately 964 persons who worked at various Enterprise locations around the country. Specifically, the Court certified (*see* Doc. 114, p. 26) the following class:

> All Enterprise employees who worked at or reported to Enterprise facilities in the United States and were terminated without cause on or about April 24, 2020, or within 14 days of April 24, 2020, or in anticipation of, or as the foreseeable consequence of, the mass layoff or plant closing ordered on or about April 24, 2020, and who are affected employees, within the meaning of 29 U.S.C. § 2101(a)(5), who do not file a timely request to opt-out of the class, and who also did not sign a severance agreement with Enterprise.

15. On May 25, 2021, Defendants filed in the Eleventh Circuit Court of Appeals a Petition for permission to appeal pursuant to Federal Rule of Civil Procedure 23(f) the District Court's Order granting, in part, Plaintiff's Motion for Class Certification. Plaintiff opposed Defendants' Petition on June 4, 2021. The Eleventh Circuit denied Defendants' Rule 23(f) Petition on June 23, 2021.

16. On September 14, 2021, the Parties participated in a Court-Ordered mediation with highly-respected mediator Carlos J. Burruezo, who regularly mediates class action cases.

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17. During mediation, and with Mr. Burruezo's assistance, the Parties were able to reach a settlement on a class basis, contingent upon this final agreement and the Parties' class action settlement being approved by the Court.

18. Defendants deny that they (and any other Enterprise entity or

operating group) has engaged in any wrongdoing, does not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could have been alleged against it in the Action, but have agreed to this Settlement Agreement because of the substantial expense of litigation, the length of time necessary to resolve the issues presented, the inconvenience involved, and the disruption to their business operations.

19. Plaintiff, the Settlement Class, and Class Counsel are aware that Defendants have significant defenses to the allegations in this Action upon which Defendants might prevail and that, as a result, Plaintiff and the Settlement Class may not receive any benefit or consideration for the claim that has been asserted against Defendants.

20. Based upon its analysis and evaluation of several factors, Class Counsel recognize the substantial risks of continued litigation and delays, including the likelihood that the claims, if not settled now, might not result in any recovery whatsoever for the Settlement Class.

21. Class Counsel have conducted a thorough study and investigation

of the law and facts relating to the claims that have been asserted, as well as a thorough study and investigation of the scope and identity of the Settlement Class, and have concluded, considering the benefits of this settlement, as defined below, and the risks and delays of further litigation, that this settlement is fair

and reasonable and in the best interests of the Settlement Class.

22. Subject to the approval of the Court, the Parties wish to settle this Action, effect a compromise, and settle the claims asserted in the Action against Released Parties.

23. The Parties therefore agree that the claims referenced herein shall be settled, compromised, and released, subject to the approval of the Court, upon and subject to the following terms and conditions:

II. DEFINITIONS

As used in all parts of this Agreement, the following terms have the meanings set out below:

24. **Action or Litigation.**

The above-entitled action, Case No.: 6:20-cv-891.

25. **Agreement.**

This Class Settlement and Release, together with all of its attachments and exhibits, which the Parties understand and agree set forth all material terms and conditions of the Settlement between them, and which is subject to Court approval.

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26. **Claim Form.**

The document substantially in the form attached as Exhibit "1" that will be mailed to Class Members' last known addresses and must be signed and returned, or properly submitted online, by the Response Date in order for the Class Member to

receive his or her share of the Net Settlement Fund

27. **Class Counsel.**

Luis A. Cabassa and Brandon J. Hill of Wentzel Fenton & Cabassa, P.A.

28. **Class Member.**

Any person who is a member of the Settlement Class as defined below.

29. **Class Settlement Administration Costs.**

The aggregate sum of the Settlement Notice and Settlement Administration Costs paid in connection with giving effect to the terms of this Settlement, which sum will be paid from the Settlement Fund.

30. **Class Representative or Plaintiff.**

Plaintiff, Elva Benson.

31. **Court**.

The United States District Court for the Middle District of Florida, Orlando Division.

32. **Defendants.**

The defendants in the Action, specifically: Enterprise Holdings, Inc. and Enterprise Leasing Company of Orlando, LLC.

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33. **Enterprise or the Enterprise Groups**.

Collectively, the Defendants and all subsidiaries and/or operating groups of Defendant Enterprise Holdings, Inc.

34. **Final Order.**

With respect to any judicial ruling or order, an order that is final for purposes of 28 U.S.C. § 1921, and that: (a) the time has expired to request a review proceeding with no such review proceeding having been filed; or (b) if a review proceeding has been filed with respect to such judicial ruling or order, (i) the judicial ruling or order has been affirmed without modification and with no further right of review, or (ii) such review proceeding has been denied or dismissed with no further right of review.

35. **Final Approval Date.**

The date upon which the Court enters the Final Approval Order and Judgment.

36. **Final Approval Hearing.**

The Court's hearing following the Settlement Administrator's work to locate and send Notices to all Class Members, determine the amount payable to each Participating Settlement Class Member, and perform other settlement-related administrative tasks, for the purpose of determining the fairness and reasonableness

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of the Agreement and enter the Final Approval Order and Judgment. The hearing shall be set by the Court to take place at the Court's convenience, but at least thirty (30) days after the Response Deadline.

37. **Final Approval Order and Judgment.**

A Court order that unconditionally grants final approval of the Agreement, authorizes payments to the Participating Settlement Class Members, and extinguishes the Released Claims of all Class Members who do not timely opt out from this Settlement as set forth herein.

38. **Last Known Address(es).**

The most recently recorded mailing address(es) for a Class Member as reflected in Defendants' and/or the Enterprise Groups' records.

39. **Net Settlement Fund.**

The amount of money remaining after the Settlement Fund is reduced by the following amounts:

a. Class Settlement Administration Costs approved by the Court, including an amount reserved to complete the Settlement Notice and an amount reserved to complete the Settlement Administration after the initial Settlement Payment checks are distributed (the aggregate sum of which Class Counsel estimates will be approximately $33,000.00); and

b. Reimbursement to Class Counsel for any litigation costs up to $10,000.00, subject to Court approval.

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40. **Notice.**

The notice substantially in the form attached hereto as Exhibit "2," subject to Court approval and associated response forms, which the Settlement Administrator

will mail, via first-class U.S. mail, and e-mail to each Class Member to explain the terms of the settlement, including the procedure for objecting to or opting out of the settlement.

41. **Parties**.

Plaintiff and Defendants (as defined above).

42. **Participating Settlement Class Member.**

Any individual who is a member of the Settlement Class who is not validly excluded from the Settlement Class and who timely submits a proper Claim Form in compliance with all terms and conditions of this Settlement Agreement.

43. **Preliminary Approval Date.**

The date on which the Court enters the Preliminary Approval Order.

44. **Preliminary Approval Order.**

The Court's Order granting preliminary approval of the terms contained in this Agreement. The Parties will submit a draft order, entitled Order Granting Preliminary Approval of Class Settlement for the Court's review and approval.

45. **Reasonable Address Verification Measure.**

The utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, to update a Last Known Address.

46. **Limited Released of Claims as to Class Members.**

Except for the rights arising out of, provided for or reserved in this Settlement Agreement, Class Members, for and on behalf of themselves and their respective predecessors, successors, agents, attorneys, heirs, representatives, assigns, affiliates and subsidiaries (collectively the "Releasing Parties"), do hereby fully and forever release and discharge Defendants, and all other Released Parties of and from any and all claims, demands, debts, liabilities, obligations, liens, actions and causes of action, costs, expenses, attorneys' fees and damages of whatever kind or nature, at law, in equity and otherwise, whether known or unknown, anticipated, suspected or disclosed, that the Releasing Parties may have had, now have or hereafter may have against the Released Parties, which relate to or arise from the WARN Act or any analogous state or local law or regulation applying to mass layoffs and/or plant closings ("Limited Release"), that are duplicative of, or subsumed by, the claims asserted in this case (the "Released Claims"). To be clear and for the avoidance of doubt, this Limited Release does not and is not intended to serve as a general release as to the Class Members. Rather, it is intended to be a Limited Release as to claims the Class Members have against the Released Parties under the WARN Act, WARN

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Act State/Local Equivalents, or any other analogous state or local law or regulation applying to mass layoffs and/or plant closings. On the Effective Date, all Released Claims from this Limited Release are deemed settled, released, withdrawn and dismissed in their entirety, on the merits, with prejudice.

The claims released shall also include any claims that may now or hereafter arise relating to the administration of this Agreement. Defendants shall have no responsibility for, interest in, or liability whatsoever with respect to the administration of this Agreement or disbursement of the Settlement Fund, including without limitation, the determination, administration, calculation or payment of claims, the payment or withholding of taxes in connection with the payment of claims, or any losses incurred in connection with any of the foregoing.

47. **General Release of Claims as to Elva Benson Only.**

In addition to the Limited Release by the Class Members, Named Plaintiff Elva Benson agrees to a general release of all claims, known or unknown, including any and all actions, causes of action, suits, debts, claims, complaints, charges, contracts, controversies, agreements, promises, damages, counterclaims, cross-claims, claims for contribution and/or indemnity, claims for costs and/or attorneys' fees, judgments and demands whatsoever, in law or equity, known or unknown that she ever had or now has against the Released Parties in connection with her employment. This release (the "General Release") includes, but is not limited to,

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any claims alleging violations of the WARN Act, WARN Act State/Local Equivalents, breach of express or implied contract wrongful discharge, constructive discharge, breach of an implied covenant of good faith and fair dealing, negligent or intentional infliction of emotional distress, negligent supervision or retention,

violation of the Civil Rights Act of 1866, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, claims pursuant to any other federal, state, or local law regarding discrimination, harassment or retaliation based on age, race, sex, religion, national origin, marital status, disability, sexual orientation or any other unlawful basis or protected status or activity, and claims for alleged violations of any other local state or federal law, regulation, ordinance, public policy, or common-law duty having any bearing whatsoever upon the terms and conditions of, and/or the cessation of her employment with and by the Released Parties.

For the avoidance of doubt, this General Release does not include any claims that may not be released under applicable law and does not apply to the Class Members (other than Elva Benson).

48. **Released Parties.**

Defendants Enterprise Holdings, Inc., and Enterprise Leasing Company of Orlando, LLC, and each of their past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors

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in interest, parents, subsidiaries, affiliates, and attorneys and each of their company-sponsored employee benefit plans and all of their respective officers, directors, employees, administrators, fiduciaries, trustees, and agents.

49. **Response Deadlines.**

Members of the Settlement Class shall have sixty (60) days from the date that the Settlement Administrator mails the Notice to Class Members to submit a claim. Additionally, members of the Settlement Class shall have sixty (60) days from the date the Settlement Administrator mails the Notice to Class Members, to postmark written notice of their intent to opt-out of the Settlement and/or a written notice of objection to the preliminarily approved Settlement, as applicable.

50. **Settlement.**

The agreement embodied in this Agreement.

51. **Settlement Administrator.**

The third-party settlement administrator is American Legal Claims Services. The Settlement Administrator will contract with Class Counsel only; Defendants and Defendants' Counsel are not parties to any contracts or agreements with the Settlement Administrator. Accordingly, Class Counsel, not Defendants or Defendants' Counsel, will be responsible for the performance of the Settlement Administrator, including its compliance with the terms of this Agreement and other applicable requirements.

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52. **Settlement Class.**

All Enterprise employees who worked at or reported to Enterprise facilities in the United States and were terminated without cause on or about April 24, 2020, or within 14 days of April 24, 2020, or in anticipation of, or as the foreseeable consequence of, the

mass layoff or plant closing ordered on or about April 24, 2020, and who are affected employees, within the meaning of 29 U.S.C. § 2101(a)(5) who did not sign a severance agreement with Enterprise, are not subject to an arbitration agreement, and who do not file a timely request to opt-out of the class.

53. **Settlement Effective Date or Effective Date.**

The date by which the Court's Final Approval Order and Judgment approving the Agreement and dismissing with prejudice all claims encompassed by the Agreement becomes Final. For purposes of this paragraph, the Court's Final Approval Order and Judgment becomes Final upon the latter of: (1) the date of its final affirmance on appeal; (2) the expiration of the time to file a petition for a writ of certiorari, and, if certiorari is granted, the date of final affirmance following review pursuant to that grant; (3) the date of final dismissal of any appeal from the Final Approval Order and Judgment or the final dismissal of any proceeding on certiorari to review the Final Approval Order and Judgment; or (4) if no appeal is filed, the expiration date of the time for filing any appeal from the Court's Final Approval Order and Judgment.

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54. **Settlement Fund.**

The gross sum of $175,000.00. That amount will be allocated among the approximately 964 Class Members equally on a pro rata basis based on the number of valid Claim Forms filed by Class Members after the Total Class Settlement

Administration Costs and Court-approved litigation costs are deducted. No money from the Settlement Fund shall revert to Defendants. Class Counsel's Attorney's Fees are not part of the Settlement Fund and shall be paid separately by Defendants, subject to Court approval.

55. **Settlement Payment.**

"Settlement Payment" means the individualized distribution from the Net Settlement Fund that will be made in the first distribution from the Settlement Fund to the Participating Settlement Class Members. Settlement Payments will be distributed to each Participating Settlement Class Member who timely submits a valid Claim Form in compliance with all terms and conditions of this Settlement Agreement. The Settlement Payment shall be determined by dividing the amount in the Net Settlement Fund by the number of Participating Settlement Class Members that have filed a Claim Form. For example, if the Net Settlement Fund is $150,000.00 and 120 Participating Settlement Class Members timely submit claims, the individualized Settlement Payment shall be $1,250.00.

56. **Total Class Settlement Administration Costs.**

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The aggregate costs incurred by the Settlement Administrator in administering the settlement, which is estimated at $33,000.00. The aggregate costs include an amount reserved to complete the settlement notice and an amount reserved to complete the settlement administration after the initial

Settlement Payment checks are distributed.

57. **Total Settlement Amount.**

The aggregate amount of any and all payments that Defendants will be required to pay under the terms of this Agreement, the total of which is Four Hundred and Twenty-Five Thousand U.S. Dollars and No Cents ($425,00.00).

58. **Updated Address.**

A Last Known Address that was updated by the Class Member.

59. **WARN Act.**

The Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2100.

60. **WARN Act State/Local Equivalents.**

Any statute or regulation of any state, U.S. territory, locality/municipality, the District of Columbia, or Puerto Rico, that has a similar purpose or effect as the federal WARN Act.

III. RELIEF AND BENEFITS

61. **Monetary Benefits to Participating Settlement Class Members.**

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a. In exchange for the releases and waivers of claims described below, Defendants will pay each Participating Settlement Class Member their individualized Settlement Payment equal to their *pro rata* share of the Net Settlement Fund. Defendants will deposit 100% of the full Settlement Fund

($175,000.00) with the Settlement Administrator within seven (7) days after the Final Approval Date.

b. The Settlement Administrator will be responsible for mailing Settlement Payments to Participating Settlement Class Members. The Settlement Administrator shall mail Settlement Payments to each Participating Settlement Class Member at his or her Last Known Address, or Updated Address if obtained.

The Net Settlement Fund will be distributed to the Participating Settlement Class Members using the timeline and procedure set forth below:

c. Initial payments to Participating Settlement Class Members will be mailed by the Settlement Administrator by check and delivered by first-class U.S. mail, postmarked within twenty-one (21) business days of the Effective Date.

d. When a Participating Settlement Class Member does not negotiate his or her check, such check becomes void and the Participating Settlement Class Member shall be deemed to have waived irrevocably any right in or claim to the Settlement, and, will like all Participating Settlement Class Members, remain

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subject to the terms of the Agreement.

e. All initial checks will expire one hundred and eighty (180) days after they are issued and will state the expiration date on their faces. If any such payment is returned by the U.S. Postal Service as undeliverable, or is uncashed or

not negotiated before it expires, neither Defendants nor the Settlement Administrator nor Class Counsel shall have any further obligations to Plaintiff or any Participating Settlement Class Member, except that: (A) For any check returned by the U.S. Postal Service with a forwarding address before the check's expiration date, the Settlement Administrator will re-mail the check to the forwarding address; and (B) If a Participating Settlement Class Member contacts the Settlement Administrator or Class Counsel to request a replacement check before the initial check is negotiated, the Settlement Administrator will comply with that request by cancelling the initial check and issuing a replacement check.

f. The Parties agree that all Participating Settlement Class Members waive and abandon any ownership interest in any such undeliverable, returned, uncashed, or non-negotiated checks and further agree that no obligation has been generated or proven with respect to such undeliverable, returned, uncashed, or non-negotiated checks.

g. No person or entity shall have any claim against the Defendants, Defendants' counsel, the Plaintiff, Participating Settlement Class Members, Class Counsel, or the Settlement Administrator based on distributions and payments made in accordance with this Agreement.

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h. After the initial 180-day period for negotiating checks (which total uncashed first check remainder will be calculated by the Settlement

Administrator at least thirty (30) days following the 90-day check expiration date). If the uncashed remainder is equal to or less than $25,000 any unclaimed funds from the Net Settlement Fund shall be donated *cy pres* to United Against Poverty of Orlando (uporlando.org), a 501(c)(3) nonprofit that operates a Success Training Employment Program, a workforce development program dedicated to enhancing job-readiness skills for those who have experienced difficulties finding or keeping a job. If the uncashed remainder exceeds $25,000, the funds shall be re-allocated to the Participating Settlement Class Members who cashed their Settlement Payments on a proportional basis.

i. Nothing herein shall be construed to prevent the Settlement Administrator or Class Counsel (through the Settlement Administrator) from contacting Participating Settlement Class Members to inform them of the expiration of the Settlement Payments.

j. The Settlement Administrator shall keep Class Counsel and Defendants' counsel apprised (on a bi-weekly basis) of all distributions from the Settlement Fund and, upon completion of the administration of the Settlement, the

Settlement Administrator shall provide written certification of such completion to the Court and counsel for the Parties. The Settlement Administrator shall further provide to Class Counsel and Defendants' counsel weekly status updates as to how many Claim Forms have been filed and how many Notices and Claim Forms have been

returned undeliverable.

62. **Taxes.**

The payments to the Class Members are for back pay wages. The Settlement Administrator shall be responsible for all applicable tax, withholding, and reporting obligations with respect to the Settlement Payments. The Settlement Administrator shall also be responsible for calculating all local, state, and federal taxes that Defendants may owe as a result of the payments to the Participating Settlement Class Members ("Required Employer Withholdings"). Deductions from the Settlement Payments will be made for local, state, and federal taxes owed by the Participating Settlement Class Members as a result of the payment. This will result in a Net Settlement Payment to be made to each Participating Settlement Class Member.

To the extent that any forms must be filed or tax forms issued for the Settlement Fund pursuant to this Agreement, the Settlement Administrator will cause to be timely and properly filed and issued all tax returns and tax forms, if any, necessary with respect to the Settlement Fund and any and all payments therefrom.

63. **Class Counsel Attorney's Fees and Costs.**

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a. Defendants agree that Class Counsel may apply to the Court for an award of attorney's fees in the amount of $250,000.00 to be paid directly by Defendants. Defendants agree not to oppose Plaintiff's application for attorneys' fees to the extent that they are consistent with these limitations. Class

Counsel's attorneys' fees were discussed separately from and independent of the Settlement Fund amount for the Class Members. Additionally, Defendants agree Class Counsel may also apply separately for reimbursement from the Settlement Fund for litigation expenses up to $10,000.00 to be paid from the Settlement Fund, subject to Court approval.

b. Class Counsel will file the application for approval of Class Counsel Attorney's Fees and Costs no later than thirty (30) days after the Notice is mailed to the Settlement Class. Except as provided for herein, Class Counsel shall not be permitted to petition the Court for, or accept, any additional payments for fees, costs, or interest, and the Attorneys' Fees shall be for all claims for attorneys' fees past, present, and future incurred in the Action and/or as part of effectuation of this Agreement.

c. Defendants will deposit 100% of the Court-approved Class Counsel Attorneys' Fees (not to exceed $250,000) with the Settlement Administrator within seven (7) days after the Final Approval Date.

d. The Settlement Administrator shall pay any approved Class Counsel Attorney's Fees and Costs no later than fifteen (15) days after the Effective Date.

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64. **Total Payments by Defendants**

As detailed herein, the maximum, aggregate sum total of any and all

payments owed by Defendants pursuant to this Agreement is $425,000.00 (the "Total Settlement Amount" as defined above). This includes Defendants' payment of the Settlement Fund ($175,000.00) and Defendants' payment of Class Counsel's Attorneys' Fees, in an amount approved by the Court, but not to exceed $250,000.00. Additionally, and although not part of the Settlement Fund, Defendants agreed to pay the Parties' costs incurred for the September 14, 2021 mediation.

65. **Payments to the Settlement Administrator.**

The Settlement Administrator shall pay any approved Class Settlement Administration Costs no later than five (5) days after the Effective Date.

IV. NOTICE, OPT-OUT, OBJECTIONS AND SETTLEMENT APPROVAL

66. **Notice to Class Members.**

a. Not later than seven (7) calendar days after the Court has issued the Preliminary Approval Order, Defendants shall disclose the names and last known addresses of members of the Settlement Class to Class Counsel, who shall provide that information to the Settlement Administrator.

b. Prior to mailing the Notice to each Class Member, the Settlement Administrator shall undertake a Reasonable Address Verification Measure to ascertain the current accuracy of the Last Known Address of each Class Member. To the extent this process yields an Updated Address, that

Updated Address shall replace the Last Known Address and be treated as the new Last Known Address for purposes of this Agreement and for subsequent mailings related thereto.

c. No later than seven (7) calendar days after receipt of such information, the Settlement Administrator will mail the Notice (attached as Exhibit "2") to all Class Members via email and first-class U.S. Mail, postage prepaid and return service requested to such Settlement Class Member's last known mailing address, as updated by using the U.S. Postal Service's database of verifiable mailing addresses (the CASS database) and the National Change-of-Address database. The Notice shall bear the Settlement Administrator's mailing address as the return-mail address. The Notice will include an indication it is a "Court Approved Settlement Notice authorized by the U.S. District Court for the Middle District of Florida" and may also include a bar code.

d. In addition, the Notice will include a pre-printed, postage-prepaid, return envelope to facilitate submission of Claim Forms, objections, and requests for exclusion. A Claim Form (Exhibit "1") will also be included as part of the mailing.

e. Not later than seven (7) calendar days after the Court has issued the Preliminary Approval Order, the Settlement Administrator shall post a website containing information about the Settlement, including all relevant

dates and pleadings.

67. **Notices Returned as Undeliverable.**

a. In the event that a Notice is returned to the Settlement Administrator by the United States Postal Service, but with a forwarding address for the recipient, the Claims Administrator shall re-mail the Notice to that address, and the Notice will be deemed mailed as of that date (and the forwarding address shall be deemed the Updated Address for that Class Member).

b. In the event that a Notice is returned to the Settlement Administrator without a forwarding address, the Settlement Administrator will use publicly available databases as practicable to update those Class Members' addresses and will cause the Notice to be re-mailed by the Settlement Administrator to such Class Members who can be located.

c. In either event, the Notice shall be deemed received once it is mailed for the second time, and the Class Member shall have up to and including ten (10) days after the Response Deadline to file a Claim Form or request to opt out of the settlement.

68. **Toll-Free Telephone Line.**

The Settlement Administrator will establish and staff a toll-free telephone line that members of the Settlement Class can use to contact the Settlement Administrator with questions about the settlement or to change their addresses.

69. **Claim Form Procedures**

a. To receive a portion of the Net Settlement Fund, all members of the Settlement Class must submit a timely Claim Form by the Response Deadline. Claim Forms may be submitted through a claims filing portal on the settlement website, by email to the Settlement Administrator, or by U.S. Mail to the Settlement Administrator. The Claims Form submission processes will be clearly indicated in the Notice. If a completed and properly executed Claim Form is not received by the Settlement Administrator and postmarked by the Response Deadline, then that Class Member will be deemed to have forever waived his or her right to receive a Settlement Payment, but will still be bound by the terms of this Agreement, including the release of the Released Claims defined above (unless such Class Member submitted a timely and valid request to opt out of the settlement), subject to the Court's final approval of this agreement.

b. The date of the postmark on the return mailing envelope or the applicable electronic timestamp for electronically submitted documents will be the exclusive means to determine whether a Claim Form or has been timely submitted. However, it is not the intention of the Parties to exclude Class Members from participating in the Settlement for technical reasons that do not interfere with the orderly administration of the Settlement. Therefore, the

Settlement Administrator will compile a list of claims rejected for failure to cure an unsigned Claim Form.

c. If the Class Member's Claim Form or Request for Exclusion is defective as to the requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will mail the Class Member a cure letter ("Cure Letter") within three (3) business days of receiving the defective submission to advise the Class Member that his or her submission is defective and that the defect must be cured to render the Claim Form or Request for Exclusion valid. The Class Member will have until the later of (a) the Response Deadline or (b) fifteen (15) calendar days from the date the cure letter is sent, to postmark, fax, or electronically submit a revised Claim Form or Request for Exclusion. If a Class Member responds to a Cure Letter by filing a defective claim, then the Claims Administrator will have no further obligation to give notice of a need to cure. If the revised Claim Form is not postmarked, received by fax, or electronically submitted within the later of (a) the Response Deadline or (b) fifteen (15) calendar days from the date of the Cure Letter, it will be deemed untimely and the claim will be rejected.

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d. Class Members who, for future reference and mailings from the Court or Settlement Administrator wish to change the name or address listed on the envelope in which the Class Notice was fist mailed to them must fully

complete the "Change of Name and/or Address Information" section on the Notice and submit it, per the instructions therein, to the Settlement Administrator. The address provided shall be deemed the Updated Address for any such Class Member.

70. **Right to Opt-Out.**

a. All members of the Settlement Class will have the right to be excluded from, *i.e.*, to "opt out" of, the Settlement Class. The Notice and Claim Form will clearly inform members of their right to "opt out" or exclude themselves from the Settlement. Class Members who wish to exercise this option must send, by first-class U.S. mail, written notice addressed to the Settlement Administrator that (1) indicates his or her name and address, (2) states that he or she desires to opt-out of the settlement or otherwise does not want to participate in the settlement, and (3) is signed by the Class Member (a "Request for Exclusion").

b. To be timely, a Request for Exclusion must be postmarked on or before the Response Deadline. Any member of the Settlement Class who does not timely (as measured by the postmark on that individual's written notice) opt out of the settlement by written notice directed to the Settlement Administrator and containing the requisite information shall remain a member of the Settlement Class and shall be bound by any orders of the Court about the

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Settlement or the Settlement Class.

c. If a Class Member's Request for Exclusion is defective as to the requirements listed herein, the Class Member will be given an opportunity to cure the defect(s) through the procedures outlined in Section 9(c) of this Agreement.

d. If more than 48 members of the Settlement Class (approximately 5%) validly and timely opt out of the class, then Defendants may in their sole discretion exercise their right to void the Settlement, in which case this Agreement will be vacated, rescinded, cancelled, and annulled, and the Parties will return to the status quo ante as if they had not entered into this Settlement. In that event, the Settlement and all negotiations and proceedings related to the Settlement will be without prejudice of the rights of the Parties, and evidence of the Settlement, negotiations, and proceedings will be inadmissible and will not be discoverable.

71. **Objections.**

a. Any member of the Settlement Class who wishes to object to

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the Settlement must return to the Settlement Administrator a timely written statement of objection no later than sixty (60) days after the date the Settlement Administrator mails the Notice of Settlement. The Notice of Objection must state (1) the case name and number; (2) the name, address, telephone number,

and email address (if any) of the member of the Settlement Class making the objection; (3) a statement of the objection(s) being asserted; (4) a detailed description of the facts and any legal authorities underlying each objection; (5) a notice of intent to appear at the final Fairness Hearing, if the Class Member making the objection intends to appear; (6) a list of any witnesses the Class Member making the objection may call to testify at the Final Approval Hearing, whether in person, by deposition, or affidavit; and (7) a list of any exhibits, and copies of the same, which the objector may offer at the Final Approval Hearing. Any objection must be personally signed by the objector.

b. No member of the Settlement Class shall be entitled to contest in any way the approval of the terms and conditions of this Agreement or the Court's Final Approval Order except by filing and serving written objections in accordance with the provisions of this Settlement Agreement. Any member of the Settlement Class who fails to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections, whether by appeal or otherwise, to the settlement.

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c. The Settlement Administrator shall provide any objections and information provided to Defendants' Counsel and to Class Counsel within five (5) business days of receipt of same. Class Counsel shall file same with the Court at least seven (7) days before the Final Approval Hearing or as otherwise

ordered by the Court.

72. **Preliminary Settlement Approval.**

As soon as practicable after the Parties execute this Agreement, the Parties will jointly present this Agreement to the Court, and Plaintiff shall seek preliminary settlement approval of this Agreement. Via this submission, and appropriate accompanying documentation, Plaintiff, through Class Counsel, will request that the Court: (i) enter the Preliminary Approval Order approving the terms of this Agreement as fair, reasonable and adequate and in the best interests of the Plaintiff and the Class Members; (ii) approve the Class Notice; (iii) approve the Claim Form; (iv) authorize the mailing of the Notices and Claim Forms to the respective Class Members; (v) appoint American Legal Claims Services as Settlement Administrator; (vi) set the Response Deadline; and (vii) schedule a hearing for the final approval of the Agreement and entry of a Final Approval Order and Judgment dismissing with prejudice all claims encompassed by this Agreement. Plaintiff shall provide Defendants the draft motion for preliminary approval with sufficient time for Defendants to review before it is filed.

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73. **Final Approval Hearing and Final Approval Order and Judgment.**

The Parties agree to cooperate to work to schedule a Final Approval Hearing as soon as practicable. Within forty-five (45) days of the expiration of the Response

Deadline, the Parties shall submit a Motion for Final Approval to the Court which, among other things, shall identify the total number of Participating Settlement Class Members, detail the Settlement Payments that each Participating Settlement Class Member shall receive, and whether any objections to the Settlement have been made. Plaintiff shall draft the Motion for Final Approval and provide Defendants with sufficient opportunity to review the Motion before it is filed. The Motion will include a report from the Settlement Administrator certifying that the Notice and Claims Form process has been completed in compliance with this Agreement and the Court's Preliminary Approval Order. In conjunction with this filing, the Parties shall present a proposed Final Approval Order and Judgment.

V. RELEASE OF CLAIMS

74. **Dismissal of Claims**

Upon the Effective Date, Plaintiff agrees to a dismissal with prejudice of the Action.

75. **Release of Claims by the Class Members.**

As of the Effective Date and upon payment of the Total Settlement Amount by Defendants to the Settlement Administrator, all Class Members who did not opt out of the Settlement release and agree not to sue or otherwise make a claim for any of the Released Claims, as defined above, against Defendants and any of the Released Parties, as defined above.

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Class Members who are members of the Settlement Class, do not return a valid Claim Form, and do not exercise the right to "opt out" of the Settlement by submitting a Request for Exclusion, agree to release the Defendants and the Released Parties only from the Released Claims to the same extent as the Participating Settlement Class Members.

VI. OTHER PROVISIONS

76. **No Admission of Liability.**

By entering into this Agreement, Defendants do not admit any liability or wrongdoing and expressly deny the same. The Parties understand and agree that this Agreement is being entered into by Defendants solely for the purpose of avoiding the time, cost, uncertainty and disruption associated with ongoing litigation and to settle all outstanding claims. Neither the fact of, nor any provision contained in, this Agreement, nor the implementing documents or actions taken under them, nor Defendants' willingness to enter into this Agreement, nor the content or fact of any negotiations, communications, and discussions associated with the Settlement shall constitute or be construed in any way as an admission by or against Defendants or

any of the Released Parties of any fault, culpability, wrongdoing, violation of law, or liability whatsoever, the validity of any claim or fact alleged in this Action, or any infirmity of any defenses asserted by Defendants in this Action, including but not limited to Defendant Enterprise Holdings Inc.'s defense that it does not employ

(jointly or otherwise) the employees of its subsidiary entities.

77. **If Settlement Not Approved.**

a. In the event that the Court (1) does not approve the Agreement as provided herein; (2) holds, at any stage, that any terms of the Settlement or this Agreement or any of the attached exhibits should be modified in any material way (as determined by each Party's reasonable and good faith judgment); (3) does not enter a Preliminary Approval Order; (4) does not enter a Final Approval Order and Judgment which becomes Final as a result of the occurrence of the Effective Date; or (5) the Agreement does not become final for any other reason, then the Parties may either jointly agree to accept the Settlement or this Agreement as judicially modified or work in good faith to modify the Agreement consistent with the Court's directive. Following any denial by any Court of approval of this settlement, if, after working in good faith to modify the Agreement consistent with the Court's directive, the Parties cannot modify the agreement so as to obtain Court approval of the settlement, either Party shall have the absolute discretionary right to terminate the Agreement by providing written notice to the Court, Class Counsel or Defendants' counsel (as applicable), and the Settlement Administrator. Such notice of termination of the Agreement must be given within twenty-one (21) days of receipt of the Court's decision.

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b. If the Agreement is terminated pursuant to this Section, or if an appeal is filed and if the Settlement, this Agreement, or the Final Approval Order or its equivalent in all material respects are not in effect after the termination of all proceedings arising out of that appeal, then unless the Parties jointly agree otherwise, this Agreement shall become null and void, the Parties will return to the status quo ante.

c. In the event that an appeal is filed from the Court's Final Approval Order and Judgment, or any other appellate review is sought prior to the Effective Date, administration of the Settlement shall be stayed pending final resolution of the Settlement.

78. **Settlement Modification.**

This Agreement may not be changed, altered, or modified except in a writing signed by the Parties. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties. The Parties may agree by stipulation executed by counsel to modify the exhibits to this Agreement to effectuate the purpose of this Agreement or to conform to guidance from the Court about the contents of such exhibits without the need to further amend this Agreement. A stipulation modifying the settlement will be filed with the Court and subject to the Court's approval.

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79. **Communications with Class Members.**

a. The Parties agree that Class Counsel and Enterprise may communicate directly with members of the Settlement Class to ensure as much participation in the settlement as possible. However, neither Class Counsel nor Enterprise may in any way discourage members of the Settlement Class from participating in this settlement, nor may Class Counsel nor Enterprise encourage and/or solicit objectors.

b. Should Enterprise contact class members pursuant to this Section, Enterprise agrees to limit any conversations and/or written correspondence to the following: (1) the fact that the individual is a Class Member in this Action; (2) the fact that a Settlement Agreement has been reached in the Action; (3) the fact that the Class Member will be receiving Notice in the mail; (4) the fact that the Class Member must complete and return the Claims Form in order to receive any money from the Settlement (and Enterprise may encourage the Class Members to do so); (5) that additional information can be located on the Settlement Administrator's website; and (6) that any questions can be directed to the Settlement Administrator or to Class Counsel. Plaintiff

and Class Counsel do not object to such communications to Class Members, provided the Court grants preliminary approval of the Parties' class action settlement and notice is mailed out. Additionally, Enterprise agrees to provide Class Counsel with a list of all members of the Settlement Class contacted on a

bi-weekly basis.

80. **No Waiver of Privilege.**

Nothing in this Agreement is intended to limit or waive the confidentiality of attorney-client privileged communications between Class Counsel and their current clients and members of the Settlement Class, nor is anything in this Agreement intended to limit the ability of Class Counsel to make truthful representations to judicial authorities about either its appointment as Class Counsel or the Settlement of this Action. Likewise, nothing in this Agreement is intended to limit Enterprise's or its agents' communications with their counsel or their ability to respond to judicial or other government authorities.

81. **Agreement Not Evidence.**

Neither this Agreement nor any related documents, negotiations, statements, or Court proceedings may be construed as, received as, used as, or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including but not limited to Defendants and the Released Parties, or as a waiver by Defendants of any applicable defense to the merits of the claims asserted or to Plaintiff's ability to maintain this Action as a class action, except that this Agreement is admissible at hearings necessary to obtain and implement Court approval of the Parties' Settlement or in hearings to enforce the terms of this Agreement or any related order of the Court.

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82. **No Waiver of Rights.**

A Party's failure to exercise any rights under this Agreement shall not constitute waiver of that Party's right to exercise those rights later, except as expressly provided in this Agreement. No delay by any Party in exercising any power or right under this Agreement will operate as a waiver of that power or right, nor will any single or partial exercise of any power or right under this Agreement preclude other or further exercises of that or any other power or right, except as expressly provided. The waiver by one Party of any breach of this Agreement will not be deemed to be a waiver of any prior or subsequent breach.

83. **Authority.**

The signatories below represent they are fully authorized to enter into this Agreement.

84. **Best Reasonable Efforts and Mutual Full Cooperation.**

The Parties agree to fully cooperate with one another to accomplish the terms of this Agreement, including but not limited to, executing such documents and taking such other actions as may be reasonably necessary to implement the terms of this

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Agreement, including all efforts contemplated by this Agreement and any other efforts that may become necessary or ordered by the Court, or otherwise, to ensure that checks are mailed to Participating Settlement Class Members as soon as practicable under the terms of this Agreement. As soon as practicable after

execution of this Agreement, the Parties shall take all necessary steps reasonably necessary to jointly secure the Court's preliminary and final approval of the Parties' settlement.

85. **Privacy of Documents and Information.**

After the Court's entry of a Final Approval Order and Judgment approving this Agreement, all documents and information provided to Class Counsel in connection with the Action and in connection with Settlement discussions, if in tangible form, shall, at Class Counsel's discretion either be destroyed or returned to Defendants within sixty (60) days of entry of the Final Approval Order and Judgment. The terms of the Stipulated Confidentiality Agreement entered into in this action shall continue to remain in full force and effect, notwithstanding anything to the contrary in this Agreement, including but not limited to Class Counsel and the Parties' obligations to either return or certify the destruction of all Confidential Information produced during the litigation (whether in physical or electronic form) as set out in Paragraph 12 of that stipulation. Except with respect to Confidential Information which shall be handled as set out in the Stipulated Confidentiality Agreement, this provision does not apply to electronically produced information or documents. Nor does it apply to the Class List and information contained therein. Class Counsel is under no obligation to destroy or return such information.

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86. **Entire Agreement.**

This Agreement, with its exhibits, constitutes the full and entire agreement among the Parties concerning the subject matter and supersedes all prior representations, agreements, promises, or warranties, written, oral, or otherwise. No Party shall be liable or bound to any other Party for any prior representation, agreement, promise, or warranty, oral or otherwise, except for those that are expressly set forth in or attached to this Agreement.

87. **Binding.**

This Agreement will be binding upon and will inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

88. **Governing Law.**

All terms of this Agreement shall be governed by and interpreted according to the laws of the State of Florida.

89. **Continuing Jurisdiction.**

After the Court enters a Final Approval Order and Judgment, it shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement, and all orders and judgments entered in connection therewith. The Parties and their counsel hereby submit to the jurisdiction of the Court for purposes of interpreting, implementing, and

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enforcing the settlement embodied in this Agreement, and for all orders and judgments entered in connection therewith.

90. **No Prior Assignments.**

The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights that are released or discharged in this settlement.

91. **Construction.**

The Parties agree that the terms and conditions of this Agreement are the result of lengthy, arms-length negotiations between the Parties and that this Agreement will not be construed in favor of or against any Party because of the extent to which any Party or the Party's counsel participated in the drafting of this Agreement.

92. **Construction of Captions and Interpretations.**

Paragraph titles, captions, or headings in this Agreement are inserted as a matter of convenience and for reference and do not define, limit, extend, or describe the scope of this Agreement or any provision in it. Each term of this Agreement is contractual and is not merely a recital.

93. **Notices.**

Unless otherwise specifically provided in this Agreement, any notices, demands or other communications required hereunder or after entry of the Court's

Final Approval Order and Judgment shall be in writing and addressed as follows:

If to Plaintiff:

Brandon J. Hill
Luis A. Cabassa
WENZEL FENTON CABASSA, P.A.
1110 North Florida Ave., Suite 300
Tampa, Florida 33602
Main No.: 813-224-0431
Facsimile: 813-229-8712
Email: bhill@wfclaw.com
Email: lcabassa@wfclaw.com

If to Defendants:

Jason C. Schwartz
Ryan C. Stewart
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue
N.W. Washington, D.C. 20036-5306
Jschwartz@gibsondunn.com
Rstewart@gibsondunn.com

If mailed, notice will be deemed given as of the third business day after mailing. If sent by overnight delivery or delivered person, notice will be deemed given on the date of delivery.

The Parties agree that, because the Settlement Class is so numerous, it is impossible and impracticable to have each Class Member execute this Agreement. Therefore, the Notice will advise all Class Members of the binding nature of the release and will have the same force and effect as if this Agreement were executed by each Class Member to the extent applicable law so provides.

94. **Signed Counterparts.**

This Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon the Effective Date as to all parties subject to the terms and conditions provided herein.

95. **Exhibits.**

1 – Claim Form

2 – Proposed Form Mail Notice

IN WITNESS THEREOF, and intending to be legally bound, the Parties hereto have caused this Settlement Agreement and Release to be executed by their duly authorized representative.

Dated this 29th day of November, 2021.

Luis A. Cabassa
Florida Bar No. 053643
Brandon J. Hill
Florida Bar No. 37061
WENZEL FENTON CABASSA, P.A.
1110 North Florida Ave., Suite 300
Tampa, Florida 33602
Main No.: 813-224-0431
Facsimile: 813-229-8712
Email: lcabassa@wfclaw.com
Email: bhill@wfclaw.com

Attorneys for Plaintiff Elva Benson and the Class

Jason C. Schwartz (*pro hac vice*)
Ryan C. Stewart, FL Bar No. 1024100
Brian Richman (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
Phone: (202) 955-8500
Jschwartz@gibsondunn.com
Rstewart@gibsondunn.com
Brichman@gibsondunn.com

Christina M. Kennedy
Florida Bar No. 58242
FOLEY & LARDNER, LLP
111 N. Orange Avenue, Suite 1800
Orlando, F.L. 32801
Phone: (407) 244-7137
Email: ckennedy@foley.com

Michael D. Leffel (*pro hac vice*)
FOLEY & LARDNER LLP
150 East Gilman Street
Madison, W.I. 53703
Phone: (608) 258-4216
Email: mleffel@foley.com

Attorneys for Defendants Enterprise Holdings, Inc., and Enterprise Leasing Company of Orlando, LLC

EXHIBIT 1

***BENSON v. ENTERPRISE HOLDING, INC.* - CLASS ACTION CLAIM FORM**

THE CLAIM FORM MUST BE RECEIVED BY [insert date], 2021.

IF YOU WANT TO SHARE IN THE SETTLEMENT, THEN YOU *MUST* COMPLETE THIS FORM AND SUBMIT IT VIA MAIL, EMAIL, OR ONLINE SUBMISSION AT THE ADDRESSES PROVIDED BELOW.

____ Yes, I want to receive my share of the Settlement Fund. I understand the actual amount of the recovery will calculated based upon the number of class members timely submitting claims and Court approved costs.

Signature: _____

Print Name:_____

Address:_____

_____

Phone: _____

If your name or address has changed or will change within the next 90 days, please enter the new information below:

Name:_____

Address:_____

City:_____, State_____, Zip Code_____

TO RECEIVE YOUR SHARE OF THE SETTLEMENT, YOU MUST SUBMIT A COMPLETED CLAIM FORM THROUGH ONE OF THESE THREE METHODS:

1. **YOU MAY SUBMIT THIS CLAIM ONLINE AT [INSERT URL];**

2. **YOU MAY SUBMIT THIS CLAIM BY EMAILING A PICTURE OF THE COMPLETED CLAIM FORM TO [INSERT ADDRESS]; or**

3. **YOU MAY MAIL THE COMPLETED FORM TO THE ADDRESS BELOW:**

   [INSERT MAILING ADDRESS]

EXHIBIT 2

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

ELVA BENSON, on behalf of herself and on behalf of all others similarly-situated,

Plaintiff,

v. **CASE NO.: 6:20-cv-891-Orl-37LRH**

ENTERPRISE HOLDINGS, INC., and ENTERPRISE LEASING COMPANY OF ORLANDO, LLC,

Defendants.
_____/

NOTICE OF CLASS ACTION SETTLEMENT AND FINAL APPROVAL HEARING

YOU ARE ELIGIBLE TO PARTICIPATE IN A CLASS ACTION SETTLEMENT REACHED IN THIS CASE

YOUR LEGAL RIGHTS WILL BE AFFECTED BY THE SETTLEMENT OF THIS LAWSUIT. PLEASE READ THIS NOTICE CAREFULLY. IT EXPLAINS THE LAWSUIT, THE SETTLEMENT, AND YOUR LEGAL RIGHTS.

THIS NOTICE IS COURT APPROVED. THIS IS NOT A SOLICITATION FROM A LAWYER

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
HOW TO GET PAID FROM THE SETTLEMENT	YOU MUST COMPLETE THE ATTACHED CLAIM FORM AND IT MUST BE RECEIVED BY THE CLASS SETTLEMENT ADMINISTRATOR NO LATER THAN [*60 DAYS FROM DATE SENT*], 2021. A class action settlement has been reached in the above-styled matter. The Settlement Fund is $175,000.00. There are approximately 964 people in the Settlement Class. If you timely return the attached Claim Form or file a claim through the Settlement Website and the Court grants final approval of the Class Settlement, you will be sent a Settlement Check. The amount of your Settlement Check will be determined by dividing: 100% of the Settlement Fund less administrative costs and Class Counsel's litigation expenses by the number of Class Members that timely return claim forms to the Class Settlement Administrator.
IF YOU DO NOTHING	If the Court approves the settlement and you do nothing, you will not receive any money from the settlement and you will be releasing any and all claims against Enterprise Holdings, Inc., its subsidiaries, and other related Enterprise entities and agents. The Full Release and Released Parties are available on the Settlement Website, [*WEB ADDRESS*].
IF YOU EXCLUDE YOURSELF FROM THE SETTLEMENT	You have the right to exclude yourself from the settlement completely ("opt out"). You can opt out by following the instructions on the Settlement website. You will not receive any monetary payments from the Settlement. You will not have any right to object, but you will not be bound by the terms of this Settlement and will retain your right to file your own lawsuit. The opt out deadline is [*60 days from date sent*], 2021.
HOW TO OBJECT	If you don't exclude yourself from the Settlement, you can object to any part of the Settlement. You are not required to object if you simply want to receive your share of the money being paid in the Settlement of this case. If you wish to file an objection, you must file your written objection with the Settlement Administrator by [60 days after Notice Mailing Deadline]. Your written objection must also be mailed to both Class Counsel and Enterprise's Counsel and postmarked or received no later than [60 days after Notice Mailing Deadline]. Your

	written objection must contain the specific information set forth in the Settlement Agreement which is available on the Settlement Website. Failure to take these steps will be deemed a waiver of your objection(s). If the Court rejects your objection, you will still be bound by the terms of the settlement and the release, but you will also receive a monetary payment as if you had not objected.

These rights and options—**and the deadlines to exercise them**—are explained in this notice.

If you do not exclude yourself, you may object to the settlement. You can remain in the Settlement Class but file written objections to the Settlement. The Court will consider the objections in deciding whether to approve the Settlement. If you do not exclude yourself and the Settlement is approved, you will not be able to sue Defendants or any of the Released Parties for the Released Claims, defined as: any and all claims, demands, debts, liabilities, obligations, liens, actions and causes of action, costs, expenses, attorneys' fees and damages of whatever kind or nature, at law, in equity and otherwise, whether known or unknown, anticipated, suspected or disclosed, that the Releasing Parties may have had, now have or hereafter may have against the Released Parties, which relate to or arise from the WARN Act or analogous state or local law or regulation applying to mass layoffs and/or plant closings, that are duplicative of, or subsumed by, the claims asserted in this case (the "Released Claims"). To be clear and for the avoidance of doubt, this Limited Release does not and is not intended to serve as a general release as to the Class Members. Rather, it is intended to be a Limited Release as to claims the Class Members have against the Released Parties under the WARN Act, or analogous state or local law or regulation applying to mass layoffs and/or plant closings.

What is this lawsuit about?

Elva Benson (the "Plaintiff"), sued Enterprise Holdings Inc. and Enterprise Leasing Company of Orlando LLC (collectively, "Enterprise") in this class action case because she alleged Enterprise violated the WARN Act by terminating her employment, and the employment of the Class Members, without sufficient notice. The Court has not decided whether Enterprise did anything wrong, and Enterprise denies the allegations and denies any liability or wrongdoing whatsoever.

This lawsuit is pending in the United States District Court for the Middle District of Florida. The parties have reached a class action settlement and, according to Enterprise's records, you are a class member. The class is defined as follows: "All Enterprise employees who worked at or reported to Enterprise facilities in the United States and were terminated without cause on or about April 24, 2020, or within 14 days of April 24, 2020, or in anticipation of, or as the foreseeable consequence of, the mass layoff or plant closing ordered on or about April 24, 2020, and who are affected employees, within the meaning of 29 U.S.C. § 2101(a)(5), who do not file a timely request to opt-out of the class, and who also did not sign a severance agreement with Enterprise."

Who are the Attorneys representing the Class and how will they be paid?

The Court has appointed lawyers to represent the Class, but you may enter an appearance in the case through an attorney if you want. If you do so, you will have to pay for your own lawyer. The attorneys appointed by the Court as Class Counsel are: Luis A. Cabassa and Brandon J. Hill of Wentzel Fenton Cabassa, P.A., 1110 N. Florida Ave., Suite 300, Tampa, FL 33602, (813) 224-0431.

Subject to the Court's approval, Enterprise has agreed to compensate Class Counsel for its attorney's fees and costs, up to $250,000.00. This payment is not being paid from the Settlement Fund, so it will not affect your individual recovery. However, Class Counsel will be seeking reimbursement from the Settlement Fund for litigation expenses and costs incurred to prosecute this action, subject to the Court's approval, of up to $10,000.00.

What are the terms of the proposed settlement?

The Parties have agreed to settle the lawsuit. The Settlement Fund available to the Class is $175,000. Those Class Members who submit a timely Claim Form will receive a pro rata share of the Settlement Fund less administrative costs and Class Counsel's litigation expenses. Those Class Members who do not exclude themselves but also do not submit a Claim Form will not receive any money from the settlement but will be bound by its terms, including the release of claims.

The Court has preliminarily approved the proposed settlement of this lawsuit. The proposed settlement represents a compromise of disputed claims. Nothing in the proposed settlement is intended or will be construed as an admission by Enterprise that the claims in the Lawsuit are appropriately brought as a class action, that the claims have merit, or that Enterprise has any liability to Plaintiff or the Class on those claims. The Court has made no ruling on the merits of the Lawsuit.

How do I participate in the settlement and get a payment?

To receive payment you must complete and submit the attached Claim Form by [60 days after sent]. The Claim Form can be submitted in any one of three ways:

1. Online at [url]
2. By emailing a picture of your claim form to [email address]
3. By mailing your Claim Form to [insert address]

What rights am I giving up in this settlement?

If the settlement is approved, the Court will enter a Final Order and Judgment dismissing the Lawsuit "with prejudice" (i.e., the Lawsuit cannot be filed again).

Unless you exclude yourself from this settlement, you will be considered a member of the Class, which means you give up your right to sue Defendants for the Released Claims as defined above. a lawsuit alleging any and all claims against Enterprise. Giving up your legal claims is called a release.

If you do not exclude yourself from this settlement, you will release and be barred from prosecuting any and all of the Released Claims against Enterprise Holdings, Inc., Enterprise Leasing Company of Orlando LLC, and all of their related companies, parents, subsidiaries, affiliates, and their respective officers, trustees, employees, attorneys, insurers, owners, and agents, whether in their individual or official capacities.

If I chose to do so, how do I exclude myself from the settlement?

If you wish to be excluded, you must mail a written request for exclusion to the Settlement Administrator at: American Legal Claims Services [*INSERT ADDRESS*]. Your request for exclusion must be in writing and postmarked on or before [*60 days after sent*], 2021. The request must state: "I do not want to be part of the Class in *Benson v. Enterprise Holdings, Inc.*, 6:20-cv-891." The request must be signed, with your name, address, and telephone number printed below your signature. The address you use should be the address to which this notice was mailed, so that you can be properly identified. However, if you have a new address, please inform us of the new address so we can make the change in the Class List.

What if I disagree with something about the settlement but do not want to be excluded?

If you don't exclude yourself from the Settlement, you can object to any part of the Settlement. You must file your written objection with the Settlement Administrator by [60 days after Notice Mailing Deadline]. Your written objection must also be mailed to both Class Counsel and Enterprise's Counsel and postmarked or received no later than [60 days after Notice Mailing Deadline]. Your written objection must contain the specific information set forth in the Settlement Agreement which is available on the Settlement Website at [url]._____.

IF YOU DO NOT TIMELY MAIL YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS AND WILL NOT BE ENTITLED TO SPEAK AT THE FINAL HEARING.

When and where will the Court decide whether to approve the settlement?

The Court has preliminarily approved the proposed settlement. The Court will hold a Final Fairness Hearing on _____2021, at _____ a.m./p.m.. The hearing will be held in the United States Federal Courthouse for the Middle District of Florida, Orlando, Florida, 401 West Central Boulevard, Orlando, Florida 32801, in Courtroom [_____]. At the Fairness Hearing, the Court will consider whether the proposed settlement is fair, reasonable, and adequate. The Court will hear objections to the settlement, if any. You may attend, but you do not have to attend. You (or your counsel) may speak at the Final Hearing only if (a) you have timely served and filed an objection, and (b) your objection stated an intent to speak at the Final Hearing.

We do not know how long the Court will take to make its decision. In addition, the hearing may be continued (i.e., postponed or rescheduled) at any time by the Court without further notice to you. Finally, the Final Hearing may be held via Zoom or by phone due to the ongoing pandemic without further notice to you. If you plan to attend the Final Hearing, you may contact Class Counsel to confirm the date and time.

Payments will be made if the Court approves the settlement. If the settlement is not approved by the Court or does not become final for some reason, the Lawsuit may continue.

Where can I get additional information?

This notice is only a summary of the proposed settlement of this lawsuit. Certain pleadings and documents filed in Court, including the Settlement Agreement, may be reviewed or copied in the Clerk's Office or by visiting the website [insert url].

EXHIBIT B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

ELVA BENSON, on behalf of herself and on behalf of all others similarly-situated,

Plaintiff,

v. **CASE NO.: 6:20-cv-891-Orl-37LRH**

ENTERPRISE HOLDINGS, INC., and ENTERPRISE LEASING COMPANY OF ORLANDO, LLC,

Defendants.
_____/

[*PROPOSED*] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

This matter is before the Court on Plaintiff's Unopposed Motion for Preliminary Approval of Settlement and Notice to the Settlement Class. (Doc. ___ ("Motion"). On review and after a hearing (Doc. ___), the Court grants the Motion.

Plaintiff alleges a violation of the WARN Act. In the Complaint, Plaintiff alleged that Defendants violated the WARN Act by terminating her and the class members without sufficient notice. This case has been extensively litigated, including at the District Court and also at the Eleventh Circuit Court of Appeals. This Court previously certified a nationwide class of 964 persons who worked for various Enterprise facilities.

Now, Plaintiff represents the parties reached a settlement after arms-length negotiation and mediation. Thus, Plaintiffs seeks: (1) preliminary approval of the

Stipulation of Settlement; and(2) approval of the Notice of Action Settlement for distribution to members of the Class.

Federal Rule of Civil Procedure 23(e) requires judicial approval of a class action settlement. Before granting such approval, a court should ensure the settlement "is fair, adequate and reasonable and is not the product of collusion between the parties." *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984) (citation omitted). "Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial." *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). But the Court must give heightened scrutiny to the other Rule 23 requirements because the Court will lack the normal opportunity to adjust the class based on information revealed during the proceedings. *Id.*; see Fed. R. Civ. P. 23.

Having reviewed the factors set forth in Fed. R. Civ. P. 23(e)(2), listening to the parties' argument at the hearing on Plaintiff's Unopposed Motion, and reviewing the Settlement Agreement, Notice, and additional exhibits, the Court preliminarily approves the settlement set forth in the parties' Settlement Agreement as being a fair, reasonable, and adequate resolution of the pending class action claims.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiff's Unopposed Motion for Preliminary Approval of Settlement and Notice to Settlement Class (Doc. ____) is **GRANTED**.

2. Incorporation of Definitions. This Order incorporates by reference the definitions set forth in the Unopposed Motion for preliminary approval and the proposed settlement agreement, and all terms used herein shall have the same meaning as set forth in those filings.

3. Preliminary Approval of Proposed Settlement. The proposed settlement agreement, including all exhibits thereto, is preliminarily approved as fair, reasonable, adequate, and within the range of reasonableness for preliminary settlement approval. The Court preliminarily finds that the proposed settlement agreement resulted from extensive arm's length negotiations and with the help of a mediator, and is sufficient to warrant notice of the Settlement to persons in the Settlement Class and a full hearing on the approval of the Settlement.

4. 6. Class Notice. The parties' Class Notice is approved for distribution in accordance with the schedule included in the Settlement.

7. Initial Motion for Fees and Expenses. Pursuant to Rule 23(h), Class Counsel is directed to file a motion for attorneys' fees and costs at 14 days before the objection deadline for class members.

8. Opt-Outs and Objections. Class Members shall have the right to either opt-out or object to this Settlement pursuant to the procedures and schedule included in the Settlement.

9. Jurisdiction. The Court has jurisdiction over the subject matter of the Action, the Class Representative, the Class Members, and Defendant. Jurisdiction is retained by this Court for matters arising out of the Settlement.

10. Final Approval Hearing. A final approval hearing is set for [*date*] at [*time a.m./p.m.*] in Courtroom [room number], United States Federal Courthouse for the Middle District of Florida, Orlando, Florida, 401 West Central Boulevard, Orlando, Florida 32801. At the Fairness Hearing, the Court will consider whether the proposed settlement is fair, reasonable, and adequate. The Court will hear at the final fairness hearing objections to the settlement, if any. Please note: the Final Hearing may be held via Zoom or by phone due to the ongoing pandemic without further notice to the class members.

11. Timeline. The Court sets the following schedule for the final approval hearing and the actions which must take place before and after it:

Defendant provides Class List to Settlement Administrator Settlement Administrator establishes Settlement Website Settlement Administrator mails Notice ("Notice Date")	No later than 7 days after Preliminary Approval Order is issued No later than 7 days after Preliminary Approval Order is issued No later than 7 days after receiving Class List
Deadline for Filing Claim	60 Days after Notice is mailed by Settlement Administrator
Deadline for Objections	60 days after Notice is mailed by Settlement Administrator
Deadline for Opt Outs (Exclusion Requests)	60 days after Notice is mailed by Settlement Administrator
Deadline for Motion for Attorney's Fees and Costs, Class Settlement Administration Costs	30 days after Notice is mailed to the Class
Deadline for Motion for Final Approval	45 days after the Response Deadline (i.e., 105 days after notice is mailed)

Fairness Hearing	TBD by Court
Defendants deposit the full Settlement Fund	7 days after Final Approval Date
Defendants deposit Court-approved attorneys' fees	7 days after the Final Approval Date

DONE AND ORDERED in Orlando, Florida on this _____ day of _____, 2021.

_____
HON. ROY B. DALTON
United States District Judge