

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
In re: : Chapter 11  
: :  
JCK LEGACY COMPANY, *et al.*, : Case No. 20-10418 (MEW)  
: :  
Debtors.<sup>1</sup> : (Jointly Administered)  
: :  
-----X **Related Docket Nos. 1410, 1433**

**FINAL ORDER APPROVING THE SETTLEMENT AGREEMENT  
BETWEEN GUC RECOVERY TRUSTEE AND SETTLEMENT CLASS  
OF FORMER NEWSPAPER CARRIERS AND GRANTING RELATED RELIEF**

The Court has considered the Joint Motion<sup>2</sup> Docket No. 1410 presented by William A. Brandt, Jr. (the “**GUC Recovery Trustee**”) and Veronica Becerra, Roger Carpenter, Vanessa Castro, Alma Landeros, Randy Leyva, and Williams Herrera Luis (the “**Class Representatives**”), on their own behalf and similarly situated prospective class members (together with the Class Representatives (excluding those who opt-out), the “**Class**”, and each member within the Class “**Class Member(s)**”, and together with the Class Representatives and the GUC Recovery Trustee, the “**Parties**”) for an order approving the Settlement and Mutual Release Agreement (the “**Settlement**”) dated as of February 25, 2022 (attached as **Exhibit A**) settling the misclassification and mileage reimbursement claims, and certain other claims as described in the Settlement and the Joint Motion; and the Bankruptcy Court having reviewed and considered the Joint Motion, and upon the arguments of counsel made, and the evidence adduced, at the hearing held on June 15, 2022 (the “**Fairness Hearing**”) where all interested persons had an opportunity to be heard; and upon the record of the Preliminary Hearing held on March 17, 2022, and the Fairness Hearing, and

---

<sup>1</sup> The Debtors in these chapter 11 cases and the last four characters of each Debtor’s tax identification number are: JCK Legacy Company (0478) and Herald Custom Publishing of Mexico, S. de R.L. de C.V. (SUZ1). The location of the GUC Recovery Trustee’s service address for purposes of these chapter 11 cases is: 110 East 42 Street, Suite 1818 New York, NY 10017.

<sup>2</sup> Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the Joint Motion.

after due deliberation thereon and good cause appearing thereof:

The Court hereby finds:

- A. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334;
- B. This is a core proceeding under 28 U.S.C. § 157(b);
- C. Venue for this matter is proper in this district under 28 U.S.C. §§ 1408 and 1409;
- D. The Court has entered an order on March 18, 2022, Docket No. 1433, certifying the Class for settlement purposes, granting preliminary approval of the Settlement, approving the form and manner of notice to be given the Class of class certification and the Settlement and the deadline for opting out of the Class and filing objections to the Settlement, and approving the form and manner of notice to federal and state officials under 28 U.S.C. § 1715 of the Class Action Fairness Act;
- E. Due notice has been given to the Class of the Settlement, of the right to opt-out of the Class or object to the Settlement, and of the right to appear in person or by counsel at the Fairness Hearing; and no other and further notice is required and such notice is deemed proper and sufficient under the circumstances and meets all applicable requirements of Rules 23(c) and (e), Bankruptcy Rules 7023 and 9019(a), and the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- F. Due notice has been given to federal and state officials under 28 U.S.C. § 1715 of the Class Action Fairness Act;
- G. The Court held a Fairness Hearing on June 15, 2022, to consider final approval of the Settlement and has determined that the legal and factual bases outlined in the Joint Motion and at the Fairness Hearing establish just cause for the relief granted herein;
- H. All Class Members who did not exercise the right to opt-out of the Class are bound

by this Order and the terms of the Settlement;

I. The GUC Recovery Trustee has authority to enter into the Settlement;

J. The terms of the Settlement are fair, reasonable, and adequate under Rule 23, as incorporated by Bankruptcy Rule 7023, and the nine-factor test developed in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974);

K. The Class Counsel Award and Class Administrator fee set forth in the Settlement are reasonable;

L. The Settlement was negotiated at arm's-length and in good faith, and is fair and equitable and in the best interests of the Debtors' estates and the GUC Recovery Trust; and

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

**THEREFORE, IT IS HEREBY ORDERED:**

1. The Joint Motion is **GRANTED**.

2. The Settlement is **APPROVED**.

3. All Class Members are bound by the Settlement and this Order.

4. The GUC Recovery Trustee is authorized to accept the rescission of any opt-out form completed by a Class Member, and upon rescission, such Class Member shall be bound by the Settlement and this Order.

5. As of the effective date of the Settlement, the GUC Recovery Trustee and the Class Administrator are authorized to implement the terms of the Settlement and make payments required thereunder and in accordance with the Settlement and the Plan.

6. Within seven (7) business days after entry of this Order, the Class Representatives shall take all necessary steps to secure dismissal of the Class Action with prejudice.

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

Dated: June 16, 2022  
New York, NY

**s/Michael E. Wiles**  
Michael E. Wiles  
United States Bankruptcy Judge

**Exhibit A**

Settlement and Mutual Release Agreement

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----	X	
In re:	:	Chapter 11
	:	
JCK LEGACY COMPANY, <i>et al.</i> ,	:	Case No. 20-10418 (MEW)
	:	
Debtors. <sup>1</sup>	:	(Jointly Administered)
	:	
-----	X	

**SETTLEMENT AND MUTUAL RELEASE AGREEMENT**

This Settlement and Mutual Release Agreement (the “**Settlement**”) is made and entered into as of the 25th day of February, 2022, by and between William A. Brandt, Jr., in his capacity as trustee (“**Brandt**” or the “**GUC Recovery Trustee**”) for the JCK GUC Recovery Trust (the “**GUC Recovery Trust**”) established under the GUC Recovery Trust Agreement (the “**Trust Agreement**”) and the *First Amended Joint Chapter 11 Plan of Distribution of JCK Legacy Company and Its Affiliated Debtors and Debtors in Possession* (the “**Plan**”), confirmed on September 25, 2020 (the “**Confirmation Order**”) [Docket No. 879], and Veronica Becerra, Roger Carpenter, Vanessa Castro, Alma Landeros, Randy Leyva, and Williams Herrera Luis (the “**Class Representatives**”) (together with the GUC Recovery Trustee, the “**Parties**”) on their own behalf and on behalf of similarly situated class members (the “**Class**”, and together with the Class Representatives, the “**Class Members**”).

**RECITALS**

A. **WHEREAS**, on December 19, 2008, the Class Representatives filed a putative class action complaint against The McClatchy Company, a Delaware Corporation, d/b/a The Fresno Bee, and McClatchy Newspapers Inc., a Delaware Corporation, d/b/a The Fresno Bee

---

<sup>1</sup> The Debtors in these chapter 11 cases and the last four characters of each Debtor’s tax identification number are: JCK Legacy Company (0478) and Herald Custom Publishing of Mexico, S. de R.L. de C.V. (5UZ1). The location of the GUC Recovery Trustee’s service address for purposes of these chapter 11 cases is: 110 East 42 Street, Suite 1818 New York, NY 10017.

(collectively, the “**Bee**”), in the Superior Court (the “**Court**”) for the County of Fresno (Case No. 08CECG04411 (KAG)) (the “**Class Action**”), asserting causes of action for: (1) failure to pay minimum wages and overtime wages; (2) failure to provide meal periods or compensation in lieu thereof; (3) failure to provide rest periods or compensation in lieu thereof; (4) failure to reimburse reasonable expenses; (5) unlawful deductions from wages; (6) failure to pay for training; (7) failure to provide itemized wage statements; (8) failure to keep accurate payroll records; and (9) unfair business practices.

B. **WHEREAS**, the Class Members are former newspaper carriers of the Bee and consist of 3,810 individuals.

C. **WHEREAS**, on July 15, 2013, the Court certified the Class, which comprise of former newspaper carriers of the Bee and carriers who signed contracts directly with the Bee in the State of California, between December 19, 2004 and January 31, 2010 (the “**Class Period**”). Omitted from the class definition were carrier substitutes and large distributors.

D. **WHEREAS**, on March 24, 2014, the Court dismissed all causes of action, except the ninth cause of action for violation of Bus. & Prof. Code, § 17200 *et seq.* (the “**UCL**”). On April, 2, 2014, the Court approved the Class Action parties’ stipulation of notice to the class regarding plaintiffs’ dismissal of certain claims.

E. **WHEREAS**, on November 19, 2014, the Court commenced Phase One of the trial solely on the ninth cause of action for violation of the UCL. The Court framed the issues as follows: (a) whether the carriers were misclassified as independent contractors; (b) if yes, whether the carriers were properly reimbursed for mileage expenses; and (c) if no, whether The McClatchy Company was the joint employer of the carriers.

F. **WHEREAS**, on March 4, 2015, the Class Action parties concluded presentation of evidence of Phase One. On July 28, 2015, the Court denied the Class Action defendants' post-trial motion to decertify the class. Post-trial briefs were filed November 20, 2015, and final closing arguments were heard on February 5, 2016.

G. **WHEREAS**, on September 9, 2016, the Court issued a statement of decision, finding that the Class Members were properly classified as independent contractors. In so ruling, the Court relied on section 4304-6 of title 22 of the California Code of Regulations, regulations promulgated by the Employment Development Department (the "**EDD Regulations**") and which contain factors necessary to determine whether a party is either an employee or an independent contractor for purposes of the Unemployment Insurance Code.

H. **WHEREAS**, the Court examined the business arrangements at issue in the Class Action within the framework of the EDD Regulations and determined that the Class acted independently, free from the Bee's control. The Court also considered common law factors and fourteen "secondary factors" typically applied in employment and labor issues to determine the independent contractor status of the Class. Application of these factors led to the same conclusion that the Class Members were properly classified as independent contractors.

I. **WHEREAS**, on September 15, 2016, the Court entered a judgment in favor of the Bee, and the Class Representatives timely appealed the judgment to the Court of Appeal of the State of California (the "**Appeal**"), the Fifth Appellate District (Case No. F074680) (the "**Appellate Court**").

J. **WHEREAS**, on February 13, 2020, The McClatchy Company and fifty-four of its direct and indirect subsidiaries (including McClatchy Newspapers, Inc., d/b/a the Bee) (collectively, the "**Debtors**") each commenced a case (the "**Chapter 11 Cases**") by filing a



voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”). The Chapter 11 Cases were assigned to the Honorable Michael E. Wiles, United States Bankruptcy Judge and are jointly-administered under the case caption, *In re JCK Legacy Co., et al.*, Case No. 20-10418 (MEW) (Bankr. S.D.N.Y.).

K. **WHEREAS**, due to the filing of the Chapter 11 Cases, which included the Bee, the Appeal was stayed under section 362(a) of the Bankruptcy Code.

L. **WHEREAS**, on April 28, 2020, the Debtors scheduled the Class as holder of a contingent, unliquidated, and disputed claim [Docket No. 4] (All docket citations are to the PACER/ECF docket in the Chapter 11 Cases). The Bankruptcy Court set July 10, 2020, at 5:00 p.m. (ET) [Docket No. 485], as the deadline for non-governmental parties holding prepetition claims to file proofs of claim.

M. **WHEREAS**, on July 7, 2020, the Class Representatives filed Proofs of Claim Nos. 1841 and 1880 in the Bankruptcy Court, each asserting a general unsecured claim amount of \$19,453,649 based on unreimbursed mileage expenses, interest, and attorney’s fees and costs.

N. **WHEREAS**, on September 25, 2020, the Bankruptcy Court confirmed the Plan, which established the GUC Recovery Trust under the Trust Agreement. The Plan went effective on September 30, 2020 (the “**Plan Effective Date**”) [Docket No. 886].

O. **WHEREAS**, as of the Plan Effective Date, Brandt is the appointed trustee of the GUC Recovery Trust. Confirmation Order at 11; Trust Agreement, § 2.1; Plan § 6.20. As GUC Recovery Trustee, Brandt is authorized to review, object to, settle and resolve all general unsecured claims filed against the Debtors’ estates. Trust Agreement, § 6.1. Brandt is also authorized to take any action that may be or could have been taken by any officer or director of

the Debtors or their estates with respect to the GUC Recovery Trust Assets, *id.* at § 2.2(e), represent the Debtors' estate before any court of competent jurisdiction on matters concerning the GUC Recovery Trust, *id.* at § 2.2(m), implement and enforce the terms and conditions under the Plan, *id.* at § 2.2(p), enter into any agreement that is consistent with the Plan, the Confirmation Order, and the Trust Agreement, *id.* at § 2.2(u), and take any action that is reasonably necessary to administer the GUC Recovery Trust and the Plan. *Id.* at § 2.2(aa).

P. **WHEREAS**, on January 15, 2021, the Plan Administrator<sup>2</sup> in the Chapter 11 Cases filed an omnibus objection to various duplicate claims, which included an objection to Proof of Claim No. 1841 [Docket No. 1091]. On February 19, 2021, the Bankruptcy Court entered an order granting the Plan Administrator's omnibus objection [Docket No. 1129]. Upon entry of the order, Proof of Claim No. 1841 was expunged from the claims register, and Proof of Claim No. 1880 was deemed the surviving claim (the "**Surviving Claim**").

Q. **WHEREAS**, after entry of the Confirmation Order, the automatic stay barring further proceedings of the Appeal was lifted. *See* Docket No. 879.

R. **WHEREAS**, on September 30, 2021, the Appellate Court issued a decision, reversing the Court's findings that the Class Members were properly classified as independent contractors. Among other things, the Appellate Court ruled that the Court misapplied the burden of proof and failed to apply a 1989 California Supreme Court precedent to determine the Class Members' status as either employees or independent contractors.

S. **WHEREAS**, notwithstanding the decision, the Appellate Court declined to enter a ruling in favor of the Class Representatives' on the merits that the Class Members were employees

---

<sup>2</sup> The Plan created two liquidation trusts: (a) the Plan Administrator Trust, which is administered by the Plan Administration Trustee, a/k/a "Plan Administrator"; and (b) the GUC Recovery Trust, which is administered by the GUC Recovery Trustee. *See* Plan §§ 6.6 and 6.20.

as a matter of law. According to the Appellate Court, much of the Class Representative's evidence concerning the Bee's right to control remained disputed, and the Court did not resolve whether such evidence was credible or whether such evidence described policies applicable to the Class. Accordingly, the Appellate Court remanded the case back to the Court for further proceedings.

T. **WHEREAS**, after negotiations with Class Counsel (defined below), it has been agreed to that the Class is entitled to an allowed general unsecured claim in the total amount of \$19,453,649, which includes Class Counsel fees and costs. The allowed claim shall consist of: (a) \$12,353,659 to the Class as mileage reimbursement for reasonable expenses; and (b) \$7,099,990 to Class Counsel, for attorney's fees and costs.

U. **WHEREAS**, after good-faith, arm's-length negotiations, in order to avoid the costly and burdensome process of administering potentially hundreds of individual claims that may be asserted by the Class Members in these Chapter 11 Cases, the Parties have agreed to the terms and conditions set forth herein.

V. **WHEREAS**, the Bankruptcy Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334; this is a core proceeding pursuant to 28 U.S.C. § 157(b); and venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

**NOW, THEREFORE**, in consideration of the mutual covenants, the promises and other good and valuable consideration, the sufficiency of which hereby are acknowledged, the undersigned parties agree as follows:

#### **AGREEMENT**

1. **Joint Motion for Class Certification, Settlement Approval, and Class Notice**

(a) **Joint Motion.** After the execution of this Settlement, the Parties agree to file a joint motion (the "**Joint Motion**") seeking the Bankruptcy Court's approval of the Settlement

under procedures considered herein and under Rules 9019 and 7023 of the Federal Rules of Bankruptcy Procedure (“**Bankruptcy Rule(s)**”).

(b) **Preliminary Hearing.** The Joint Motion shall request a preliminary hearing at which time the Parties shall seek entry of an order from the Bankruptcy Court (the “**Preliminary Order**”) certifying the Class for settlement purposes only, preliminarily approving the Settlement, and approving the form and manner of notice to the members of the Class, including, among other things, their right to opt-out of the Class, object to the Settlement and appear by counsel.

(c) **Fairness Hearing.** The Parties shall request a date for a fairness hearing (the “**Fairness Hearing**”) at which the Bankruptcy Court will consider final approval of the Settlement, including attorney’s fees and costs for Class Counsel and the Class Administrator Fee (as defined below), as well as the GUC Recovery Trustee’s authority to enter into the Settlement.

(d) **Finality.** This Settlement is only valid if the Bankruptcy Court certifies the Class for settlement purposes only pursuant to Rule 23 of the Federal Rules of Civil Procedure (“**Rules**”), as incorporated by Bankruptcy Rule 7023.

## 2. **Class Certification and Appoint of Class Counsel and Class Representatives**

(a) **Class Certification.** Upon execution of this Settlement, the Parties consent to the certification of the Class in connection with the Class Action, i.e., all former newspaper carriers of the Bee who worked between the period of December 19, 2004 and January 31, 2010, *provided, however*, that such Class shall be certified for settlement purposes only pursuant to Rule 23(b)(3), as made applicable by Bankruptcy Rule 7023, and upon this Settlement’s final approval by the Bankruptcy Court.

(b) **Appointment of Class Counsel.** Callahan & Blaine APLC (“**Class Counsel**”) shall be appointed as class counsel for the Class created under this Settlement.

(c) **Appointment of Class Representatives.** Veronica Becerra, Roger Carpenter, Vanessa Castro, Alma Landeros, Randy Leyva, and Williams Herrera Luis shall be appointed as Class Representatives for the Class created under this Settlement.

### 3. **Settlement**

(a) **Class Settlement Amount.** Upon the entry of an order approving this Settlement on a final basis (the “**Final Order**”) pursuant to Rule 23 and Bankruptcy Rules 7023 and 9019, the Class Members collectively shall have, and may assert an allowed general unsecured claim against the GUC Recovery Trust in the amount of \$12,353,659 (the “**Class Settlement Amount**”).

(b) **Class Counsel Award.** Upon the entry of the Final Order pursuant to Rule 23 and Bankruptcy Rules 7023 and 9019, Class Counsel shall be entitled to an allowed general unsecured claim against the GUC Recovery Trust in the amount of \$7,099,990, comprised of: (a) \$6,000,000 in legal fees; and (d) \$1,099,990 in legal costs (the “**Class Counsel Award**”).

### 4. **Individual Class Member Settlement Payment Calculation**

(a) **Individual Class Member Settlement Payment.** The GUC Recovery Trustee’s sole responsibility with respect to the Class Settlement Amount shall be to treat such amount as a general unsecured claim and make a distribution on account of such amount to the Class Administrator (defined below). The Class Administrator shall have sole responsibility for allocating the Class Settlement Amount to the Class Members.

(b) After payment of the Class Administrator Fee from the Class Settlement Amount (the “**Net Settlement Amount**”), each Class Member will receive, as a pro rata share of

the Net Settlement Amount, an Individual Class Member Settlement Payment relative to the total number of days worked by all Class Members during the Class Period. Individual Class Member Settlement Payments shall be calculated and apportioned as follows:

- i. Determine total number of Work Days.
  - ii. Divide Net Settlement Amount by the total number of Work Days; the resulting figure is the value of the Work Day ("**Base Value**").
  - iii. Multiply Base Value by the number of the Class Member's Work Days.
- (c) The resulting figure shall be the "Individual Class Member Settlement Payment" for each Class Member.

**5. Distribution**

(a) **Distribution of Class Settlement Amount.** The Class Settlement Amount shall be paid from assets of the GUC Recovery Trust and distributed to the Class Administrator for purposes of making distributions of the Individual Class Member Settlement Payment(s) to the Class Members. Any distribution of the Class Settlement Amount to the Class Administrator shall be made in accordance with the terms of distribution under the Plan.

(b) **Distribution of Individual Class Member Settlement Payments.** The Individual Class Member Settlement Payment(s) shall be mailed by the Class Administrator (defined below) to the Class Member(s) within thirty (30) business days following receipt of the Class Settlement Amount. The GUC Recovery Trustee shall have no responsibility with respect thereto.

(c) **Distribution of Class Counsel Award.** The Class Counsel Award shall be paid from assets of the GUC Recovery Trust and distributed to Class Counsel in accordance with the terms of distribution under the Plan.

(d) **Uncashed Settlement Checks.** Any Individual Class Member Settlement Payment checks which are not deposited, endorsed, or negotiated within one hundred eighty (180) days of their date of issuance shall be deemed residual funds (“**Residual Funds**”) on the hundred and eighty-first day (181) following distribution of the Net Settlement Amount by the Class Administrator. All Residual Funds shall revert to the GUC Recovery Trust and be distributed in accordance with Section 9.6 (d) and (e) of the Plan and Section 7.5 and 9.3 of the Trust Agreement.

(e) **Effect of Uncashed Settlement Checks.** Class Members who fail to cash their check(s) in a timely fashion shall remain subject to the terms of the Settlement, the Released Claims, and the Final Order from the Bankruptcy Court.

6. **Class Administrator.** CPT Group, Inc. shall serve as class administrator (the “**Class Administrator**”) for purposes of administering this Settlement and shall receive a professional fee of \$30,000 (the “**Class Administrator Fee**”), which shall be paid solely out of the Class Settlement Amount. The Parties represent that they do not have any financial interest in the Class Administrator or otherwise have a relationship with the Class Administrator that could create a conflict of interest.

7. **Class Administrator Fee.** Within ten (10) business days after receipt of the Class Settlement Amount, the Class Administrator shall release the Class Administrator Fee in accordance with the terms of this Settlement or the Final Order.

8. **Class Notice**

(a) **Notice by First-Class U.S. Mail.** Within ten (10) days after entry of the Preliminary Order, the Class Notice shall be sent by the Class Administrator via regular first-class mail to the last known address of each Class Member, as provided by Class Counsel

(the “**Class Notice**”). The Class Notice shall be in substantially the form as approved by the Bankruptcy Court.

(b) **Non-Deliverable Notices.** For any Class Notice returned as non-deliverable within the time frames set forth by the Class Notice, the Class Administrator will promptly re-mail the Class Notice to the addressee via first-class mail if the returned Class Notice contains a forwarding address. If no forwarding address is provided, the Class Administrator will promptly attempt to determine the correct address using a skip-trace, or other search, and will then perform a single re-mailing. Those Class Members who receive a re-mailed Class Notice shall have between the later of: (a) an additional fifteen (15) days or (b) the response deadline stated in the Class Notice to opt-out or object to the Settlement. If the Class Administrator does not receive a new address for any Class Notice returned as non-deliverable within twenty-one (21) calendar days of the return of the Class Notice, the Parties will be deemed to have satisfied the requirement of due process and the obligation to provide the Class Notice to the Class Member through the original mailing.

9. **Objection Procedures to Settlement.** Unless otherwise modified by the Bankruptcy Court, the Class Members shall have thirty (30) days from the mailing of the Class Notice to object to the Settlement by sending written notice of such objection (“**Notice of Objection**”) to counsel for the GUC Recovery Trustee and Class Counsel. A Notice of Objection shall specify the relief sought and grounds for such relief.

10. **Release of Claims by Class Representatives and All Class Members.** Upon the Settlement Effective Date (defined below) and in exchange for the consideration provided, the Class Representatives and all Class Members (excluding those who opt-out), regardless of whether they have submitted a timely and valid proof of claim in the Chapter 11 Cases and their respective



heirs, beneficiaries, devisees, executors, administrators, trustees, conservators, guardians, personal representatives, successors-in-interest and assigns (the “**Releasing Person(s)**”), shall hereby fully and forever completely release and discharge the Debtors and the GUC Recovery Trust all of their past, present or future subsidiaries, parents, affiliates, officers, directors, employees, representatives, insurers, agents, counsel, successors, heirs, assigns, executors, administrators, affiliated entities, and vendors (each a “**Released Party**”) from all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys’ fees, known or unknown, in law or equity, fixed or contingent, that accrued on or before the execution of this Settlement. The release includes, but is not limited to any claims for restitution, equitable relief, wages, bonuses or incentive payments, penalties, interest, and/or attorneys’ fees and costs of any kind arising under California or federal law for the claims asserted in the Class Action or that could have been alleged under California or federal law based on the alleged facts in any of the complaints filed in the Class Action, including without limitation, Wage Order 9-2001, Business and Professions Code sections 17200-17208, and California Labor Code sections 200-203, 216, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1194 and 2698-2699.5 (the California Private Attorneys General Act) and 29 U.S.C. §§ 201 et seq. (collectively, the “**Released Claims**”).

11. **Waiver of California Civil Code Section 1542.** With respect to the Released Claims only, each Releasing Party expressly warrants that he or she has read, understands, and intends to waive the rights described in Section 1542 of the California Civil Code which provides:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her would have materially affected his or her settlement**

**with the debtor or the released party.**

Thus, notwithstanding the provision of Section 1542, and for the express purpose of implementing a full and complete release and discharge of each Released Party, Releasing Persons expressly acknowledge that this Settlement is intended to include within its effect, without limitation, all Released Claims that Releasing Persons do not know or suspect to exist in his or her favor at the time of execution of this Settlement, and that this Settlement contemplated the extinguishment of any and all such Released Claim(s).

12. **Stipulation of Dismissal With Prejudice.** Within seven (7) business days after entry of the Final Order approving this Settlement, the Parties shall execute a stipulation of dismissal of the Class Action with prejudice.

13. **Effective Date of Settlement.** The effective date of this Settlement (the “**Settlement Effective Date**”) shall be the date upon which the Final Order is entered by the Bankruptcy Court. If the Settlement Effective Date does not occur, then this Settlement shall be *void ab initio* and the Parties shall revert to their respective positions, and in such event the Parties shall not rely on this Settlement or any of the negotiations with the GUC Recovery Trustee that resulted in this Settlement.

14. **Miscellaneous Provisions.**

(a) **Entire Agreement.** This Settlement contains the entire understanding of the Parties hereto with respect of the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings governing the subject matter of this Settlement other than those expressly set forth or referred to herein. This Settlement supersedes all prior agreements.

(b) **Amendment or Modification.** This Settlement may not be changed, amended, altered, or modified, except in writing and signed by the Parties, and approved by the Bankruptcy Court.

(c) **Real Party in Interest.** In executing this Settlement, the Parties warrant and represent that they, including Class Representatives in their representative capacity on behalf of the Class, are the only persons having any interest in the claims asserted in the Class Action. Neither these claims, nor any part of these claims, have been assigned, granted, or transferred in any way to any other Persons.

(d) **Integration Clause.** This Settlement contains the entire agreement between the Parties relating to the resolution of the Class Action, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged in this Settlement. No rights under this Settlement may be waived except in writing.

(e) **Construction.** The Parties have negotiated the Settlement at arms-length and in good faith. The Parties agree that they executed this Settlement knowingly, voluntarily, and without duress or undue influence, and that this Settlement shall not be construed in favor of or against any party.

(f) **Parties' Authority.** The respective signatories to the Settlement represent that they are fully authorized to enter into this Settlement and bind the respective Parties to its terms and conditions.

(g) **Class Signatories.** The Parties agree that because the members of the Class are so numerous, it is impractical to have each Class Member execute this Settlement. The Class Notice will advise all Class Members of the binding nature of the releases set forth herein.

Excepting only the Class Members who timely opt out of the Settlement pursuant to the opt out procedure approved by the Bankruptcy Court, the Class Notice shall have the same force and effect as if this Settlement was executed by each Class Member.

(h) **Counterparts.** This Settlement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties shall exchange among themselves original signed counterparts.

(i) **Governing Law.** This Settlement shall be governed by, construed, and interpreted, and the rights of the Parties determined in accordance with the laws of the State of California, except to the extent bankruptcy laws apply, irrespective of the State of California's choice of law principles. This Settlement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties.

(j) **Notices.** If not otherwise specified, all notices, requests, demands and communications required or permitted to be given pursuant to this Settlement shall be in writing and shall be delivered personally or mailed overnight to Class Counsel and counsel for the GUC Recovery Trustee.

(k) **Binding on Successors.** This Settlement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors and/or assigns.

(l) **Costs and Attorney's Fees.** Other than as set forth above, all parties hereto shall bear their own costs and attorneys' fees in connection with the disputes and the claims raised in the Class Action that are the subject of this Settlement.

(m) **Retention of Jurisdiction.** The Parties hereby agree that the Bankruptcy Court shall have exclusive jurisdiction to hear and determine any claims or disputes among the Parties pertaining directly or indirectly to this Settlement or any matter arising therefrom. The Parties hereby waive any objection which any of them may have to the venue of any action commenced in the Bankruptcy Court.

(n) **Severability.** The invalidity of any particular provision of this Settlement shall not affect the other provisions hereof, which nevertheless shall continue in full force and effect.

(o) **Headings.** The various headings used in this Settlement were formatted and inserted solely for the Parties' convenience and may not be used to interpret this Settlement. The headings and formatting do not define, limit, extend, or describe the Parties' intent or the scope of this Settlement.

(p) **No Waiver.** The waiver by one Party of any breach of this Settlement by any other Party shall not be deemed a waiver by any other Party or a waiver of any other prior or subsequent breach of this Settlement.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the Parties have executed and delivered this Settlement as of  
the date first written above.

Dated: February \_\_, 2022

\_\_\_\_\_  
William A. Brandt, Jr.

*GUC Recovery Trustee of the JCK Legacy GUC  
Recovery Trust created under the GUC  
Recovery Trust Agreement and Joint Chapter  
11 Plan*

Dated: February \_\_, 2022

**CALLAHAN & BLAINE APLC**

By: \_\_\_\_\_

Michael J. Sachs

Scott D. Nelson

*Proposed Class Counsel*