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Attorney for Defendants Jose M.
Plehn-Dujowich and BizQualify LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

QIUZI HU, an individual, **EDWIN
RAMIREZ**, an individual, **IVAN
RONCERIA**, an individual, **WENZHI FEI**,
an individual, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

**JOSE M. PLEHN-DUJOWICH, a.k.a.
JOSE M. PLEHN**, an individual;
BIZQUALIFY LLC, a California limited
liability company; and **POWERLYTICS,
INC.**, a Delaware corporation,

Defendants.

Case Number: 3:18-cv-01791-EDL

Honorable Elizabeth D. Laporte

**NOTICE OF JOINT MOTION AND JOINT
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Date: October 1, 2019

Time: 9:00 a.m.

Courtroom: E

PLEASE TAKE NOTICE that on October 1, 2019, at 9:00 a.m., before the Honorable Elizabeth D. Laporte in Courtroom E of the above-entitled court located at 450 Golden Gate Avenue, San Francisco, California, Plaintiffs Qiuzi Hu, Edwin Ramirez, Ivan Ronceria, and Wenzhi Fei (collectively, “Class Representatives”), on behalf of themselves and the Class, Subclass, and FLSA Collective, and Defendants Jose M. Plehn-Dujowich and BizQualify LLC (collectively, “Defendants;” Class Representatives and Defendants are hereinafter the “Parties”) will and hereby jointly move the Court for an order preliminarily approving the Parties’ Stipulation of Class Action Settlement and Release of Claims (“Class Settlement Agreement,” “Class Settlement,” or “Settlement”) pursuant to Rule 23(e) of the Federal Rules of Civil Procedure. A copy of the Class Settlement Agreement is filed herewith as **Exhibit A**.

1. On March 22, 2018, Class Representatives initiated this Class and Collective Action against Defendants, asserting various federal and state claims arising from, *inter alia*, Class Representatives’ enrollment in Defendants’ online course, the Global Financial Data Project (the “GFDP”), and Defendants’ advertising of, recruitment to, and performance during and after the same. Dkt. 1.

2. Class Representatives filed their operative First Amended Class and Collective Action Complaint (“FAC”) against Defendants and Powerlytics, Inc., on July 31, 2018, alleging claims for: (1) Failure to Pay Minimum Wage (29 U.S.C. § 201 *et seq.*); (2) Failure to Pay Minimum Wage (Cal. Lab. Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1); (3) Failure to Provide Accurate Wage Statements (Cal. Lab. Code § 226); (4) Failure to Reimburse Required Business Expenses (Cal. Lab. Code § 2802); (5) Failure to Pay Earned Wages Upon Discharge (Cal. Lab. Code §§ 201-203); (6) False Advertising (Cal. Bus. & Prof. Code § 17500); (7) Unfair Competition (Cal. Bus. & Prof. Code § 17200); (8) Violation of Consumer Legal Remedies Act (Cal. Civ. Code § 1750, *et seq.*); (9) Fraud (Cal. Civ. Code §§ 1709, 1710); (10) Negligent Misrepresentation (Cal. Civ. Code § 1710(2)); (11) Breach of Implied Contract; (12) Quantum Meruit; and (13) Civil Theft (Cal. Pen. Code § 496). Dkt. 40.¹

¹ On February 19, 2019, the Court granted Class Representatives’ stipulated request to voluntarily dismiss all claims against Powerlytics, Inc. Dkt. 76.

3. Defendants failed to timely respond to the FAC and the Court entered default against Defendants on September 13, 2018. Dkt. 52.

4. On February 25, 2019, being so moved by Class Representatives, the Court conditionally certified this Action as a Collective Action under the Federal Fair Labor Standards Act (“FLSA”), and certified the Class and California Subclass, defined as follows (Dkt. 80):

FLSA Collective: All persons who enrolled in the Global Financial Data Project (“GFDP”) while residing in, or who performed work for the project in, the United States or any territory of possession of the United States.

Class: All persons who enrolled in the GFDP. Excluded from the Class are Defendants’ officers and directors and the immediate families of the Defendants’ officers and directors. Also excluded from the Class are the Defendants’ legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or have had a controlling interest.

California Subclass: All members of the Class who resided in California during any portion of their participation in the GFDP, and/or who performed work in California for the GFDP, at any point.

5. On March 5, 2019, Defendants filed a motion to set aside the defaults entered against them, and requested a stay of the proceedings pending a settlement conference, which motion Class Representatives opposed. Dkts. 83, 87, 88.

6. On March 6, 2019, the Court issued an Order Rescinding Authorization to Disseminate Class Notices in light of Defendants’ motion to set aside the defaults. Dkt. 84.

7. The Court held a hearing on Defendants’ motion to set aside the defaults on April 9, 2019, took Defendants’ motion under submission, and referred this matter to Chief Magistrate Judge Joseph C. Spero for a settlement conference to be held on April 23, 2019.

8. Following an arm’s-length negotiation, and with the assistance of Judge Spero, the Parties reached terms of settlement at the April 23, 2019 settlement conference. The Parties thereafter entered into the Class Settlement Agreement. Ex. A. The Parties now request that the Court preliminarily approve the proposed Class Settlement.

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1 9. The proposed Class Settlement Agreement defines the Settlement Class as “all Class
2 Members,” including Class Representatives, who do not opt out of the settlement (Ex. A, p. 10):

3 **Settlement Class:** All Class Members, including Class Representatives, who do
4 not exclude themselves from the Class or Settlement Class, pursuant to the
5 procedures set forth in Section 6.3 of the Settlement Agreement and the Class
6 Notice.

7 10. The Settlement is fundamentally fair, adequate, and reasonable in light of the
8 circumstances of this case, and preliminary approval of the Settlement is in the best interests of the
9 Settlement Class Members. In return for a release of the Settlement Class Members’ claims, Defendants
10 have agreed to pay a sum of up to \$695,000 into a Settlement Fund, comprised of the following:

- 11 a. \$375,000 in exchange for a general release of all claims by the Settlement Class;
- 12 b. Up to \$20,000, in an amount to be determined by the Court, as incentive awards to
13 Class Representatives;
- 14 c. Up to \$300,000, in an amount to be determined by the Court, as payment for the
15 reasonable attorneys’ fees, costs, and expenses incurred by the Settlement Class,
16 which funds are to be paid to Class Counsel.

17 11. As this Court has previously explained, “[a]t the preliminary approval stage, the Court
18 may grant preliminary approval of a settlement and direct notice to the class if the settlement: (1) appears
19 to be the product of serious, informed, non-collusive negotiations; (2) has no obvious deficiencies; (3)
20 does not improperly grant preferential treatment to class representatives or segments of the class; and (4)
21 falls within the range of possible approval.” *Harris v. Vector Mktg. Corp.*, No. C-08-5198 EMC, 2011
22 WL 1627973, at *7 (N.D. Cal. Apr. 29, 2011); *see also* A. Conte & H.B. Newberg, *Newberg on Class*
23 *Actions*, §11.25 (4th ed. 2002); *Armstrong v. Bd. Of School Dir. Of City of Milwaukee*, 616 F.2d 305,
24 314 (7th Cir. 1980); *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 205 (5th Cir. 1981); *In re*
25 *Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007).

26 12. Here, the proposed Class Settlement reached between the Parties more than satisfies
27 this standard. Preliminary approval will not foreclose on interested persons objecting to the proposed
28 settlement and voicing any dissent.

13. Class Representatives file herewith their Memorandum of Points and Authorities in Support of the Joint Motion for Preliminary Approval of Class Action Settlement, as well as a supporting declaration from Class Counsel. Defendants are not submitting a memorandum.

WHEREFORE, the Parties respectfully request that the Court:

- (1) amend the February 25, 2019 Order certifying the Class (Dkt. 80), by certifying the Settlement Class pursuant to Fed. R. Civ. P. 23(b)(3), for settlement purposes, only;
- (2) enter an Order granting preliminary approval of the Class Settlement Agreement (**Exhibit A**), and directing Class Counsel, in its capacity as Settlement Administrator, to disseminate the Notice of Class Action Settlement, Claim Form, and Opt-Out Form filed herewith as **Exhibits B, C, and D**, to the Settlement Class by email and, where possible, mail;
- (3) schedule a Final Approval Hearing for the purpose of receiving evidence, argument, and any objections relating to the Parties' Class Settlement, and to set the amounts to be paid by Defendants in the form of incentive awards to Class Representatives and reasonable attorneys' fees, costs, and expenses to Class Counsel.

Respectfully submitted,

Date: August 10, 2019

DHILLON LAW GROUP INC.

By: /s/ Harmeet K. Dhillon

Harmeet K. Dhillon (SBN: 207873)

Krista L. Baughman (SBN: 264600)

Gregory R. Michael (SBN: 306814)

Attorneys for Plaintiffs, Class, Subclass, and
FLSA Collective

Date: August 10, 2019

KIEVE LAW OFFICES

By: /s/ Loren Kieve

Loren Kieve (SBN: 56280)

Attorney for Defendants Jose M. Plehn-
Dujowich and BizQualify LLC

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ATTESTATION PER L.R. 5-1

I, Harmeet K. Dhillon, hereby attest, pursuant to Local Rule 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto:

Dated: August 10, 2019 By: /s/ Harmeet K. Dhillon
Harmeet K. Dhillon (SBN: 207873)



EXHIBIT A

HARMEET K. DHILLON (SBN: 207873)
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GREGORY R. MICHAEL (SBN: 306814)
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Attorneys for Plaintiffs Qiuzi Hu, Edwin
Ramirez, Ivan Ronceria, Wenzhi Fei, Class,
and FLSA Collective

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Attorney for Defendants Jose M. Plehn-
Dujowich and BizQualify LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

QIUZI HU, an individual, **EDWIN
RAMIREZ**, an individual, **IVAN
RONCERIA**, an individual, **WENZHI FEI**,
an individual, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

**JOSE M. PLEHN-DUJOWICH, a.k.a.
JOSE M. PLEHN**, an individual;
BIZQUALIFY LLC, a California limited
liability company; and **POWERLYTICS,
INC.**, a Delaware corporation,

Defendants.

Case Number: 3:18-cv-01791-EDL

**STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE OF CLAIMS**

Complaint Filed: March 22, 2018

REDACTED PUBLIC VERSION

INTRODUCTION

This Stipulation of Class Action Settlement and Release of Claims (the “Settlement Agreement,” “Settlement” or “Agreement”) is entered into between Plaintiffs Qiuzi Hu, Edwin Ramirez, Ivan Ronceria, and Wenzhi Fei (“Class Representatives”) on behalf of themselves and all class members defined herein, and Defendants Jose M. Plehn-Dujowich, also known as Jose Plehn, and BizQualify LLC (collectively, “Defendants”). Class Representatives and Defendants are at times referred to collectively as the “Parties” herein.

1 RECITALS:

1.1 WHEREAS, on March 22, 2018, Class Representatives filed their Class and Collective Action Complaint against Defendants in the United States District Court, Northern District of California, titled *Hu, et al v. Plehn-Dujowich, et al.*, Case No. 3:18-cv-01791-EDL (the “Lawsuit”), alleging various legal claims arising from, *inter alia*, Class Representatives’ enrollment in Defendants’ online course, the Global Financial Data Project (the “GFDP”), and Defendants advertising of, recruitment to, and performance during and after the same (Dkt. #1);

1.2 WHEREAS, on July 31, 2018, Class Representatives filed their operative First Amended Class and Collective Action Complaint (“FAC”) against Defendants and Powerlytics, Inc., in the Lawsuit, alleging claims for: (1) Failure to Pay Minimum Wage (29 U.S.C. § 201 *et seq.*); (2) Failure to Pay Minimum Wage (Cal. Lab. Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1); (3) Failure to Provide Accurate Wage Statements (Cal. Lab. Code § 226); (4) Failure to Reimburse Required Business Expenses (Cal. Lab. Code § 2802); (5) Failure to Pay Earned Wages Upon Discharge (Cal. Lab. Code §§ 201-203); (6) False Advertising (Cal. Bus. & Prof. Code § 17500); (7) Unfair Competition (Cal. Bus. & Prof. Code § 17200); (8) Violation of Consumer Legal Remedies Act (Cal. Civ. Code § 1750, *et seq.*); (9) Fraud (Cal. Civ. Code §§ 1709, 1710); (10) Negligent Misrepresentation (Cal. Civ. Code § 1710(2)); (11) Breach of Implied Contract; (12) Quantum Meruit; and (13) Civil Theft (Cal. Pen. Code § 496) (Dkt. #40);

1.3 WHEREAS, Class Representatives brought this case as a class action under Rule 23 of the Federal Rules of Civil Procedure, on behalf of the Class and California Subclass, comprising all individuals who enrolled in the GFDP and those Class members that performed work for the

1 GFDP in California, respectively. Class Representatives also brought this case as a collective action
 2 under the Fair Labor Standards Act (“FLSA”) on behalf of the FLSA Collective, comprising all
 3 Class members who enrolled in the GFDP and performed work for the same within the United
 4 States or its territories (Dkt. #40);

5 **1.4 WHEREAS**, Defendants were served with the complaint and summons in this
 6 Action on March 31, 2018 (Dkts. #8, 9);

7 **1.5 WHEREAS**, Class Representatives and Defendants consented to proceed before
 8 Magistrate Judge Elizabeth D. Laporte on April 5, 2018 and May 11, 2018, respectively (Dkts. #7,
 9 13);

10 **1.6 WHEREAS**, Defendants failed to timely respond to the FAC and the Court entered
 11 default against Defendants on September 13, 2018 (Dkt. #52);

12 **1.7 WHEREAS**, on February 25, 2019, upon motion by the Class Representatives, the
 13 Court certified the Class and California Subclass and conditionally certified the FLSA Collective
 14 (Dkt. #80);

15 **1.8 WHEREAS**, on March 5, 2019, Defendants filed a motion to set aside the defaults
 16 entered against them, and to request a stay of the proceedings pending a settlement conference,
 17 which motion Class Representatives opposed (Dkts. #83, 87, 88);

18 **1.9 WHEREAS**, on March 6, 2019, the Court issued an Order Rescinding Authorization
 19 to Disseminate Class Notices in light of Defendants’ motion to set aside the defaults (Dkt. #84);

20 **1.10 WHEREAS**, on April 9, 2019, the Court held a hearing on Defendants’ motion to
 21 set aside the defaults, took Defendants’ motion under submission, and referred this matter to Chief
 22 Magistrate Judge Joseph C. Spero for a settlement conference to be held on April 23, 2019;

23 **1.11 WHEREAS**, the Parties reached terms of settlement at the April 23, 2019 settlement
 24 conference, which terms are set forth herein;

25 **1.12 WHEREAS**, the Parties have engaged in formal and informal written discovery,
 26 including exchanging initial disclosures, pursuant to Fed. R. Civ. P. 26. Class Representatives have
 27 also served and received responses to several subpoenas for documents relating to the Lawsuit. The
 28 Parties have exchanged a substantial number of documents and data through informal discovery.

1 Powerlytics, Inc. took the deposition of Class Representative Edwin Ramirez, and Class
2 Representatives took the depositions of Defendant Jose M. Plehn-Dujowich, and an executive of
3 Powerlytics, Inc.;

4 **1.13 WHEREAS**, Class Counsel represents that they have made a thorough and
5 independent investigation of the facts and law relating to the allegations in the Lawsuit, including
6 Defendants' financial ability to pay for any settlement or judgment entered by the Court. In
7 agreeing to this Settlement, Class Representatives and Class Counsel have considered: (a) the facts
8 developed during the Parties' ADR process and the law applicable thereto; (b) the attendant risks of
9 continued litigation and the uncertainty of the outcome of the claims alleged against Defendants and
10 the attendant challenges in collecting money from Defendants following entry of any judgment; and
11 (c) the desirability of consummating this Settlement according to the terms of this Settlement
12 Agreement. Class Representatives and Class Counsel have concluded that the terms of this
13 Settlement are fair, reasonable, and adequate, and that it is in the best interests of Class
14 Representatives and the Class (as defined below) to settle their claims against Defendants pursuant
15 to the terms set forth herein;

16 **1.14 WHEREAS**, as of the date of the execution of this Settlement Agreement,
17 Defendants remain in default in the Lawsuit;

18 **1.15 WHEREAS**, Defendants are entering into this Settlement Agreement solely to
19 resolve the claims against them and by entering into this Settlement Agreement do not admit
20 liability other than for purposes of entering into this Settlement Agreement and resolving this
21 litigation by a settlement;

22 **1.16 WHEREAS**, Defendants agree and acknowledge that all debts and obligations
23 arising under this Settlement Agreement and the Stipulated Judgment, should it be entered by the
24 Court, shall be fully and entirely non-dischargeable, as all such debts and obligations arise from
25 activities exempt from discharge under 11 U.S.C. § 523(a)(2)(A), and shall therefore survive any
26 liquidation proceeding, receivership proceeding, conservatorship proceeding, bankruptcy
27 proceeding and/or any other similar proceeding;
28

1 **1.17 WHEREAS**, upon final approval of this Settlement Agreement by the Court,
2 Defendants agree to sign the Joint Stipulation for Conditional Entry of Final Judgment, attached
3 here as **Exhibit 1**, which requests that the Court enter a Stipulated Judgment in the amount of
4 \$1,000,000 against Defendants, jointly and severally, in the event that (a) Defendants fail to
5 perform any obligation under this Settlement Agreement; (b) Class Representatives have given
6 Defendants written notice specifying the failure to perform; and (c) after the expiration of thirty
7 (30) calendar days following service of such written notice, Defendants have failed to cure the
8 failure to perform; and the Parties intend and agree that all factual admissions stated therein will
9 have preclusive effect in any future proceeding between either or both Defendants and the Class
10 Representatives and/or Settlement Class Members;

11 **1.18 WHEREAS**, Class Representatives shall file the executed Joint Stipulation for
12 Conditional Entry of Final Judgment only in the event that Class Representatives, or a Class
13 Representative, reasonably believe(s) Defendants, or a Defendant, have or has failed to perform any
14 obligation under this Settlement Agreement and, in conjunction with filing the Joint Stipulation,
15 shall request that the Court seal all factual admissions made by Defendants in the Joint Stipulation,
16 pursuant to the procedures established by this Court's Local Rule 79-5, until such time as the Court
17 determines that the Stipulated Judgment shall be entered;

18 **1.19 WHEREAS**, Defendant Plehn-Dujowich agrees to sign the Stock Pledge and
19 Security Agreement, attached here as **Exhibit 2**, upon final approval of this Settlement Agreement
20 by the Court, thereby pledging and collaterally assigning the collateral specified therein to the
21 Settlement Administrator, in order to secure Defendants' obligations under this Settlement
22 Agreement;

23 **1.20 WHEREAS**, the Parties recognize that notice to the Settlement Class Members of
24 the material terms of this Settlement Agreement, as well as Court approval of the terms of
25 settlement, are required to effectuate the Settlement Agreement, and that the Settlement Agreement
26 will not become operative until the Court grants final approval of it and the Settlement Agreement
27 becomes effective by its terms;
28

1 **1.21 WHEREAS**, the Parties stipulate and agree that, for settlement purposes only, the
 2 requisites for establishing collective action certification under the FLSA pursuant to 29 U.S.C. §
 3 216(b), and class certification pursuant to Fed. R. Civ. P. 23(a) and (b)(3) are met. Should this
 4 Settlement not become final, such stipulation as to both collective and class certification shall
 5 become null and void and shall have no bearing on, and shall not be admissible in connection with,
 6 the issue of whether or not certification was, is, or will be appropriate in a non-settlement context;
 7 and

8 **1.22 WHEREAS**, Class Counsel shall provide to Defendants' counsel all papers,
 9 including addressed envelopes, necessary for Defendants to provide notice of this proposed
 10 Settlement Agreement to the appropriate state and federal officials pursuant to 28 U.S.C. § 1715,
 11 which papers, within seven days of receipt, Defendants shall transmit to those officials,

12 **1.23 NOW, THEREFORE**, for good and valuable consideration provided for herein, it is
 13 agreed by, between, and among the Class Representatives, Settlement Class, and Defendants that,
 14 subject to Court approval, the Lawsuit shall be fully and completely settled according to the
 15 following terms and conditions:

16 **2 DEFINITIONS:** For purposes of this Settlement Agreement, the following terms shall have
 17 the meanings specified herein:

18 2.1 **"Action"** or **"Lawsuit"** means the action titled *Hu, et al v. Plehn-Dujowich, et al.*,
 19 Case No. 3:18-cv-01791-EDL, pending in the United States District Court for the
 20 Northern District of California.

21 2.2 **"Claim"** or **"Claim Form"** refers to the form by which Settlement Class Members
 22 seek benefits under this Settlement Agreement.

23 2.3 **"Claims Deadline"** means the deadline for submitting Claim Forms as agreed by
 24 Parties or ordered by the Court.

25 2.4 **"Claimant"** means a Settlement Class Member who has submitted a Claim Form.

26 2.5 **"Class"** or **"Class Members"** means the Class certified by the Court as follows: All
 27 persons who enrolled in the Global Financial Data Project. Excluded from the Class
 28 are Defendants Jose M. Plehn-Dujowich, BizQualify LLC, and Powerlytics, Inc.'s

officers and directors and the immediate families of the Defendants' officers and directors. Also excluded from the Class are the Defendants' legal representatives, heirs, successors or assigns; any entity in which Defendants have or have had a controlling interest; and any putative Class Members who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice. Dkt. #80.

2.6 “**Class Counsel**” or “**Plaintiffs’ Counsel**” means the law firm Dhillon Law Group Inc., located at 177 Post Street, Ste. 700, San Francisco, CA 94108.

2.7 “**Class Notice**” means the notices of proposed class action settlement that the Parties will ask the Court to approve in connection with a motion for preliminary approval of the Settlement Agreement.

2.8 “**Class Notice Date**” means the date upon which Class Notice is initially sent.

2.9 “**Class Representatives**” means Plaintiffs Qiuzi Hu, Edwin Ramirez, Ivan Ronceria, and Wenzhi Fei.

2.10 “**Court**” means the United States District Court for the Northern District of California, San Francisco Division, located at 450 Golden Gate Avenue, San Francisco, CA 94102, which is presiding over the Action.

2.11 “**Defendants**” means Jose M. Plehn-Dujowich, also known as Jose Plehn, and BizQualify LLC.

2.12 “**Defendants’ Counsel**” means Loren Kieve, Kieve Law Offices, located at 2655 Steiner Street, San Francisco, CA 94115.

2.13 “**Effective Date**” means the first business day after which all of the following events and conditions have occurred: (a) the Parties, Class Counsel, and Defendants’ Counsel have signed this Settlement Agreement; (b) the Court has entered the Final Approval Order; and (c) the Final Approval Order has become a final, non-appealable judgment approving the Settlement Agreement in all material respects and is no longer subject to review, rehearing, appeal, petition for allowance of appeal, petition for certiorari, or other review of any kind. The Effective Date shall

1 not be altered in the event the Court declines to approve, in whole or in part, the
2 payment of attorneys' fees, costs, and expenses in the amounts that Class Counsel
3 requests. Further, the Effective Date shall not be altered in the event that an appeal is
4 filed with the sole issue on appeal being the Fee and Expense Award awarded to
5 Class Counsel.

6 2.14 **"Fee and Expense Award"** means the amount awarded to Class Counsel by the
7 Court for the reasonable attorneys' fees, costs, and expenses incurred by Class
8 Representatives and the Settlement Class, which award shall be distributed by
9 Settlement Administrator to Class Counsel. The Court shall use a lodestar method
10 (reasonable hourly rate multiplied by reasonable hours expended) to determine the
11 fee amount to be awarded. The Parties and Class Counsel agree that the Fee and
12 Expense Award shall not exceed three hundred thousand dollars and no cents
13 (\$300,000). The Fee and Expense Award paid by Defendants shall constitute full
14 satisfaction of Defendants' obligations to pay amounts to any person, attorney, or
15 law firm for attorneys' fees or costs in this Action on behalf of Class Representatives
16 and all Settlement Class Members. In determining the amount of the Fee and
17 Expense Award, the Court may consider reasonable approximations of fees likely to
18 be incurred after the Final Approval Date, including for the attorney and
19 administrative resources expended by Class Counsel in its role as Settlement
20 Administrator. The Parties agree that Class Counsel shall not be separately
21 compensated in connection with its role as Settlement Administrator. However, the
22 Parties further agree that in performing its role as Settlement Administrator, Class
23 Counsel shall not be responsible for any costs associated with the issuance and
24 distribution of settlement payments to the Settlement Class Members (e.g. postage,
25 wire transfer fees, etc.), and accordingly, such costs shall either be paid for from the
26 Net Settlement Fund or, where possible, deducted from the settlement amount
27 payable to the claimant on whose behalf the cost is incurred (e.g., if a claimant
28 requests that a check be mailed to China at a cost of \$2.00, rather than sent by some

other less expensive means, that claimant shall bear the \$2.00 cost associated with that request, via deduction from his/her settlement payment).

2.15 “**Final Approval Order**” means an order and judgment issued and entered by the Court, approving this Settlement Agreement as binding upon the Parties and the Settlement Class Members and dismissing the claims against Defendants with prejudice, and setting the Fee and Expense Award. The Final Approval Order shall constitute a judgment within the meaning and for purposes of Rule 54 of the Federal Rules of Civil Procedure. In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval Order shall be deemed issued as of the date of the last of such orders.

2.16 “**Joint Stipulation for Conditional Entry of Final Judgment**” or “**Joint Stipulation**” means the stipulation attached hereto as **Exhibit 1**, which is to be signed by Defendants, Defendants’ Counsel, and Class Counsel, with the original provided to Class Counsel, within ten (10) calendar days following the issuance of the Final Approval Order by the Court. Class Representatives may file the Joint Stipulation (provisionally under seal, as discussed herein) if, and only if, Class Counsel and one or more Class Representatives reasonably believe that Defendants, or a Defendant, have or has failed to perform any obligation under the Settlement Agreement. Filing of the Joint Stipulation may be done in conjunction with filing a motion requesting that the Court enter the Stipulated Judgment pursuant to the terms and conditions set forth in the Joint Stipulation. Class Representatives must follow the Court’s Local Rule 79-5 when filing the Joint Stipulation, requesting that all factual admissions made by Defendants, stated in the Joint Stipulation (including the proposed Stipulated Judgment attached thereto), be maintained under seal, provisionally, pending a Court ruling on whether the Stipulated Judgment shall issue. The Court shall enter the Stipulated Judgment only upon a showing of all of the following: (a) one or more of the Defendants failed to perform any obligation under this Settlement Agreement; (b) Class Representatives gave Defendants written

notice (which notice shall be served by e-mail and mail on Defendants' Counsel) stating that one or more of the Defendants have failed to perform and specifying such failed performance; and (c) after the expiration of thirty (30) calendar days following service of such written notice, Defendants have failed to cure said failure to perform.

2.17 **"Net Settlement Fund"** means the amount remaining in the Settlement Fund after payment of the amounts set forth in Section 3.5.1 to 3.5.2 to Class Representatives and Class Counsel.

2.18 **"Notice Program"** means the procedure by which Class Notices shall be disseminated, as set forth in Section 6.1 of this Settlement Agreement.

2.19 **"Objection Deadline"** means sixty (60) calendar days after the Class Notice Date.

2.20 **"Objector"** means any Settlement Class Member that objects to this Settlement Agreement by following the procedures set forth in Section 6.4.

2.21 **"Opt-Out Deadline"** means sixty (60) calendar days after the Class Notice Date.

2.22 **"Parties"** means the Class Representatives and Defendants.

2.23 **"Preliminary Approval"** means that the Court has entered an order preliminarily approving the terms and conditions of this Settlement Agreement, including the manner of providing and content of notice to Settlement Class Members.

2.24 **"Preliminary Approval Date"** means the date on which the Court enters an Order granting Preliminary Approval.

2.25 **"Released Claims"** means the claims released by Releasing Parties, as defined in Section 10.1 of the Settlement Agreement.

2.26 **"Released Parties"** means (a) Jose M. Plehn-Dujowich, (b) BizQualify LLC, and (c) each of their respective present and former parents, subsidiaries, divisions, affiliates, predecessors, successors, heirs, beneficiaries, and assigns, and the present and former directors, officers, executives, employees, agents, insurers, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, vendors, auditors, principals.

1 2.27 “**Releasing Parties**” means the Class Representatives and all Settlement Class
 2 Members who do not timely and properly exclude themselves from the Settlement
 3 Class, and each of their respective heirs, assigns, beneficiaries, and successors.

4 2.28 “**Reasonable Documentation**” means documentation supporting a Claim. Non-
 5 exhaustive examples of Reasonable Documentation include credit card statements,
 6 bank statements, invoices, telephone records, e-mail receipts, other payment records,
 7 or sworn declaration or affidavit. A completed Claim Form with the name, signature,
 8 and date of a Settlement Class Member on the attestation and signature page of the
 9 Claim Form shall constitute a sworn declaration for purposes of Reasonable
 10 Documentation as defined herein.

11 2.29 “**Settlement Account**” means an account with a U.S. bank opened by the Settlement
 12 Administrator for the sole purpose of receiving and issuing payments in connection
 13 with this Settlement Agreement.

14 2.30 “**Settlement Administrator**” means Class Counsel. The Parties may, by agreement,
 15 substitute a different settlement administrator, subject to approval by the Court. In
 16 the absence of agreement, either Class Representatives or Defendants may move the
 17 Court to substitute a different settlement administrator, upon a showing that the
 18 responsibilities of settlement administrator have not been adequately executed by the
 19 incumbent.

20 2.31 “**Settlement Class**” and “**Settlement Class Members**” means: All Class Members,
 21 including Class Representatives, who do not exclude themselves from the Class or
 22 Settlement Class, pursuant to the procedures set forth in Section 6.3 of the
 23 Settlement Agreement and the Class Notice. Class Members who do so exclude
 24 themselves shall not be considered Settlement Class Members, shall not be bound by
 25 this Settlement Agreement, and shall not be eligible to make a Claim for any benefit
 26 under the terms of this Settlement Agreement or object thereto.

27 2.32 “**Settlement Fund**” means the total cash commitment of Defendants for purposes of
 28 effectuating the settlement of this Action, which shall not exceed the total value of

1 six hundred, ninety-five thousand dollars and no cents (\$695,000), comprised of the
 2 following: (a) three hundred, seventy-five thousand dollars and no cents (\$375,000)
 3 in exchange for the release of all Released Claims by Releasing Parties; (b) incentive
 4 awards to Class Representatives, which shall be determined by the Court and shall
 5 not exceed a combined total of twenty thousand dollars and no cents (\$20,000); and
 6 (c) the Fee and Expense Award, which shall be determined by the Court and shall
 7 not exceed three hundred thousand dollars and no cents (\$300,000). The payment
 8 and disposition of these payments are subject to the provisions of this Settlement
 9 Agreement.

10 2.33 “**Settlement Website**” means the website that the Settlement Administrator will
 11 establish as soon as practicable following Preliminary Approval, but prior to the
 12 dissemination of the Class Notices, as a means for Settlement Class Members to
 13 obtain notice of and information about the Settlement Agreement, through and
 14 including hyperlinked access to (a) the publicly filed version of this Settlement
 15 Agreement; (b) privileged access to any unredacted version of the Settlement
 16 Agreement, provided that the Settlement Class Member wishing to review the
 17 unredacted version requests a password from the Settlement Administrator and
 18 agrees to maintain the confidentiality of all portions of this Settlement Agreement
 19 that are sealed by the Court; (c) the Class Notice; (d) the order regarding Preliminary
 20 Approval; (e) the Claim Form; (f) the operative First Amended Complaint; (g) all
 21 papers filed in connection with Class Representatives’ motion for attorneys’ fees and
 22 costs; and (h) such other documents as the Parties agree to post or that the Court
 23 orders posted on the website. These documents shall remain on the Settlement
 24 Website at least until the Final Approval Order. The Settlement Website may be
 25 hosted on Class Counsel’s website. The Settlement Website may permit Settlement
 26 Class Members to submit Claim Forms electronically via the Settlement Website.
 27 The Settlement Website shall remain operational until the date distributions become
 28 void.

2.34 “**Stipulated Judgment**” means the Stipulated Judgment in the amount of one million dollars and no cents (\$1,000,000) against Defendants, jointly and severally, in the same or substantially similar form as attached to the Joint Stipulation for Conditional Entry of Final Judgment.

2.35 “**Stock Pledge and Security Agreement**” or “**Security Agreement**” means the agreement attached hereto as **Exhibit 2**, which is to be signed by Defendant Jose M. Plehn-Dujowich, Defendants’ Counsel (as to form), and Settlement Administrator, with the original provided to Settlement Administrator, within ten (10) calendar days following Final Approval of this Settlement Agreement by the Court.

2.36 “**Valid Claim Form**” means a Claim Form submitted by a Settlement Class Member that (a) is submitted in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement; (b) is substantially completed with sufficient information for the Settlement Administrator to evaluate the validity of the claim and executed by a Settlement Class Member on the initial submission; (c) is signed physically or by e-signature by a Settlement Class Member or person with authority to sign for and bind a Settlement Class Member, subject to penalty of perjury; (d) is returned via mail and post-marked by the Claims Deadline, or received by mail or on-line submission by 11:59 p.m. Pacific Standard Time on the Claims Deadline, and (e) is determined to be valid by the Settlement Administrator.

3 SETTLEMENT CONSIDERATION:

3.1 **Settlement Fund.** In consideration for the releases contained in Section 10 of this Settlement Agreement, Defendants shall establish a Settlement Fund, not to exceed six hundred, ninety-five thousand dollars and no cents (\$695,000), by making the following payments to the Settlement Administrator, to be held in the Settlement Account:

3.1.1 three hundred, seventy-five thousand dollars and no cents (\$375,000) in exchange for the release of all Released Claims by Releasing Parties;

3.1.2 an incentive payment, which shall be determined by the Court and shall not exceed twenty thousand dollars and no cents (\$20,000), which is to be

divided amongst Class Representatives in the amounts set forth below or as otherwise ordered by the Court; and

3.1.3 the Fee and Expense Award, which shall be determined by the Court using a lodestar method applicable to fee-shifting cases, and shall not exceed three hundred thousand dollars and no cents (\$300,000).

3.2 Payment Schedule.

3.2.1 **Initial Payment.** Defendants shall pay to the Settlement Administrator a combined sum of one hundred, fifty thousand dollars and no cents (\$150,000), within ninety (90) calendar days of the Final Approval Date (“Initial Payment”);

3.2.2 **Remaining Payments.** Defendants shall pay to the Settlement Administrator ten thousand dollars and no cents (\$10,000), on the first day of every month, commencing on the first day of the month immediately following the month in which the Initial Payment is made, and continuing thereafter until the Settlement Fund is paid in full;¹

3.2.3 **Manner of Payment.** Payment may be made by check or wire transfer in a manner directed by Settlement Administrator, or as otherwise agreed upon by the Parties and Settlement Administrator.

3.2.4 **Payments to Cure Default.** All payments made by Defendants under this Settlement Agreement shall be credited toward the most recent payment obligation that has arisen under this Settlement Agreement at the time of said payment. Accordingly, should Defendants tender any payment following a notice of default provided by Class Representatives, such payment shall be applied toward the balance of the most recent payment obligation, prior to being applied toward any outstanding obligation arisen from an earlier

¹ The final payment made pursuant to this Settlement Agreement may be less than \$10,000, if the remaining unpaid portion of the Settlement Fund is less than that amount.

missed or insufficient installment payment. The following example is intended to illustrate the effect of this provision: should Defendants fail to pay an amount owing under this Settlement Agreement (Installment A), causing Class Representatives to serve a notice of default triggering the 30-day cure period for Installment A, and should Installment B then come due, and should Defendants then pay the amount owed for Installment A, then such payment would first be applied to the obligation associated with Installment B, before any remaining portion of the payment is applied to the obligation associated with Installment A. In such a scenario, if Defendants' payment is insufficient to satisfy all obligations associated with both Installment A and Installment B, then Defendants will remain in default, and Class Representatives would be entitled to seek entry of the Stipulated Judgment, and this is the case regardless of any designation made by Defendants concerning the payment made.

3.3 **Joint Stipulation for Conditional Entry of Final Judgment.**

3.3.1 **Execution of the Joint Stipulation.** Within ten (10) calendar days of the Final Approval Date, Defendants and Class Counsel shall execute the Joint Stipulation for Conditional Entry of Final Judgment attached here as **Exhibit 1**. Defendants' Counsel shall also sign the Joint Stipulation as an indication of his approval as to form.

3.3.2 **Requesting Entry of the Stipulated Judgment.** In the event that Class Representatives, or a Class Representative, form a reasonable belief that Defendants, or either Defendant, have or has failed to fully perform under this Settlement Agreement, including by, but not limited to, failing to make full and timely payments to the Settlement Administrator under this Settlement Agreement, Class Representatives are entitled to file the Joint Stipulation and seek entry of the Stipulated Judgment. When filing the Joint Stipulation, Class Representatives shall simultaneously request that all

portions of the Joint Stipulation, and any attachments thereto, in which Defendants make factual admissions be maintained under seal, pursuant to this Court's Local Rule 79-5, pending determination by the Court on whether the Stipulated Judgment shall issue. The public, redacted version of the Joint Stipulation, and any attachments thereto, filed by Class Representatives in connection with their request for entry of the Stipulated Judgment shall be redacted in all locations corresponding to any material sealed by the Court in connection with the Parties' filing of this executed Settlement Agreement prior to preliminary approval of the same. Defendants acknowledge that pursuant to this Court's Local Rule 79-5, Defendants' failure to justify sealing of the Joint Stipulation, including by making appropriate filings in support of the request to seal, may result in the Court's denial of the request to seal the Joint Stipulation, provisionally or otherwise.

3.3.3 Issuance of the Stipulated Judgment. Pursuant to the Joint Stipulation, the Court shall, being so moved by Class Representatives, enter the Stipulated Judgment upon a showing that: (a) Defendants, or one of the Defendants, failed to comply with or fully perform under this Settlement Agreement; (b) Class Representatives have served on Defendants written notice that Defendant(s) are in default of such obligation or performance and specifying such default; and (c) after the expiration of thirty (30) calendar days following service of such written notice, Defendant(s) failed to cure such default. Any written notice of default under this provision may be mailed to Defendants' Counsel at the address set forth in this Settlement Agreement, where such notice will be deemed effective as to Defendants.

3.3.4 Destruction of Original Joint Stipulation. Within twenty-one (21) calendar days of Class Counsel being notified by Settlement Administrator of Settlement Administrator's receipt of the final settlement payment from Defendants pursuant to Section 3.2, Class Counsel shall destroy the original,

signed Joint Stipulation, and promptly notify Defendants' Counsel of its destruction. Class Counsel may retain a pdf copy of the signed Joint Stipulation for record-keeping purposes. In the event that Defendants, or a Defendant, fail to satisfy any obligation under this Settlement Agreement, and fail to cure the same within thirty (30) calendar days of the notice of default being served, Class Counsel is relieved of any obligation to destroy the original, signed Joint Stipulation under this Settlement Agreement.

3.4 **Execution of Stock Pledge and Security Agreement.** Within ten (10) calendar days of the Final Approval Date, Defendant Jose M. Plehn-Dujowich and Settlement Administrator shall execute the Stock Pledge and Security Agreement attached here as **Exhibit 2**. Defendants' Counsel shall also sign the Security Agreement as an indication of his approval as to form.

3.5 **Distribution of the Settlement Fund.** Subject to the Court's final approval, the Settlement Fund shall be distributed by Settlement Administrator to Class Representatives, Class Counsel, and the Settlement Class in the following order, in a reasonably prompt manner, as the funds are transferred by Defendants to Settlement Administrator:

3.5.1 **Incentive Award and Payment for General Releases to Class Representatives.**

3.5.1.1 Plaintiff Qiuzi Hu shall receive up to eight thousand, four hundred thirteen dollars and no cents (\$8,413), comprised of two parts: (1) an incentive award of up to \$6,000, in an amount to be determined and approved by the Court; and (2) a full refund of the \$2,413 course fee, unless the total recognized loss for the Claims described in Section 8.3.1.1 is equal to or exceeds the Net Settlement Fund, in which case, the refunded amount will be equal to a Claimant's pro rata share of the Net Settlement Fund under Section 8.3.2.2, in which said Claimant had a recognized loss in the amount of \$2,413.

1 3.5.1.2 Plaintiff Edwin Ramirez shall receive up to nine thousand, four
2 hundred thirteen dollars and no cents (\$9,413), comprised of two
3 parts: (1) an incentive award of up to \$7,000, in an amount to be
4 determined and approved by the Court; and (2) a full refund of the
5 \$2,413 course fee, unless the total recognized loss for the Claims
6 described in Section 8.3.1.1 is equal to or exceeds the Net Settlement
7 Fund, in which case, the refunded amount will be equal to a
8 Claimant's pro rata share of the Net Settlement Fund under Section
9 8.3.2.2, in which said Claimant had a recognized loss in the amount
10 of \$2,413.

11 3.5.1.3 Plaintiff Ivan Ronceria shall receive up to seven thousand, four
12 hundred thirteen dollars and no cents (\$7,413), comprised of two
13 parts: (1) an incentive award of up to \$5,000, in an amount to be
14 determined and approved by the Court; and (2) a full refund of the
15 \$2,413 course fee, unless the total recognized loss for the Claims
16 described in Section 8.3.1.1 is equal to or exceeds the Net Settlement
17 Fund, in which case, the refunded amount will be equal to a
18 Claimant's pro rata share of the Net Settlement Fund under Section
19 8.3.2.2, in which said Claimant had a recognized loss in the amount
20 of \$2,413.

21 3.5.1.4 Plaintiff Wenzhi Fei shall receive up to four thousand, four hundred
22 thirteen dollars and no cents (\$4,413), comprised of two parts: (1) an
23 incentive award of up to \$2,000, in an amount to be determined and
24 approved by the Court; and (2) a full refund of the \$2,413 course fee,
25 unless the total recognized loss for the Claims described in Section
26 8.3.1.1 is equal to or exceeds the Net Settlement Fund, in which case,
27 the refunded amount will be equal to a Claimant's pro rata share of
28 the Net Settlement Fund under Section 8.3.2.2, in which said

1 Claimant had a recognized loss in the amount of \$2,413.

2 **3.5.2 Attorneys' Fees and Costs.**

3 3.5.2.1 Several claims asserted by Class Representatives and the Settlement
 4 Class permit the recovery of reasonable attorneys' fees and costs by
 5 the prevailing party (i.e. fee-shifting statutes). Accordingly, as a part
 6 of the consideration for entering into this Settlement Agreement,
 7 Defendants agree to pay the reasonable attorneys' fees and costs (as
 8 determined by the Court) incurred by Class Representatives and the
 9 Settlement Class in this Action (the "Fee and Expense Award"),
 10 subject to the limitations set forth herein.

11 3.5.2.2 Class Counsel shall receive a Fee and Expense Award of up to three
 12 hundred thousand dollars and no cents (\$300,000.00), as determined
 13 by the Court using a lodestar method, which will compensate Class
 14 Representatives and the Settlement Class for all attorneys' fees, out of
 15 pocket costs, and work performed in the Action both before and after
 16 the issuance of the Final Approval Order, including but not limited to
 17 documenting the Settlement, securing Court approval of the
 18 Settlement, administering the Settlement as Settlement Administrator,
 19 and obtaining final dismissal of the Action.

20 3.5.2.3 The Fee and Expense Award paid by Defendants pursuant to this
 21 Agreement shall constitute full satisfaction of Defendants' obligations
 22 to pay amounts to any person, attorney or law firm for attorneys' fees
 23 or costs in this Action on behalf of Class Representatives and/or any
 24 Settlement Class Member, and shall relieve Defendants from any
 25 other claims or liability to any other attorney or law firm for any
 26 attorneys' fees or costs to which any of them may claim to be entitled
 27 on behalf of Class Representatives or any Settlement Class Member.

28 3.5.2.4 **IRS Form 1099.** By the first day of the month of February of each

year (beginning the year following the Court's issuance of the Final Approval Order and ending one year after the last payment is made by Defendants pursuant to this Settlement Agreement), Defendants shall provide to Class Counsel an IRS Form 1099 for the payments made to Class Counsel during the preceding tax year, if any such payments were made. Class Counsel shall be solely and legally responsible to pay any and all applicable taxes on the Fee and Expense Award.

3.5.3 Settlement Awards to Settlement Class.

3.5.3.1 Each Settlement Class Member shall receive their allocated share of the Net Settlement Fund, pursuant to Section 8.3.2 herein.

3.5.3.2 All payments to the Settlement Class Members shall be made in the order that the Valid Claim Forms were received by Settlement Administrator.

3.5.4 Optional Second Round Disbursement to Settlement Class. If, at the conclusion of ninety (90) calendar days after the final settlement distribution is made to the Settlement Class Members pursuant to Section 3.5.3, there are any monies remaining in the Settlement Account, Settlement Administrator may determine that a second round distribution is necessary or proper. This determination shall be made as follows: if the monies remaining in the Settlement Account are greater than seven thousand five hundred dollars (\$7,500), the Settlement Administrator shall administer a second round disbursement of the remaining monies, by allocating all such remaining funds in accordance with Section 8.3.2 herein, and distributing the funds accordingly. If the monies remaining in the Settlement Account are less than seven thousand five hundred dollars (\$7,500), Settlement Administrator has sole discretion to determine whether a second round distribution should occur. If the Settlement Administrator determines that a second round

distribution is appropriate, Settlement Administrator shall allocate all such remaining funds in accordance with Section 8.3.2 herein, and distribute the funds accordingly. For the purposes of any second round disbursement, Class Representatives shall be treated as having recognized losses in the amount of \$2,413.

3.5.5 **Cy Pres.** If, at the conclusion of one hundred eighty (180) calendar days after the final settlement distribution (including any second round disbursement, if any) is made to the Settlement Class Members, there are any monies remaining in the Settlement Account, those monies shall be paid to the Parties' agreed-upon *cy pres* recipient: UC Berkeley Extension, located at 1995 University Ave., Suite 200, Berkeley, California 94704-7000, subject to the Court's approval in the Final Approval Order. No funds are to be returned to Defendants.

3.6 None of the Releases as defined in this Settlement Agreement shall be effective until Defendants pay the entirety of the Settlement Fund.

3.7 Class Counsel shall file with the Court a motion for attorneys' fees and reimbursement of their out-of-pocket costs no later than fourteen (14) calendar days prior to the deadline for Settlement Class Members to object to the Settlement. The motion papers shall be made available on the Settlement Website.

3.8 All payments made by Defendants to the Settlement Administrator are to be held in the Settlement Account, until such time as the Settlement Administrator distributes payments to Class Representatives, Class Counsel, and the Settlement Class, in accordance with this Settlement Agreement.

3.9 Defendants are jointly and severally liable for all payment obligations under this Settlement Agreement.

4 BUSINESS PRACTICE REPRESENTATIONS AND WARRANTIES:

4.1 Defendants represent and agree that they will not operate or advertise, or assist others in operating or advertising, any educational course, online or otherwise, in a manner that is,

or is likely to, deceive Settlement Class Members or other members of the public.

5 PRELIMINARY APPROVAL:

5.1 Upon execution of this Settlement Agreement by Parties, Parties shall promptly and jointly move the Court for an order granting preliminary approval of this Settlement Agreement (“Preliminary Approval Order”). The motion for preliminary approval shall request that the Court: (a) preliminarily approve the terms of the Settlement Agreement as within the range of fair, adequate, and reasonable; (b) approve the form and content of the Class Notice and its dissemination via the Notice Program set forth below in Section 6.1; (c) approve the procedures set forth in Sections 6.3 and 6.4 for Class Members to exclude themselves from the Settlement Class or to object to the Settlement Agreement; (d) stay all proceedings in this Action unrelated to the Settlement Agreement pending final approval of the Settlement Agreement; and (e) schedule a final approval hearing for a time and date convenient for the Court, at which the Court will conduct an inquiry into the fairness of the Settlement Agreement, determine whether it was made in good faith and should be finally approved, and determine whether to approve Class Counsel’s application for attorneys’ fees, costs, and expenses (“Final Approval Hearing”).

6 CLASS NOTICE & CLAIM FORM DISSEMINATION:

6.1 **Notice Program.** The Parties shall provide Settlement Administrator with all information and/or documentation in their possession necessary for Settlement Administrator to implement the following Notice Program:

6.1.1 **By Mail.** Within thirty (30) calendar days of the Preliminary Approval Date, Settlement Administrator shall mail Court-approved Class Notices and Claim Forms to the last known physical addresses of the Class Members, to the extent known to the Parties. Approximately sixty (60) such addresses are known to the Parties as of the date of this Settlement Agreement.

6.1.2 **Email and/or WeChat Notice.** Within thirty (30) calendar days of the Preliminary Approval Date, Settlement Administrator shall email Court-approved Class Notices and Claim Forms to the Class Members to the last known email addresses of the Class Members, to the extent known to the

Parties. Where Settlement Administrator receives notification that an email failed to deliver to any particular email address, Settlement Administrator shall send, or attempt to send, a hyperlink to the Class Notice and Claim Form via WeChat, a Chinese social media and messaging platform, to the extent the Parties are aware of a WeChat address corresponding to that individual or his or her email address. The hyperlink may be a direct link to the Settlement Website.

6.1.3 **Settlement Website.** No later than the first date that Class Notice is provided, Settlement Administrator will develop, host, administer, publish, and maintain the Settlement Website in accordance with the Notice Program, which may include the ability to electronically file Claim Forms online, provided that such Claims Forms, if signed electronically, will be binding for purposes of applicable law and contain a statement to that effect. The Settlement Website shall host (a) a copy of the publicly filed version of this Settlement Agreement; (b) if the Court grants a request to seal any portion of this Settlement Agreement, an unredacted version of this Settlement Agreement, which may be accessed by Settlement Class Members by requesting a password from the Settlement Administrator and by agreeing to maintain the confidentiality of all sealed materials through a clickwrap or other enforceable agreement; (c) a copy of the Class Notice and Claim Form; and (d) the Court's order granting Preliminary Approval of this Settlement Agreement. The Settlement Website may be hosted as a separate webpage on Class Counsel's law firm website.

6.2 **The Class Notices Shall:**

6.2.1 Contain a short, plain statement of the background of the Lawsuit, the class certification, and the proposed settlement;

6.2.2 Describe the proposed settlement relief outlined in this Settlement Agreement and inform Class Members that they may review a fully

unredacted version of this Settlement Agreement by (a) contacting the Settlement Administrator to request a passcode and (b) agree to maintain the confidentiality of any material sealed by the Court;

6.2.3 Inform Class Members of their rights to: (a) exclude themselves from the Settlement Class by timely signing and mailing a valid Opt-Out Notice to the Settlement Administrator, or (b) object to the proposed Settlement Agreement by following the instruction provided in the Class Notice. Any Class Member who elects to opt out of the Settlement Class shall not be permitted to object to the Settlement Agreement. Persons falling within the definition of the Class who validly and timely request exclusion from the Settlement Class shall not be Settlement Class Members and shall not be eligible to make a Claim for any benefit under the terms of this Settlement Agreement;

6.2.4 Inform Class Members that, if they do not exclude themselves from the Settlement Class and submit a Valid Claim to the Settlement Administrator, they may be eligible to receive relief under the proposed settlement;

6.2.5 State that any relief to Settlement Class Members is contingent upon the Court's final approval of the proposed Settlement Agreement; and

6.2.6 State that Class Counsel will file a motion for the Fee and Expense Award no later than fourteen (14) calendar days prior to the Final Approval Hearing, and that such motion papers shall be made available on the Settlement Website promptly after being filed.

6.3 Request for Exclusion from Settlement Class.

6.3.1 Any Class Member may opt out of the Settlement Class by timely submitting a valid, signed Opt-Out Notice to the Settlement Administrator at the address set forth in the Class Notice. To be timely, the Opt-Out Notice must be postmarked no later than sixty (60) calendar days from Class Notice Date. A valid Opt-Out Notice must also include the following:

6.3.1.1 the case name and case number of the Lawsuit (*Hu, et al. v. Plehn-Dujowich, et al.*, Case No. 3:18-cv-01791-EDL);

6.3.1.2 the Class Member's legal name, address, telephone number, and, if available, an email address;

6.3.1.3 a statement that the Class Member wishes to exclude themselves from the Settlement Class; and

6.3.1.4 the Class Member's signature.

6.3.2 Any Opt-Out Notice that is not postmarked by the Opt-Out Deadline or that does not substantially comply with the instructions set forth in the Class Notice or Section 6.3 of this Settlement Agreement shall be deemed invalid. All Settlement Class Members who do not submit a valid Opt-Out Notice shall be bound by all proceedings, orders, and judgments in the Lawsuit, and shall be bound to the terms of this Settlement Agreement, following the Court's entry of the Final Approval Order.

6.3.3 Upon signing and mailing a valid Opt-Out Notice, the Class Member shall no longer be deemed a Settlement Class Member and shall not be entitled to receive any benefit from this Settlement Agreement.

6.4 **Objections.** Any Settlement Class Member who intends to object to the Settlement Agreement (an "Objector") must do so no later than sixty (60) calendar days after the Notice Date (the "Objection Deadline"). In order to object, the Settlement Class Member must file with the Court and provide a copy to Class Counsel and Defendants' Counsel, a hand signed document that includes:

6.4.1 the case name and case number of the Lawsuit (*Hu, et al. v. Plehn-Dujowich, et al.*, Case No. 3:18-cv-01791-EDL);

6.4.2 the legal name, address, telephone number, and email address (if any) of the person objecting, and if he/she is represented by counsel, the same contact information for his/her counsel;

6.4.3 specifically, and in writing, each objection and the grounds for each

objection, accompanied by any legal support for the objection;

6.4.4 whether he/she intends to appear at the Final Approval Hearing, either with or without counsel;

6.4.5 a statement sufficient to establish his/her membership in the Settlement Class, including all information required by the Claim Form;

6.4.6 a detailed list of any other objections submitted by the Objector, and/or his/her counsel, to any class actions submitted in any court, whether state or federal, in the United States in the previous five (5) years. If the Objector or his/her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the Objection to this Settlement Agreement;

6.4.7 any and all agreements that relate to the objection or the process of objecting, whether written or verbal, between Objector or Objector's counsel and any other person or entity; and

6.4.8 the Objector's signature on the written objection (an attorney's signature is not sufficient).

6.5 The proposed order granting Preliminary Approval will provide that any Settlement Class Member wishing to object and/or appear who fails to follow the procedures set forth above may, in the discretion of the Court, be precluded from doing so.

7 SETTLEMENT ADMINISTRATION:

7.1 **Responsibilities of Settlement Administrator.** The Settlement Administrator (including subcontractors, if any) shall help implement the terms of the proposed Settlement Agreement. The Settlement Administrator shall be responsible for administrative tasks, including, without limitation, (a) arranging for dissemination of Class Notices (in the form approved by the Court) and Claim Forms (in a form approved by the Court) to Class Members, in accordance with the Notice Program; (b) answering inquiries from Class Members and/or Settlement Class Members; (c) receiving and maintaining on behalf of the Court and the Parties any Class Member

1 correspondence regarding requests for exclusion from the settlement; (d) establishing the
2 Settlement Website that posts Class Notices, Claim Forms, and other related documents, including
3 privileged access to an unredacted version of this Settlement Agreement; (e) receiving and
4 processing Claims and distributing cash payments to Class Representatives, Class Counsel, and
5 Settlement Class Members; (f) informing Class Counsel of Settlement Administrator's receipt of all
6 settlement payments, and each settlement payment, from Defendants made pursuant to this
7 Settlement Agreement; and (g) otherwise assisting with implementation and administration of the
8 Settlement Agreement terms.

9 7.2 The attorneys' fees incurred in connection with Class Counsel's duties as Settlement
10 Administrator are intended to be accounted for in the Fee and Expense Award. Should another
11 person or entity replace Class Counsel as Settlement Administrator, at any point, the substituted
12 Settlement Administrator, upon conclusion of its services as Settlement Administrator, shall make a
13 motion to the Court, with notice to the Parties, for reasonable fees and costs for work performed as
14 Settlement Administrator. Defendants shall be jointly and severally liable for any amount awarded
15 by the Court to the substituted Settlement Administrator.

16 7.3 The Settlement Administrator shall provide prompt, accurate and objective responses
17 to inquiries from the Parties, their Counsel, or any designee thereof, and shall periodically report on
18 Claims, Objectors, exclusion requests, or such other information that may be reasonably requested
19 by such persons.

20 7.4 The Settlement Administrator shall, subject to the supervision of the Court,
21 administer the relief provided by this Settlement Agreement by processing Claim Forms in a
22 rational, responsive, cost-effective and timely manner. The Settlement Administrator shall maintain
23 reasonably detailed records of its activities under this Settlement Agreement. The Settlement
24 Administrator shall maintain all such records as are required by applicable law in accordance with
25 its normal business practices, and such records will be made available to Class Counsel,
26 Defendants' Counsel, and the Parties and their representatives, promptly upon request. The
27 Settlement Administrator shall also provide reports and other information to the Court as the Court
28 may require. The Settlement Administrator shall promptly provide the Parties and their counsel

1 with information concerning Class Notice, administration, and implementation of the Settlement
2 Agreement. Should the Court request or should it be reasonably advisable to do so, the Parties, in
3 conjunction with the Settlement Administrator, shall submit a timely report to the Court
4 summarizing the work performed by the Settlement Administrator.

5 7.5 The Settlement Administrator shall employ reasonable procedures to screen Claim
6 Forms for waste, fraud, and abuse, and shall reject a Claim Form, or any part of a Claim for a
7 payment reflected therein, where the Settlement Administrator determines that there is evidence of
8 fraud. The Settlement Administrator will review each Claim Form based upon the initial submission
9 by a Settlement Class Member and ensure that each is complete and properly substantiated, and,
10 based on the substantiation, the Settlement Administrator will determine the appropriate benefit to
11 be paid, if any, in accordance with the terms of this Agreement. The Settlement Administrator is
12 empowered to pay Claims determined to be valid.

13 7.6 The Settlement Administrator shall prepare a declaration attesting to compliance
14 with the Class Notice requirements set forth herein and identifying all Opt-Outs and/or objectors.
15 Such declaration shall be provided to Class Counsel and Defendants' Counsel no later than fourteen
16 (14) calendar days prior to the Final Approval Hearing.

17 7.7 The Settlement Administrator shall be responsible for distributing cash payments to
18 Settlement Class Members according to the processes and criteria set forth herein and in the Notice
19 Program. Such processes and criteria may include payment in the following forms, as selected by
20 each Settlement Class Member during the claim process: (i) mailed check; (ii) direct credit to a
21 PayPal or similar account; or (iii) electronic check emailed to the Settlement Class Member. Such
22 payment form shall be selected by each Settlement Class Member. All checks issued to Settlement
23 Class Members pursuant to this Agreement shall bear in the legend that they expire if not negotiated
24 within ninety (90) calendar days of their date of issue. To the extent that a check issued to a
25 Settlement Class Member is not cashed within ninety (90) calendar days after the date of issue, the
26 check will be void.

27 **8 CLAIMS PROCESS:**

28 8.1 Each Settlement Class Member shall be entitled to submit one Claim for a cash

1 payment pursuant to the terms of the Settlement Agreement and as set forth further below. The
2 period for submitting such Claims shall commence upon the Class Notice Date and continue for no
3 less than sixty (60) calendar days.

4 **8.2 Claim Form and Reasonable Documentation.** All Claims must be submitted with
5 a Valid Claim Form and Reasonable Documentation substantiating the claim, and received by the
6 Settlement Administrator or postmarked by the Claims Deadline, which shall be clearly set forth in
7 the Class Notice, on the Settlement Website, and on the Claim Form. The Claim Form will be
8 available on the Settlement Website. The Claim Form will also be mailed or emailed to any
9 Settlement Class Member upon request by calling or writing to Class Counsel or the Settlement
10 Administrator. Settlement Class Members may submit their completed and signed Claim Forms to
11 the Settlement Administrator by such means as prescribed by the Class Notice on or before the
12 Claims Deadline.

13 **8.3 Filing a Claim.** Each Settlement Class Member may file a Claim that will, if
14 determined by the Settlement Administrator to be a valid Claim, render that Settlement Class
15 eligible to receive a distribution from the Settlement Fund, in the manner set forth below:

16 **8.3.1 Recognized Losses:**

17 8.3.1.1 Settlement Class Members who submit a Valid Claim Form and
18 Reasonable Documentation demonstrating that he or she paid a fee to
19 enroll in the GFDP will have a recognized loss in the amount paid as
20 the course fee;

21 8.3.1.2 For purposes of allocating the Net Settlement Fund, Class
22 Representatives will be deemed to have no recognized losses, to
23 account for earlier payments distributed to Class Representatives, as
24 set forth in section 3.5.1.

25 **8.3.2 Payment Allocations:** All allocations of the Net Settlement Fund shall be
26 distributed by the Settlement Administrator to the respective Settlement
27 Class Members by making a single disbursement of monies to each such
28 Settlement Class Member, unless the Settlement Administrator determines

1 that second round disbursement is necessary or proper as permitted by
2 Section 3.5.4. Monies for distribution to the Settlement Class Members shall
3 be allocated as follows:

4 8.3.2.1 If the total recognized loss for the Claims in Sections 8.3.1.1 is **less**
5 **than** the Net Settlement Fund, Claims made under Sections 8.3.1.1
6 will first be allocated an amount equal to their recognized loss. All
7 remaining funds in the Net Settlement fund will be allocated equally
8 amongst all Settlement Class Members who submit a Valid Claim
9 Form and Reasonable Documentation demonstrating that he or she
10 enrolled in the GFDP.

11 8.3.2.2 If total recognized loss for the Claims described in Section 8.3.1.1 **are**
12 **equal to or exceed** the Net Settlement Fund, Claims made by persons
13 with no recognized losses shall not receive any distribution of funds.
14 Claims made under Section 8.3.1.1 will receive a distribution on a pro
15 rata basis based on each Claimant's recognized loss as a proportion of
16 the total amount of recognized losses for all Claimants.

17 8.4 After all Claims have been processed, Settlement Administrator will provide
18 Defendants' Counsel with the approved Claimants list, including the distribution calculations for
19 each Claim, and details regarding any deficient Claim Forms and all Claims marked for denial.
20 Settlement Administrator will maintain a database of filed Claims, which will include all relevant
21 information captured from the Claim Form. Depending on the number of Claims Forms marked as
22 deficient, the Parties shall meet and confer to determine if a deficiency and denial process is
23 necessary. Any deadlines set forth in this Settlement Agreement shall be changed to accommodate
24 for such deficiency processes as deemed appropriate by the Parties.

25 8.5 Settlement Administrator shall be responsible for reviewing all Claims to determine
26 their validity. Settlement Administrator shall reject any Claim that does not comply in any material
27 respect with the instructions on the Claim Form, or is submitted after the Claims Deadline. The
28 Parties, Class Counsel, and Defendants' Counsel may review any Claims found to be invalid by

Settlement Administrator. If the Parties each agree that a Claim is valid, the Claim shall be paid irrespective of the original determination made by the Settlement Administrator. If either Class Counsel or Defendants' Counsel believe a Claim is valid while the other does not, such disagreements shall be resolved by the Hon. Joseph C. Spero or another third-party mediator agreed upon by the Parties. Any further mediation fees shall be paid from the Settlement Fund.

8.6 **Confidentiality of Claim Forms.** The Parties agree that all Claim Forms submitted by Settlement Class Members, and the personal information contained therein, shall be treated as strictly confidential and will not be disclosed to any person other than the Parties' counsel, the Settlement Administrator, the Court, and any other person(s) to whom disclosure is necessary to effectuate the terms of this Settlement Agreement, or required by applicable state or federal law.

8.7 **Uncleared Checks.** Those Settlement Class Members whose cash benefit checks are not cleared within ninety (90) calendar days after issuance shall be ineligible to receive a cash settlement benefit, and Settlement Administrator shall have no further obligation to make any payment to such Settlement Class Members. The Settlement Administrator shall honor requests for checks to be reissued provided said requests are made prior to the expiration of the ninety (90) calendar day clearance period, and the Settlement Class Member provides any and all necessary documentation to support a request for reissue. Reissued checks shall be valid for a term of thirty (30) calendar days from mailing or the original void date, whichever is later. Any unpaid funds from uncleared checks upon conclusion of the Settlement Fund distribution process described in Section 3.5, shall remain in the Settlement Fund, pending further order of the Court.

8.8 Each Settlement Class Member may submit only one Claim, irrespective of the number of GFDP cohorts in which he or she participated.

8.9 Settlement Administrator shall pay all costs associated with the administration and issuance of checks for cash payments to Settlement Class Members from the Settlement Fund. Where possible, the costs associated with the transfer of any settlement monies to the Settlement Class shall be deducted from the settlement payment in which the cost arises.

9 FINAL APPROVAL ORDER AND JUDGMENT:

9.1 The Parties' joint motion for preliminary approval of the Settlement Agreement will

1 include a request to the Court for a scheduled date on which the Final Approval Hearing will occur.
 2 The Final Approval Hearing shall be scheduled no earlier than ninety (90) calendar days after
 3 notices of this proposed Settlement Agreement are served on the appropriate state and federal
 4 officials as required by 28 U.S.C § 1715. Class Representatives themselves, or jointly with
 5 Defendants, shall move for entry of a Final Approval Order consistent with the terms of this
 6 Agreement and the Preliminary Approval Order, granting final approval of this Settlement
 7 Agreement and, among other things, (a) determining that the Settlement Agreement is fair,
 8 adequate, and reasonable; (b) finally certifying the Settlement Class for settlement purposes only;
 9 (c) determining that the Class Notice provided satisfied Due Process requirements; and (d)
 10 reserving the Court's continuing and exclusive jurisdiction over Defendants and all Settlement
 11 Class Members (including all Objectors) to administer, supervise, construe, and enforce this
 12 Agreement in accordance with its terms.

13 9.2 Upon issuance of the Final Approval Order: (i) the Settlement Agreement shall be
 14 the exclusive remedy for any and all Settlement Class Members; (ii) Defendants shall not be subject
 15 to liability or expense of any kind to any Settlement Class Member except as set forth herein; and
 16 (iii) Settlement Class Members shall be permanently barred from initiating, asserting, or
 17 prosecuting any and all Released Claims against Defendants in any federal or state court in the
 18 United States or any other tribunal.

19 9.3 The Court shall retain jurisdiction with respect to the interpretation, implementation,
 20 and enforcement of the terms of this Settlement and all orders and judgments entered in connection
 21 therewith, and the Parties and their Counsel hereby submit to the exclusive jurisdiction of the Court
 22 for this purpose.

23 **10 RELEASE:**

24 10.1 **Release by Settlement Class Members.** As of the Effective Date, the Releasing
 25 Parties, each on behalf of himself or herself and on behalf of his or her respective heirs, assigns,
 26 beneficiaries, and successors, shall automatically be deemed to have fully and irrevocably released
 27 and forever discharged the Released Parties of and from any and all liabilities, rights, claims,
 28 actions, causes of action, demands, lawsuits, arbitrations, damages, penalties, costs, attorneys' fees,

1 losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected,
 2 liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based
 3 upon, or relate to in any way any of the allegations, acts, transactions, facts, events, matters,
 4 occurrences, representations or omissions involved, set forth, alleged or referred to in this Action,
 5 or which could have been alleged in this Action, including, without limitation, all liabilities, rights,
 6 claims, actions, causes of action, demands, lawsuits, arbitrations, damages, penalties, costs,
 7 attorneys' fees, losses, and remedies, or remedies relating to, based upon, resulting from, or arising
 8 out of the facts and circumstances giving rise to the Lawsuit, as set forth in the First Amended
 9 Complaint in the Action ("Released Claims").

10 10.2 This release is intended to have the broadest possible application and includes, but is
 11 not limited to, any tort, contract, common law, constitutional or other statutory claims, including,
 12 but not limited to alleged violations of the California Labor Code (except for the provisions relating
 13 to workers' compensation and Section 2802) or Business and Professions Code (*e.g.*, 17200 *et*
 14 *seq.*), or the federal Fair Labor Standards Act, and the Private Attorney General Act ("PAGA")
 15 (Labor Code Section 2699 *et seq.*), all wage claims, and all claims for attorneys' fees, costs and
 16 expenses. The Releasing Parties expressly waive their rights to recovery of any type, including
 17 damages, in any administrative or court action, whether state or federal, and whether brought by
 18 any Party or on its behalf, related in any way to the matters released herein.

19 10.3 With respect to the Released Claims, each Settlement Class Member shall be
 20 deemed to have waived and relinquished, to the fullest extent permitted by law, the provisions,
 21 rights and benefits of California Civil Code Section 1542 (and equivalent, comparable, or
 22 analogous provisions of the laws of the United States of America or any state or territory thereof, or
 23 of the common law or civil law). Section 1542 provides that:

24 A general release does not extend to claims which the creditor or releasing party does
 25 not know or suspect to exist in his or her favor at the time of executing the release and
 26 that, if known by him or her, would have materially affected his or her settlement with
 27 the debtor or released party.

28 10.4 By failing to opt-out of the settlement, Settlement Class Members acknowledge and

1 agree that all of the claims for wage and hour and payroll practice violations in the Action are
 2 disputed, and that the Settlement Class members' Settlement Awards constitute payment in full of
 3 any and all amounts allegedly due to them. In light of the foregoing, Settlement Class Members
 4 shall be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not
 5 applicable to the Parties hereto. That section provides in pertinent part as follows:

6 An employer shall not require the execution of a release of a claim or right on account
 7 of wages due, or to become due, or made as an advance on wages to be earned, unless
 8 payment of those wages has been made.

9 **10.5 Excluded Claims.** This release does not extend to claims which by law cannot be
 10 released by private agreement, such as claims for worker's compensation or unemployment
 11 benefits.

12 **10.6** Upon entry of the Final Approval Order, the Settlement Class Members shall be
 13 enjoined from prosecuting any claim they have released in the preceding paragraphs in any
 14 proceeding against any of the Released Parties, or based on any actions taken by any of the
 15 Released Parties that are authorized or required by this Agreement or by the Final Approval Order.
 16 It is further agreed that the Settlement Agreement may be pleaded as a complete defense to any
 17 proceeding subject to this section.

18 **10.7** None of the above releases include releases of claims pursuant to the Settlement
 19 Agreement, or otherwise affect the Parties' rights to enforce the terms of the Settlement Agreement.

20 **11 ATTORNEYS' FEES AND SERVICE AWARDS:**

21 **11.1** No later than fourteen (14) calendar days prior to the expiration of the Objection
 22 Deadline, Class Counsel will petition the Court for an award of attorneys' fees, costs, and expenses
 23 (the Fee and Expense Award) in an amount not to exceed three hundred thousand dollars and no
 24 cents (\$300,000). Such fees, costs, and expenses, if approved by the Court, shall be payable within
 25 fifteen (15) calendar days of the entry of the Final Approval Order, or such later date as required by
 26 the Court, subject to the provision of reasonable and adequate security, and Class Counsel's
 27 provision of all payment routing information and the tax I.D. numbers for Class Counsel. In the
 28 event the Final Approval Order is reversed or vacated by the U.S. Court of Appeals for the Ninth

1 Circuit or the U.S. Supreme Court, Class Counsel shall refund all fees, costs, and expenses paid by
2 Defendants within thirty (30) calendar days of the order vacating or reversing the Final Approval
3 Order. Defendants agree that the attorney fee award is a matter to be determined by the Court, and
4 Defendants will take no position regarding the attorney fee award. The Fee and Expense Award
5 shall be the total obligation of Defendants to pay for attorneys' fees, costs and/or expenses of any
6 kind (including, but not limited to, travel, filing fees, court reporter and videographer expenses,
7 expert fees and costs, and document review and production costs related to this Action or any
8 claims asserted in the Action). Any disputes regarding the distribution of fees or the reasonableness
9 or adequacy of the security to be provided by counsel shall be mediated by the Hon. Joseph C.
10 Spero and decided by the Court. Class Counsel agrees that the denial of, reduction or downward
11 modification of, or failure to grant any application for attorneys' fees, costs, or expenses shall not
12 constitute grounds for modification or termination of this Settlement Agreement, including the
13 releases provided for herein.

14 11.2 Class Counsel will also petition the Court for approval of, and Defendants will not
15 oppose, incentive awards not to exceed the amounts set forth in Section 3.5.1 for each Class
16 Representative, which are intended to compensate such individuals for their efforts in the litigation
17 and commitment on behalf of the Settlement Class ("Incentive Awards"). Incentive Awards will be
18 in addition to any claim which the Class Representative may be entitled to under the claims process
19 set forth in Section 8 of this agreement. Any Incentive Awards approved will be paid from the
20 Settlement Fund. Neither Class Counsel's application for, nor any individual's entitlement to, an
21 Incentive Award shall be conditioned in any way upon such individual's support for this Settlement
22 Agreement.

23 11.3 All papers filed in connection with Class Counsel's petition for the Fee and Expense
24 Award and Incentive Awards shall be made available on the Settlement Website promptly after
25 their being filed with the Court.

26 11.4 Except as otherwise provided in this Settlement Agreement, each party to this
27 Settlement Agreement shall bear his, her or its own costs of the Lawsuit.
28

12 TERMINATION:

12.1 **Effect If Settlement Not Approved.** This Settlement Agreement was entered into only for purposes of settlement, subject to and without waiver of the Parties' respective rights. If the Court does not enter the order granting Preliminary Approval or the Final Approval Order, or if the Effective Date does not occur, Class Counsel and Defendants' Counsel shall endeavor, consistent with the Settlement Agreement, to cure any defect identified by the Court; provided, however, that Defendants shall not be obligated to accept such cure if it increases the cost or burden of the Settlement Agreement to Defendants or reduces or otherwise affects the scope of the releases provided by this Settlement Agreement.

12.2 This Settlement Agreement may be terminated by either the Class Representatives or Defendants by serving on counsel for the opposing Party and filing with the Court a written notice of termination within fourteen (14) calendar days (or such longer time as may be agreed in a writing signed by both Class Counsel and Defendants' Counsel) after any of the following occurrences: (a) Class Counsel and Defendants' Counsel mutually agree in writing to termination before the Effective Date; (b) the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement Agreement; (c) an appellate court reverses the Final Approval Order, and on remand, the Court does not reinstate and finally approve the Settlement Agreement without material change; (d) the Court or any reviewing appellate court incorporates material terms or provisions into, or deletes or strikes material terms or provisions from, or materially modifies, amends, or changes, the Preliminary Approval Order, the proposed Final Approval Order, or the Settlement Agreement; or (e) the Effective Date does not occur.

12.3 If the Settlement Agreement is terminated for any reason, the Final Approval Order is not entered for any reason, or the Effective Date does not occur, then no term or condition of the Settlement Agreement, or any draft thereof, or any discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Action, or in any other proceeding, and the Parties shall be restored to their respective positions in effect immediately preceding execution of this Settlement Agreement.

13 STIPULATED JUDGMENT IN THE EVENT OF DEFAULT:

13.1 This Settlement Agreement reflects, among other things, the compromise and settlement of disputed claims among the parties. The terms of this Settlement Agreement are not to be construed as an admission by Defendants of any liability, except as provided below, upon signing of the Joint Stipulation following the Court's Final Approval of this Settlement.

13.2 Within ten (10) calendar days of the Final Approval of this Settlement Agreement by the Court, Defendants, Defendants' Counsel, and Class Counsel shall sign the Joint Stipulation for Conditional Entry of Final Judgment, attached hereto as **Exhibit 1**, with the original, signed copy to be maintained by Class Counsel. Defendants acknowledge that upon signing the Joint Stipulation, they thereby admit all factual representations made therein and in the proposed Stipulated Judgment attached thereto. Accordingly, the Parties intend and agree that all such factual representations will have preclusive effect in any future proceeding between the Parties.

13.3 Pursuant to the Joint Stipulation, if Class Counsel and Class Representatives (or a Class Representative) reasonably believe that Defendants (or a Defendant) have (or has) failed to perform any obligation under this Settlement Agreement, Class Representatives may file a motion with the Court, along with the signed Joint Stipulation, requesting that the Court enter the Stipulated Judgment in the same, or substantially similar, form as attached to the Joint Stipulation. Class Representatives shall, in accordance with this Court's Local Rule 79-5, request that all factual admissions made by Defendants in the executed Joint Stipulation be maintained under seal pending the Court's determination on whether the Stipulated Judgment shall issue. Any public, redacted version of the Joint Stipulation filed by Class Representatives should redact only those portions of the Joint Stipulation which the Court sealed (if any) following the filing of this Settlement Agreement in connection preliminary approval of the same. Pursuant to Local Rule 79-5(e), within four (4) days of Class Representatives' filing of the administrative motion to seal the Joint Stipulation, Defendants may file materials in support of the administrative motion to seal. Defendants acknowledge that failure to file such supporting materials may be grounds for the Court to deny the administrative motion to seal the Joint Stipulation, provisionally or otherwise.

13.4 Pursuant to the Joint Stipulation, the Court shall enter the Stipulated Judgment upon

a showing by Class Representatives that: (a) Defendants, or a Defendant, failed to perform any obligation required by this Settlement Agreement, including, but not limited to, failing to tender payments in accordance with Section 3 of this Settlement Agreement; (b) Class Representatives gave Defendants written notice that Defendants are in default of such obligation or performance and specifying such default; and (c) after the expiration of thirty (30) calendar days following service of such written notice (which service may be directed to Defendants' Counsel at the address listed in this Settlement Agreement), Defendants have failed to cure such default.

13.5 Within twenty-one (21) calendar days of Class Counsel being notified by Settlement Administrator of Settlement Administrator's receipt of the final settlement payment from Defendants pursuant to Section 3.2, Class Counsel shall destroy the original, signed Joint Stipulation, and promptly notify Defendants' Counsel of its destruction. Class Counsel may retain a pdf copy of the signed Joint Stipulation for record-keeping purposes. In the event that Defendants, or a Defendant, fail to satisfy any obligation under this Settlement Agreement, and fail to cure the same within thirty (30) calendar days of the notice of default being served, Class Counsel is relieved of any obligation to destroy the original, signed Joint Stipulation under this Settlement Agreement.

14 EFFECT OF CLASS CERTIFICATION:

14.1 The Parties agree, for settlement purposes only, that this Action shall be certified and proceed as a class action under Federal Rule of Civil Procedure 23(b)(3), with a class consisting of all Settlement Class Members, Plaintiffs Qiuzi Hu, Edwin Ramirez, Ivan Ronceria, and Wenzhi Fei as Class Representatives, and Class Counsel as counsel for the Settlement Class Members.

14.2 Any certification of a conditional, preliminary or final settlement class pursuant to the terms of this Settlement Agreement shall not constitute, and shall not be construed as, an admission on the part of Defendants that this Action, or any other proposed or certified class action, is appropriate for trial class treatment pursuant to Federal Rule of Civil Procedure or any similar state or federal class action statute or rule. This Settlement Agreement shall be without prejudice to the rights of Defendants to: (a) move to dismiss or stay this Action on any applicable basis, should this Settlement Agreement not be approved or implemented for any reason; (b) oppose certification

1 or seek decertification in this Action, should this Settlement Agreement not be approved or
2 implemented for any reason; or (c) oppose certification in any other proposed or certified class
3 action.

4 **15 MISCELLANEOUS PROVISIONS:**

5 15.1 **Defendants' Legal Fees.** Defendants' legal fees and expenses in this Action shall be
6 borne solely by Defendants.

7 15.2 **Computation of Time.** For purposes of this Settlement Agreement, if the prescribed
8 time period in which to complete any required or permitted action expires on a Saturday, Sunday, or
9 legal holiday (as defined by FED. R. CIV. P. 6(a)(6)), such time period shall be continued to the
10 following business day.

11 15.3 **Interim Stay of Proceedings.** The Parties agree to hold in abeyance all proceedings
12 in the Action, except such proceedings necessary to implement and complete the Settlement.

13 15.4 **Amendment or Modification.** This Settlement Agreement may be amended or
14 modified only by a written instrument signed by counsel for all Parties or their successors in interest
15 and approved by the Court. This Settlement Agreement may not be discharged except by
16 performance in accordance with its terms or by a writing signed by counsel for the Parties hereto
17 and approved by the Court.

18 15.5 **Entire Agreement.** This Settlement Agreement constitutes the entire agreement
19 among the Parties, and no oral or written representations, warranties or inducements have been
20 made to any Party concerning this Settlement Agreement other than the representations, warranties,
21 and covenants contained and memorialized in the Settlement Agreement. All prior or
22 contemporaneous negotiations, memoranda, agreements, understandings, and representations,
23 whether written or oral, are expressly superseded hereby and are of no further force and effect. Each
24 of the Parties acknowledges that they have not relied on any promise, representation or warranty,
25 express or implied, not contained in this Settlement Agreement. No rights hereunder may be waived
26 except in writing.

27 15.6 **Authorization to Enter Into Settlement Agreement.** Class Counsel, who are
28 signatories hereof, represent and warrant that they have the authority, on behalf of Class

1 Representatives and Class Counsel, to execute, deliver, and perform this Settlement Agreement and
2 to consummate all of the transactions contemplated hereby. This Settlement Agreement has been
3 duly and validly executed and delivered by Class Counsel and Class Representatives and constitutes
4 their legal, valid and binding obligation. Defendants' Counsel, who are signatories hereof, represent
5 and warrant that they have the authority, on behalf of their clients, to execute, deliver, and perform
6 this Settlement Agreement and to consummate all of the transactions contemplated hereby. The
7 execution, delivery and performance by Defendants of this Settlement Agreement and the
8 consummation by it of the actions contemplated hereby have been duly authorized by Defendants.
9 This Settlement Agreement has been duly and validly executed and delivered by Defendants and
10 constitutes their legal, valid, and binding obligation.

11 **15.7 Binding on Successors and Assigns.** This Settlement Agreement shall be binding
12 upon, and inure to the benefit of, Class Representatives, Defendants, the Settlement Class Members,
13 and their respective heirs, beneficiaries, executors, administrators, successors, transferees,
14 successors, assigns, or any corporation or any entity with which any party may merge, consolidate
15 or reorganize. Class Representatives and Defendants hereto represent, covenant and warrant that
16 they have not directly or indirectly assigned, transferred, encumbered or purported to assign,
17 transfer or encumber to any person or entity, any portion of any liability, claim, demand, action,
18 cause of action or rights herein released and discharged except as set forth herein.

19 **15.8 Counterparts.** This Settlement Agreement may be executed in one or more
20 counterparts, including by facsimile, DocuSign, or email. All executed counterparts and each of
21 them shall be deemed to be one and the same instrument. All executed copies of this Settlement
22 Agreement, and photocopies thereof (including facsimile and/or emailed copies of the signature
23 pages), shall have the same force and effect, and shall be as legally binding and enforceable, as the
24 original.

25 **15.9 No Signature Required by Settlement Class Members.** Only the Class
26 Representatives and Defendants will be required to execute this Settlement Agreement. The Class
27 Notice will advise all Settlement Class Members of the Settlement Agreement, including binding
28 nature of the release, and such shall have the same force and effect as if this Settlement Agreement

were executed by each Settlement Class Member.

15.10 Cooperation and Drafting. The Parties have cooperated in the drafting and preparation of this Agreement; hence the drafting of this Agreement shall not be construed against any of the Parties. The Parties agree that the terms and conditions of this Agreement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

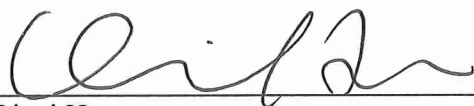
15.11 Governing Law. All terms of this Settlement Agreement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of California and the United States of America, where applicable.

15.12 Jurisdiction of the Court. The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement and all orders and judgments entered in connection therewith, and the Parties and their Counsel hereby submit to the exclusive jurisdiction of the Court for this purpose.

15.13 No Waiver. The waiver by any party of any provision or breach of this Settlement Agreement shall not be deemed a waiver of any other provision or breach of this Settlement Agreement.

IN WITNESS HEREOF, the Parties hereby execute and cause this Settlement Agreement to be executed, by their duly authorized representatives, as of the date(s) indicated on the lines below.

Dated: 7/19/2019



Qiuzi Hu
Class Representative

Dated: _____

Edwin Ramirez
Class Representative

[signatures continue onto next page]

1 were executed by each Settlement Class Member.

2 **15.10 Cooperation and Drafting.** The Parties have cooperated in the drafting and
3 preparation of this Agreement; hence the drafting of this Agreement shall not be construed against
4 any of the Parties. The Parties agree that the terms and conditions of this Agreement were
5 negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached
6 voluntarily based upon adequate information and sufficient discovery and after consultation with
7 experienced legal counsel.

8 **15.11 Governing Law.** All terms of this Settlement Agreement and the exhibits hereto
9 shall be governed by and interpreted according to the laws of the State of California and the United
10 States of America, where applicable.

11 **15.12 Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the
12 interpretation, implementation, and enforcement of the terms of this Settlement and all orders and
13 judgments entered in connection therewith, and the Parties and their Counsel hereby submit to the
14 exclusive jurisdiction of the Court for this purpose.

15 **15.13 No Waiver.** The waiver by any party of any provision or breach of this Settlement
16 Agreement shall not be deemed a waiver of any other provision or breach of this Settlement
17 Agreement.

18 IN WITNESS HEREOF, the Parties hereby execute and cause this Settlement Agreement to
19 be executed, by their duly authorized representatives, as of the date(s) indicated on the lines below.

20
21 Dated: _____

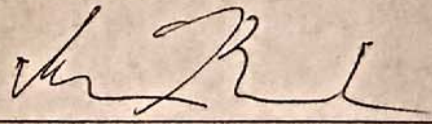
22 _____
23 Qiuzi Hu
24 Class Representative

25 Dated: 07/24/17

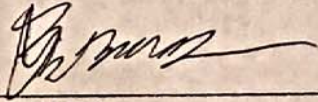
26 
27 _____
28 Edwin Ramirez
Class Representative

[signatures continue onto next page]

1
2 Dated: 7-19-19


Ivan Ronceria
Class Representative

3
4
5
6 Dated: 7-21-19


Wenzhi Fei
Class Representative

7
8
9 Dated: _____

10 Jose M. Plehn-Dujowich
11 Defendant

12
13 Dated: _____

BIZQUALIFY, LLC

14
15 By: _____
16 Jose M. Plehn-Dujowich, CEO
Defendant

17 Dated: _____

DHILLON LAW GROUP INC.

18
19 By: _____
20 Harmeet K. Dhillon (SBN: 207873)
21 Krista L. Baughman (SBN: 264600)
22 Gregory R. Michael (SBN: 306814)

Attorneys for Plaintiffs, Class, and FLSA Collective

23
24 Dated: _____

KIEVE LAW OFFICES

25
26 By: _____
Loren Kieve (SBN: 56280)

27 Attorney for Defendants Jose M. Plehn-Dujowich
28 and BizQualify LLC


1
2 Dated: _____

Ivan Ronceria
Class Representative

3
4
5
6 Dated: _____

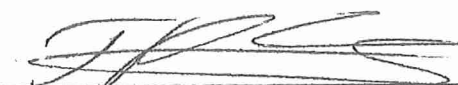
Wenzhi Fei
Class Representative

7
8
9 Dated: Aug 7, 2019


Jose M. Plehn-Dujowich
Defendant

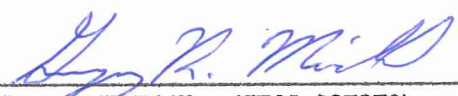
10
11
12 Dated: Aug 7, 2019

BIZQUALIFY, LLC

13
14
15 By: 
Jose M. Plehn-Dujowich, CEO
Defendant

16
17 Dated: August 8, 2019

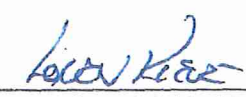
DHILLON LAW GROUP INC.

18
19 By: 
Harmmeet K. Dhillon (SBN: 207873)
Krista L. Baughman (SBN: 264600)
Gregory R. Michael (SBN: 306814)

Attorneys for Plaintiffs, Class, and FLSA Collective

20
21
22
23 Dated: August 8, 2019

KIEVE LAW OFFICES

24
25 By: 
Loren Kieve (SBN: 56280)

26
27
28 Attorney for Defendants Jose M. Plehn-Dujowich
and BizQualify LLC

EXHIBIT 1

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Attorneys for Plaintiffs Qiuzi Hu, Edwin
Ramirez, Ivan Ronceria, Wenzhi Fei, Class,
and FLSA Collective

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Attorney for Defendants Jose M. Plehn-
Dujowich and BizQualify LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

QIUZI HU, an individual, **EDWIN
RAMIREZ**, an individual, **IVAN
RONCERIA**, an individual, **WENZHI FEI**,
an individual, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

**JOSE M. PLEHN-DUJOWICH, a.k.a.
JOSE M. PLEHN**, an individual;
BIZQUALIFY LLC, a California limited
liability company; and **POWERLYTICS,
INC.**, a Delaware corporation,

Defendants.

Case Number: 3:18-cv-01791-EDL

**JOINT STIPULATION FOR CONDITIONAL
ENTRY OF FINAL JUDGMENT;**

**[PROPOSED] ORDER GRANTING JOINT
STIPULATION; AND**

[PROPOSED] FINAL JUDGMENT

Complaint Filed: March 22, 2018

1 Plaintiffs Qiuzi Hu, Edwin Ramirez, Ivan Ronceria, and Wenzhi Fei (collectively, “Class
 2 Representatives”), and the Settlement Class members they represent (Class Representatives and the
 3 Settlement Class are hereinafter referred to as “Plaintiffs”), and Defendants Jose M. Plehn-Dujowich
 4 (“Plehn-Dujowich”) and BizQualify LLC (“BizQualify”) (collectively, “Defendants”) (Plaintiffs and
 5 the Defendants are hereinafter referred to as the “Parties”) stipulate and agree as follows:

6 WHEREAS, the Parties entered into a Stipulation of Class Action Settlement and Release of
 7 Claims (“Settlement Agreement”), which was subsequently approved by this Court;

8 WHEREAS, pursuant to the terms set forth in the Settlement Agreement, Defendants
 9 stipulate that upon Class Representatives, or a Class Representative, forming the reasonable belief
 10 that Defendants, or a Defendant, failed to satisfy any obligation under the Settlement Agreement,
 11 Class Representatives may move the Court for relief from the Final Approval Order entered by the
 12 Court, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, including to seek entry of a
 13 final monetary judgment in accordance with the terms of the Settlement Agreement and this Joint
 14 Stipulation;

15 WHEREAS, Defendants stipulate to the entry of a final judgment in the amount of one
 16 million dollars (\$1,000,000.00) against Defendants, jointly and severally, in the same, or
 17 substantially similar, form as is attached here as **Exhibit A** (the “Final Judgment”), upon a showing
 18 to the Court that: (a) Defendants, or either of them, failed to satisfy any obligation, in part or in
 19 whole, under the Settlement Agreement; (b) Class Representatives gave written notice to Defendants
 20 (which may be effectuated by providing written notice to Defendants’ Counsel) of the failure to
 21 perform; and (c) after the expiration of thirty (30) calendar days following service of such written
 22 notice, Defendants have failed to cure said failure to perform;

23 WHEREAS, the Parties agree that the stipulated sum of one million dollars (\$1,000,000) is a
 24 fair and reasonable estimation of the damages sustained and recoverable by Plaintiffs as a result of
 25 Defendants’ conduct, which conduct gave rise to this action and to the Parties’ desire to enter into
 26 the Settlement Agreement;

27 WHEREAS, by signing this Joint Stipulation, Defendants admit as true Redacted

1 Redacted

2
3
4
5
6
7 WHEREAS, the Parties intend for such admissions to have preclusive effect in all future
8 actions by and between the Parties;

9 WHEREAS, all payments made by Defendants under the Settlement Agreement are to be
10 credited toward satisfaction of the Final Judgment;

11 WHEREAS, the Parties acknowledge and agree that Plaintiffs shall be entitled to recover
12 reasonable attorneys' fees and costs incurred in enforcing the Final Judgment;

13 WHEREAS, Defendants agree to be bound by the provisions of the Final Judgment duly
14 issued by the Court in furtherance of this Joint Stipulation, and waive all rights to appeal or to
15 otherwise challenge or contest the validity of the Final Judgment; and

16 WHEREAS, the Parties expressly waive the separate document requirement set forth in Rule
17 58 of the Federal Rules of Civil Procedure;

18 NOW THEREFORE, the Parties stipulate and request that, upon a showing to the Court by
19 Class Representatives, or a Class Representative, of the following:

20 (a) Defendants, or either of them, failed to perform any obligation under the Settlement
21 Agreement;

22 (b) Class Representatives gave written notice to Defendants (which may be effectuated by
23 providing written notice to Defendants' Counsel) of the failure to perform; and

24 (c) after the expiration of thirty (30) calendar days following service of such written notice,
25 Defendants failed to cure said failure to perform;

26 that the Court enter a final judgment against Defendants, jointly and severally, in the amount of one
27 million dollars (\$1,000,000.00), in the form attached here as Exhibit A, or as may be duly modified
28 by the Court to effectuate the purpose of this Joint Stipulation and the Settlement Agreement, and

the Parties further stipulate that the Court shall retain jurisdiction over this matter for purposes of construction, modification, and enforcement of the Final Judgment.

Respectfully submitted,

Dated: _____

DHILLON LAW GROUP INC.

By: _____

Harmeet K. Dhillon

Gregory R. Michael

Attorneys for Plaintiffs Qiuzi Hu, Edwin Ramirez,
Ivan Ronceria, Wenzhi Fei, Proposed Class and
Subclass, and FLSA Collective

Dated: _____

JOSE M. PLEHN-DUJOWICH

Jose M. Plehn-Dujowich

Dated: _____

BIZQUALIFY, LLC

By: _____

Jose M. Plehn-Dujowich

Chief Executive Officer

Dated: _____

KIEVE LAW OFFICES

By: _____

Loren Kieve, Esq.

Attorneys for Defendants Jose M. Plehn-
Dujowich and BizQualify LLC

[PROPOSED] ORDER

PURSUANT TO STIPULATION IT IS SO ORDERED.

DATED: _____

United States District/Magistrate Judge

EXHIBIT A

HARMEET K. DHILLON (SBN: 207873)
harmeet@dhillonlaw.com
KRISTA L. BAUGHMAN (SBN: 264600)
kbaughman@dhillonlaw.com
GREGORY R. MICHAEL (SBN: 306814)
gmichael@dhillonlaw.com
DHILLON LAW GROUP INC.
177 Post Street, Suite 700
San Francisco, California 94108
Telephone: (415) 433-1700
Facsimile: (415) 520-6593

Loren Kieve (SBN: 56280)
KIEVE LAW OFFICES
2655 Steiner Street
San Francisco, CA 94115
415.364.0060
lk@kivelaw.com

Attorney for Defendants Jose M. Plehn-
Dujowich and BizQualify LLC

Attorneys for Plaintiffs Qiuzi Hu, Edwin
Ramirez, Ivan Ronceria, Wenzhi Fei, Class,
and FLSA Collective

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

QIUZI HU, an individual, **EDWIN**
RAMIREZ, an individual, **IVAN**
RONCERIA, an individual, **WENZHI FEI**,
an individual, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

JOSE M. PLEHN-DUJOWICH, a.k.a.
JOSE M. PLEHN, an individual;
BIZQUALIFY LLC, a California limited
liability company; and **POWERLYTICS,**
INC., a Delaware corporation,

Defendants.

Case Number: 3:18-cv-01791-EDL

[PROPOSED] FINAL JUDGMENT

Complaint Filed: March 22, 2018

1 Plaintiffs Qiuzi Hu, Edwin Ramirez, Ivan Ronceria, and Wenzhi Fei and the Settlement Class
 2 Members whom they represent (collectively, “Plaintiffs”), by and through Class Counsel, and
 3 Defendants Jose M. Plehn-Dujowich (“Plehn-Dujowich”) and BizQualify LLC (“BizQualify”)
 4 (collectively, “Defendants”) (Plaintiffs and the Defendants are hereinafter referred to as the
 5 “Parties”), have stipulated to the entry of this Final Judgment upon the satisfaction of certain
 6 conditions set forth in the Parties’ Joint Stipulation for Conditional Entry of Final Judgment (“Joint
 7 Stipulation”), which conditions this Court has found to be satisfied. Accordingly, the Court enters
 8 this Final Judgment.

9 Unless defined herein, all capitalized terms in this Final Judgment shall have the same
 10 meanings as set forth in the Settlement Agreement, which the Court incorporates herein.

11 **THEREFORE, IT IS ORDERED:**

12 **FINDINGS AND CONCLUSIONS**

13 Having read and considered the Parties’ Joint Stipulation, all papers submitted by the Parties
 14 in support or opposition to Plaintiffs’ motion for entry of this Final Judgment pursuant to the Joint
 15 Stipulation, and the filings made in this Action, the Court makes the following findings and
 16 conclusions:

- 17 1. The Court has jurisdiction over this matter;
- 18 2. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court
 19 grants final certification of the following Settlement Class:

20 All persons who enrolled in the Global Financial Data Project. Excluded from the
 21 Settlement Class are Defendants Jose M. Plehn-Dujowich, BizQualify LLC, and
 22 Powerlytics, Inc.’s officers and directors and the immediate families of the
 23 Defendants’ officers and directors. Also excluded from the Settlement Class are
 24 the Defendants’ legal representatives, heirs, successors or assigns; any entity in
 25 which Defendants have or have had a controlling interest; and any putative
 Settlement Class Members who excluded themselves from the Settlement Class
 by filing a request for exclusion in accordance with the requirements set forth in
 the Class Notice.

- 26 3. The Court finds that the Settlement Class meets all prerequisites of Rule 23 of the
 27 Federal Rules of Civil Procedure, including that:

- a. The Settlement Class is so numerous that joinder of all members is impracticable;

- b. There are questions of law or fact common to the Settlement Class;
- c. Class Representatives' claims are typical of the claims of the Settlement Class;
- d. Class Representatives and Class Counsel are capable of fairly and adequately protecting the interests of the Settlement Class;
- e. Common questions of law and fact predominate over questions affecting only individual Settlement Class Members and accordingly, the Settlement Class is sufficiently cohesive to warrant settlement by representation; and
- f. Certification of the Settlement Class is superior to other available methods for the fair and efficient resolution of the claims of the Settlement Class.

4. The Court grants final appointment of Class Representatives Qiuzi Hu, Edwin Ramirez, Ivan Ronceria, and Wenzhi Fei as Settlement Class Representatives.

5. The Court grants final appointment of Harmeet K. Dhillon, Krista L. Baughman, and Gregory R. Michael of the Dhillon Law Group Inc. as Class Counsel for the Settlement Class.

6. Class Representatives and Class Counsel are authorized to take all appropriate action required or permitted to be taken to effectuate the terms of this Final Judgment.

7. The Court finds that the manner and form of notice (the "Notice Plan") set forth in the Settlement Agreement was provided to Settlement Class Members by the Settlement Administrator. The Notice Plan was reasonably calculated to give actual notice to Settlement Class Members of the right to receive benefits from the Settlement Agreement, including benefits associated with entry of this Final Judgment, and to be excluded from or object to the Settlement Agreement.

8. Class Counsel, as Court-appointed Settlement Administrator, is authorized to continue its duties as set forth in the Settlement Agreement, and shall carry out all tasks set forth in the Settlement Agreement that are assigned to the Settlement Administrator and remain to be performed.

9. The Court finds that Settlement Class Members were provided an opportunity to object to or opt out of the Settlement Class. All persons who made valid and timely requests for exclusion are hereby excluded from the Settlement Class and are not bound by this Final Judgment.

10. Pursuant to the Joint Stipulation, Plaintiffs shall be entitled to recover reasonable attorneys' fees and costs arising from the enforcement of this Final Judgment, including the collection of monies owed to Plaintiffs.

11. The Court further finds that:

- a. Redacted ;
- b. Redacted ;
- c. Redacted ;
- d. Redacted ;
- e. Redacted ;
- f. Defendants failed to satisfy their obligations under the Settlement Agreement;
- g. Plaintiffs gave written notice to Defendants of the default;
- h. after the expiration of thirty (30) calendar days following service of the written notice on Defendants, Defendants failed to cure such default, rendering entry of this Final Judgment pursuant to the Joint Stipulation necessary and proper; and
- i. as a result of Defendants' failure to fully perform obligations under the Settlement Agreement, the Releases set forth in Section 10 of the Settlement Agreement are no longer binding, and are not enforceable by Defendants.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

- 1. The action is reopened.
- 2. Judgment in the amount of ONE MILLION DOLLARS (\$1,000,000) is entered in favor of Plaintiffs against Defendants, jointly and severally, as compensation for the harms caused to Plaintiffs by Defendants' fraud. Any funds received by Plaintiffs in furtherance of the Settlement Agreement between the Parties shall be credited toward satisfaction of this Final Judgment. Class Counsel shall promptly file a notice of partial satisfaction of

this Final Judgment with the Court, disclosing the amount paid by Defendants as of the date this Final Judgment is entered.

3. The funds collected through enforcement of this Final Judgment shall be distributed to Plaintiffs by the Settlement Administrator, in a manner consistent Section 3.5 of the Settlement Agreement, and all costs associated with the same may be paid from the funds collected through the enforcement of this Final Judgment.
4. Interest, computed under 28 U.S.C. § 1961 will accrue on any outstanding amounts not paid in satisfaction of this Final Judgment as of the date of entry, and will immediately become due and payable.
5. Plaintiffs are entitled to seek costs, including attorneys' fees, incurred in connection with the enforcement of this Final Judgment.
6. The Court will retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Final Judgment.
7. There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.
8. There being no good cause to maintain under seal the factual admissions made by Defendants in the Joint Stipulation, Class Counsel shall refile an unredacted version of the executed Joint Stipulation, if applicable.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

DATED: _____

United States District/Magistrate Judge

EXHIBIT 2

STOCK PLEDGE AND SECURITY AGREEMENT

This Stock Pledge and Security Agreement (the “Agreement”) is entered into by and between, on the one hand, Jose M. Plehn-Dujowich, also known as Jose Plehn, (“Debtor”), and, on the other hand, Settlement Administrator (“Secured Party”), in its capacity as collateral agent for Qiuzi Hu, Edwin Ramirez, Ivan Ronceria, Wenzhi Fei and the Settlement Class (collectively, Hu, Ramirez, Ronceria, Fei and the Settlement Class are hereinafter referred to as the “Creditors”). The Debtor and Secured Party are collectively referred to as the “Parties” herein.

INCORPORATION OF TERMS AND DEFINITIONS

The Parties intend and agree that the Stipulation of Class Action Settlement and Release of Claims (the “Settlement Agreement”), by and between Creditors and Debtor, including all definitions and terms provided therein, are hereby incorporated by reference into this Agreement, and that to the extent any terms defined in this Agreement and the Settlement Agreement are in conflict, that the definition set forth in this Agreement shall prevail over any other definition, with respect to any interpretation of this Agreement.

RECITALS

WHEREAS, the Creditors and Debtor entered into the Settlement Agreement, as authorized by the court, in the legal action initiated by Qiuzi Hu, Edwin Ramirez, Ivan Ronceria, Wenzhi Fei, on behalf of themselves and the Settlement Class, against Debtor and others in the United States District Court for the Northern District of California titled *Hu et al. v. Plehn-Dujowich et al.*, Case No. 3:18-cv-01791-EDL;

WHEREAS, Debtor is obligated under the Settlement Agreement to make certain payments to Secured Party, for the benefit of the Creditors (the “Obligations”);

WHEREAS, Debtor owns (1) fifty thousand (50,000) shares of Series A1 Preferred Stock in Powerlytics, Inc. (formerly Plehn Analytics Inc.), and (2) one hundred thousand (100,000) shares of Series A2 Preferred Stock in Powerlytics, Inc. (collectively, the “Shares”);

WHEREAS, Debtor agrees to pledge and collaterally assign the Shares, together with any and all benefits received by Debtor in connection with Shares, including, but not limited to, all current and future interest, charges, and fees with respect thereto, and securities received as a part of any merger or reorganization with respect to such shares (the “Collateral”) to Secured Party, to secure Debtor’s Obligations under the Settlement Agreement;

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

- 1. Pledge of Shares.** Debtor hereby pledges and collaterally assigns the Collateral to Secured Party as collateral security for the payment and performance of Debtor’s

Obligations under the Settlement Agreement, including, but not limited to, the payments required under Section 3 of the Settlement Agreement.

2. **Grant of Security Interest.** Debtor hereby affirms, acknowledges, ratifies, grants and assigns in favor of the Secured Party a first, prior and sole lien and security interest (the "Security Interest") in the Collateral, to secure the payment and performance of Debtor's Obligations under the Settlement Agreement.
3. **Delivery of the Shares.** The Security Interest shall be perfected by Secured Party taking possession of the certificate(s) representing the Shares. Debtor shall deliver to Secured Party all certificates evidencing the Shares, including all separate assignments of all of the Shares (whether or not evidenced by certificates) duly executed in blank, together with irrevocable proxies which provide Secured Party with full and complete voting power and authority respecting the Shares exercisable however only upon the occurrence of an Event of Default (hereinafter defined).
4. **Event of Default.** Debtor shall be in default under this Agreement upon the occurrence of any of the following events or conditions ("Event of Default"): (a) the failure to perform any of the Obligations of this Agreement; (b) the transfer or encumbrance of the Collateral; (c) the making of any levy, seizure or attachment upon the Collateral; or (d) the filing by Debtor or by any third party against Debtor of any petition under any Federal bankruptcy statute, the appointment of a receiver of any part of the property of Debtor, or any assignment by Debtor for the benefit of any creditors, other any assignment to Secured Party for the purpose of giving effect to this Agreement.
5. **Rights Upon Event of Default.** Upon the occurrence of an Event of Default, Secured Party shall have the right (in addition to any other right otherwise possessed by Secured Party) to (a) exercise each and all the rights and privileges of a record holder of the Collateral, including without limitation, the right to sell, transfer, or otherwise dispose of the Shares and to retain and/or to collect any and all interest, dividends, and other rights or privileges flowing from ownership of the Shares, and (b) exercise all rights of a secured party under the Uniform Commercial Code as in effect in the State of California upon the date hereof and under other applicable law, including without limitation private sale of the Shares. All amounts received by Secured Party through the exercise of their rights as aforesaid shall be applied to the extent required to satisfy the Obligations of Debtor to the Creditors under the Settlement Agreement.
6. **Voting Rights.** Until the occurrence of an Event of Default, Debtor shall hold and maintain all ownership rights associated with the Shares, including the right to vote said Shares on any corporate question.
7. **Covenant of Debtor.** During the term of this Agreement:
 - (a) Debtor shall not sell, assign, transfer, hypothecate, or otherwise dispose of the Shares, or any interest therein, encumber the Shares or any interest therein, or contract to do

any of the foregoing; and

- (b) Debtor shall not take any action with respect to the Shares that is inconsistent with the provisions or purpose of this Agreement or that would adversely affect the rights of Secured Party or the Creditors under this Agreement or the Settlement Agreement.

8. Protection of Shares. Debtor shall pay all taxes, charges and assessments against the Collateral and do all acts necessary and appropriate to preserve and maintain the value thereof. In the event of the failure of Debtor to do so, Secured Party may make such payments and take such actions on account thereof as it, in its sole discretion, deems desirable. Debtor shall reimburse Secured Party immediately on demand for each and all such payments and any costs so incurred.

9. Rights of Settlement Administrator as Collateral Agent. Any rights of the Creditors in the Collateral will be exercisable by Secured Party as collateral agent for Creditors. Secured Party may in his, her, or its sole discretion, and behalf of Creditors, take any and all actions, exercise any and all rights and remedies, give any and all waivers and forbearances, make any and all determinations and elections, and make any and all sales, transfers, or assignments that Creditors may otherwise be entitled to exercise under this Agreement or the Settlement Agreement. Debtor will be entitled to rely solely on the actions of Secured Party as binding all Creditors.

10. Representations and Warranties of Debtor. Debtor represents and warrants that as of the date hereof:

- (a) Debtor is the sole owner of the Shares and has the right, authority and capacity to pledge, transfer, assign, and grant a security interest in and to all right, title and interest in and to the Shares pursuant to this assignment;
- (b) The Shares constitute all the capital stock of Powerlytics, Inc., owned by Debtor;
- (c) The Shares are not subject to any right, security interest, lien, encumbrance or adverse claim of any third party except the interest of Secured Party arising under this Agreement;
- (d) This Agreement and consummation of the transactions set forth herein do not violate or constitute a breach of any indenture, agreement or undertaking to which Debtor is a party or by which Debtor is bound, or of any laws, statutes and regulations of the United States or any state or political subdivision thereof to which Debtor may be subject;
- (e) Debtor has disclosed in writing to Secured Party all restrictions upon the sale, transfer or assignment of any of the Collateral, including by sending copies of all documents memorializing such restrictions to Secured Party; and

- (f) The execution, delivery and performance hereof by Debtor are not in contravention of any prior obligation of Debtor or any obligation with respect to the Collateral.

11. Waivers. No waiver or modification of any of the provisions hereof shall be binding on Secured Party and/or Creditors unless in writing and signed by Class Counsel and Secured Party, and no waiver by Secured Party and/or Creditors of any rights they may have hereunder shall be deemed a waiver of any other rights they may have. All rights and remedies of Secured Party and/or Creditors shall be cumulative and may be exercised singly or concurrently by Secured Party.

12. Additional Documents. Upon the request of Secured Party, Debtor will execute and deliver such further documents and take such further action as Secured Party may reasonably request in order to fully affect the purposes of this Agreement and to protect the rights of Secured Party and Creditors conferred by this Agreement. Upon satisfaction of all of Debtor's Obligations under the Settlement Agreement, and the termination of this Agreement, Secured Party shall deliver the certificates of the Shares to Defendants' Counsel at the address specified in the Settlement Agreement, or another person so designated by Debtor for their receipt.

13. Miscellaneous.

- (a) This Agreement shall be interpreted under and construed in accordance with the laws of the State of California.
- (b) Any notice or other communications required or permitted hereunder shall be in writing and shall be made to Class Counsel, Defendants, Defendants' Counsel, and Settlement Administrator.
- (c) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (d) This Agreement shall be binding upon and inure to the benefit of the Parties, their successors and permitted assigns, and may not be changed or modified except by an instrument in writing signed by the party to be charged therewith.

Dated: _____

SETTLEMENT ADMINISTRATOR

By: _____
Dhillon Law Group Inc.
Harmeet K. Dhillon
Authorized Signatory and Attorney for
Creditors

Dated: _____

JOSE M. PLEHN-DUJOWICH

Jose M. Plehn-Dujowich

APPROVED AS TO FORM:

Dated: _____

KIEVE LAW OFFICES

By: _____
Loren Kieve, Esq.

Attorney for Defendants Jose M. Plehn-
Dujowich and BizQualify LLC

EXHIBIT B

IMPORTANT LEGAL NOTICE

QIUZI HU, an individual, EDWIN RAMIREZ, an individual, IVAN RONCERIA, an individual, WENZHI FEI, an individual, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

JOSE M. PLEHN-DUJOWICH, a.k.a. JOSE M. PLEHN, an individual; BIZQUALIFY LLC, a California limited liability company; and POWERLYTICS, INC., a Delaware corporation,

Defendants.

Case Number: 3:18-cv-01791-EDL

NOTICE OF CLASS ACTION SETTLEMENT

A United States federal court authorized the distribution of this Notice to you. This is not a solicitation from a lawyer.

If you participated in the Global Financial Data Project you may be eligible to receive benefits from a class action settlement.

Your legal rights are affected whether or not you act. Please read this Notice carefully.

WHAT IS THIS NOTICE?

A proposed Class Action Settlement has been reached in a class action lawsuit involving Jose M. Plehn-Dujowich and BizQualify LLC, captioned *Hu, et al. v. Plehn-Dujowich, et al.*, Case No. 3:18-cv-01791-EDL (the “Action”) pending in the United States District Court, Northern District of California. A Federal Court authorized this Notice because you have a right to know about the proposed Settlement of this class action lawsuit and about all of your options before the Court decides whether to grant final approval of the Settlement. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, and who is eligible to receive them.

Plaintiffs Qiuzi Hu, Edwin Ramirez, Ivan Ronceria, and Wenzhi Fei (“Plaintiffs” or “Class Representatives”) have sued Defendants Jose M. Plehn-Dujowich and BizQualify LLC (“Defendants”) for their alleged violations of California Labor Code, the federal Fair Labor Standards Act (“FLSA”), fraud, false advertising, breach of contract, unfair competition, and related claims, in connection with the Global Financial Data Project (“GFDP”), an online course operated by the Defendants. Plaintiffs have voluntarily dismissed all claims against former-defendant Powerlytics, Inc., which is no longer a defendant in this action. You have received this Notice because Defendants’ records show that you participated in the GFDP during the relevant period. Accordingly, you should read this Notice carefully, because it will affect your rights.

The Parties have agreed to settle the Action in its entirety.

The Settlement Class includes all persons who participated in the Global Financial Data Project.

Because you have been identified as a potential Settlement Class member, at this time you have the following choices:

WHAT ARE MY OPTIONS REGARDING THE SETTLEMENT?	
SUBMIT A CLAIM FORM	If you submit a Claim Form, you will give up the right to sue Defendants in a separate lawsuit about the claims this Settlement resolves. The deadline to submit a Claim Form is [DATE].
ASK TO BE EXCLUDED (OPT-OUT)	If you decide to exclude yourself (“opt-out”), you will keep the right to sue Defendants in your own separate lawsuit about the claims this Settlement resolves, but you give up the right to receive the benefits this Settlement provides. The deadline to request exclusion from the Settlement Class is [DATE].
OBJECT TO THE SETTLEMENT	If you do not exclude yourself from the Settlement Class, you may object to the Settlement by following the procedures below and submitting your specific objection in writing to the Court. The deadline to object to the Settlement is [DATE].
DO NOTHING	If you do nothing, you will not receive the benefits that this Settlement provides and you will give up the right to sue Defendants in a separate lawsuit about the claims this Settlement resolves.

WHY DID I GET THIS NOTICE?

Defendants’ records show that you previously participated in the Global Financial Data Project and are a class member of this lawsuit. This Notice explains that the Court has allowed, or “certified,” a class action lawsuit and preliminarily approved a Class Settlement that may affect you. You have legal rights and options that you may exercise.

The United States District Court for the Northern District of California is overseeing this case. The lawsuit is known as *Hu, et al. v. Plehn-Dujowich, et al.*, Case No. 3:18-cv-01791-EDL.

WHAT IS THIS CASE ABOUT?

Plaintiffs filed a lawsuit against Defendants Jose M. Plehn-Dujowich and BizQualify LLC on March 22, 2018, and amended the lawsuit on July 31, 2018 to join Defendant Powerlytics, Inc. as a defendant. Plaintiffs have since voluntarily dismissed all claims asserted against Powerlytics, Inc., which is no

longer a defendant in this lawsuit. The operative First Amended Complaint asserts that Defendants made material misrepresentations with respect to the Global Financial Data Project, advertising the project as being operated, sponsored, endorsed, or affiliated by the University of California, Berkeley and/or the University of California, Los Angeles; that Defendants made certain false promises to provide meaningful educational instruction, a certification, and a letter of recommendation; that Defendants took, under false pretenses, money from those participating in the project, in the form of a course fee; and that Defendants entered into an employer-employee relationship with those who enrolled in Defendants' Global Financial Data Project and performed work for Defendants in connection thereto, including by collecting financial data on U.S. and foreign businesses. Accordingly, Plaintiffs allege that Plaintiffs and all those similarly situated are entitled to monetary damages, liquidated damages, penalties, injunctive relief, interest, costs, attorneys' fees, and expenses. The Court has allowed this case to proceed as a class action on behalf of the following Class of persons:

- **Class:** All persons who enrolled in the Global Financial Data Project. Excluded from the Settlement Class are Defendants' officers and directors and the immediate families of the Defendants' officers and directors. Also excluded from the Settlement Class are the Defendants' legal representatives, heirs, successors or assigns, and any entity in which Defendants have or have had a controlling interest.

The Parties now agree to settle the Action in its entirety. The Parties intend the Settlement to bind the Class Representatives, Defendants, and all Settlement Class Members. The Settlement Class is defined to include the following persons:

- **Settlement Class:** All Class Members, including Class Representatives, who do not exclude themselves from the Class or Settlement Class, pursuant to the procedures set forth in Section 6.3 of the Settlement Agreement and the Class Notice.

WHAT IS A CLASS ACTION AND WHO IS INVOLVED?

In a class action lawsuit, one or more people, called "Class Representatives" (in this case, Plaintiffs Qiuzi Hu, Edwin Ramirez, Ivan Ronceria, and Wenzhi Fei), sue on behalf of other people who have similar claims. These people together are a "class" or "class members." The plaintiffs who initially sued, and all the class members like them who do not opt-out of the litigation, are called the plaintiffs. The person and companies they sued are called the defendants (in this case Defendants Jose M. Plehn-Dujowich and BizQualify LLC). One Court resolves the issues for everyone in the class, except for those people who choose to exclude themselves from the class (or "opt-out").

WHY IS THERE A SETTLEMENT?

The Court did not decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to this Settlement, in order to avoid the cost and burden of further litigation and so the Settlement Class Members can receive benefits. The Class Representatives and their attorneys believe the Settlement is a fair and reasonable resolution of the claims asserted in this lawsuit.

HOW DO I KNOW IF I AM A PART OF THE SETTLEMENT?

You are a part of the Settlement Class if you participated in the Global Financial Data Project operated by Defendants, at any point in time, and regardless of whether you paid any enrollment fee. Those Settlement Class Members that paid an enrollment fee may be eligible to receive greater compensation than those Members who did not pay a fee.

Excluded from the Settlement Class are Defendants' officers and directors and the immediate families of the Defendants' officers and directors. Also excluded from the Settlement Class are the Defendants' legal representatives, heirs, successors or assigns, and any entity in which Defendants have or have had a controlling interest.

WHAT IF I AM STILL NOT SURE IF I AM A PART OF THE SETTLEMENT?

If you are not sure whether you are included in the Settlement Class, you can contact Class Counsel, which will be serving as the Settlement Administrator:

DHILLON LAW GROUP INC.

Harmeet K. Dhillon, Esq.
Krista L. Baughman, Esq.
Gregory R. Michael, Esq.
177 Post Street, Suite 700
San Francisco, CA 94108
United States of America
Telephone: +1 (415) 433-1700
Facsimile: +1 (415) 520-6593
Email: GFDPSettlement@dhillonlaw.com;

You may also visit the Settlement Website: www._____.com, for additional information.

HOW DO I KNOW IF I AM ELIGIBLE FOR MONETARY SETTLEMENT BENEFITS?

All Settlement Class Members who submit timely, valid Claim Forms will be eligible to receive monetary benefits. However, the Settlement Agreement also gives priority to those Settlement Class Members who submit both a valid Claim and proof that he or she paid a "course fee" to enroll in the GFDP. To learn more about submitting a Claim Form, see below, or visit the Settlement Website at: www._____.com.

WHAT ARE THE SETTLEMENT BENEFITS?

The Settlement creates a Settlement Fund in the total amount of up to \$695,000. Of the total Settlement Fund, \$375,000 shall be allocated amongst the Settlement Class Members and Class Representatives. The Settlement Fund shall be paid in the following order:

- (1) Payment for general releases and services provided by Class Representatives. Each Class Representative shall be refunded their \$2,413 course fee and shall, subject to Court approval, receive an incentive payment not to exceed a combined total of \$20,000, split amongst the Class Representatives;
- (2) Any award of attorneys' fees and costs as approved by the Court to Class Counsel under the Settlement Agreement, which amount is not to exceed \$300,000;
- (3) Cash benefits to the Settlement Class Members who submit a valid and legitimate Claim Form shall be eligible to receive a portion of the remaining Settlement Fund (i.e. a portion of \$345,348) in accordance with the information provided below.

The Settlement Agreement gives priority to those Settlement Class Members who submit both a valid Claim and proof that he or she paid a "course fee" to enroll in the GFDP.

Accordingly, if the total amount of documented "course fees" paid by Settlement Class Members **is equal to or greater than** \$345,348, those Settlement Class Members who fail to submit documentation of any "course fee" will not receive any settlement payment, while those who do submit such documentation will receive a pro rata share of the remaining Settlement Fund, based on the amount he or she paid in comparison to the amounts paid by all other claimants.

If the total amount of documented "course fees" paid by Settlement Class Members is **less than** \$345,348, then the funds will be split as follows: all those who submitted proof of payment of a "course fee" will be entitled to a full refund of the amount paid, and pro rata split of any remaining funds; those who do not submit such proof will be entitled to receive a pro rata split of any funds remaining after the refunds of course fees have been allocated to the other claimants.

All disbursements to the Settlement Class Members shall be made in the order that the Valid Claim Forms were received by the Settlement Administrator. Under the Settlement Agreement, Defendants are required to make payments on an ongoing basis over no less than five years. Accordingly, those Settlement Class Members that submit a Valid Claim earlier, will be eligible to receive payment earlier, following the final approval of the Settlement by the Court.

Additionally, the Parties have agreed that Defendants will provide certain assurances that they will fully perform their obligations under the Settlement Agreement, including making all settlement payments in a timely manner. Specifically, upon final approval of the Settlement by the Court, Defendants have agreed to do the following: (1) Defendant Plehn-Dujowich will execute a stock pledge and security agreement pledging 50,000 shares of Series A1 Preferred Stock and 100,000 shares of Series A2 Preferred Stock in Powerlytics, Inc. to the Settlement Administrator, for the benefit of the Settlement Class; and (2) Defendants will stipulate to entry of a final judgment of \$1,000,000 which will be entered by the Court in the event that Defendants default on any obligation under the Settlement Agreement. In the event Defendants default on any Settlement obligation, and funds are collected through the sale of the shares or enforcement of the stipulated judgment, such funds will be distributed to Class Representatives, Class Counsel, and the Settlement Class pursuant to the Settlement Agreement and as directed by the Court.

The Parties have filed certain portions of the Settlement Agreement under seal with the Court. Any Settlement Class Member wishing to review the sealed portions of the Settlement Agreement may do so by requesting access from the Settlement Administrator and agreeing to maintaining the confidentiality of all material sealed by the Court.

HOW DO I GET BENEFITS AND WHEN ARE THE CLAIM FORMS DUE?

In order to receive monetary benefits under this Settlement, Settlement Class Members should submit a Claim Form to Class Counsel, which is also serving as the Settlement Administrator. Claim Forms must be submitted or postmarked by [DATE], and may be submitted online via the Settlement Website www._____, or by mail to the Settlement Administrator at:

DHILLON LAW GROUP INC.

Harmeet K. Dhillon, Esq.
Krista L. Baughman, Esq.
Gregory R. Michael, Esq.
177 Post Street, Suite 700
San Francisco, CA 94108
United States of America
Telephone: +1 (415) 433-1700
Facsimile: +1 (415) 520-6593
Email: GFDPSettlement@dhillonlaw.com;
Settlement Website: www._____.com

To receive a payment, you must submit a timely Claim Form with information or documentation sufficient to establish that you participated in the Global Financial Data Project and/or paid a course enrollment fee for the same, and comply with the instructions set forth in the Claim Form. If you have any questions regarding the claim submissions process please contact the Settlement Administrator.

WHAT RIGHTS AM I GIVING UP TO RECEIVE SETTLEMENT BENEFITS?

Unless you timely exclude yourself (“opt-out”) from the Settlement, you will remain in the Settlement Class. If the Settlement is approved and becomes final, you will not be able to sue Defendants regarding the legal claims that were litigated in this case, but you will be eligible to receive benefits from this Settlement if you submit a valid and timely Claim. The specific rights you are giving up are called “Released Claims.”

WHAT ARE THE RELEASED CLAIMS?

As of the Effective Date of the Settlement Agreement, the Class Representatives and Settlement Class Members (the “Releasing Parties”), each on behalf of himself or herself and on behalf of his or her respective heirs, assigns, beneficiaries, and successors, shall automatically be deemed to have fully and irrevocably released and forever discharged the Defendants (and the successors, agents, and assigns) of and from any and all liabilities, rights, claims, actions, causes of action, demands, lawsuits, arbitrations, damages, penalties, costs, attorneys’ fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result

from, arise out of, are based upon, or relate to in any way any of the allegations, acts, transactions, facts, events, matters, occurrences, representations or omissions involved, set forth, alleged or referred to in this Action, or which could have been alleged in this Action, including, without limitation, all liabilities, rights, claims, actions, causes of action, demands, lawsuits, arbitrations, damages, penalties, costs, attorneys' fees, losses, and remedies, or remedies relating to, based upon, resulting from, or arising out of the facts and circumstances giving rise to the Action, as set forth in the First Amended Complaint in the Action. A copy of the First Amended Complaint is available on the Settlement Website at www._____.com.

This release is intended to have the broadest possible application and includes, but is not limited to, any tort, contract, common law, constitutional or other statutory claims, including, but not limited to alleged violations of the California Labor Code (except for the provisions relating to workers' compensation and Section 2802) or Business and Professions Code (*e.g.*, 17200 *et seq.*), or the federal Fair Labor Standards Act, and the Private Attorney General Act ("PAGA") (Labor Code section 2699 *et seq.*), all wage claims, and all claims for attorneys' fees, costs and expenses. Class Representatives and the Settlement Class Members expressly waive his, her, and their right to recovery of any type, including damages, in any administrative or court action, whether state or federal, and whether brought by any Party or on its behalf, related in any way to the matters released herein.

With respect to the Released Claims, each Settlement Class Member shall be deemed to have waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of California Civil Code section 1542 (and equivalent, comparable, or analogous provisions of the laws of the United States of America or any state or territory thereof, or of the common law or civil law). Section 1542 provides that:

A general release does not extend to claims which 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 released party.

By failing to exclude themselves from the settlement, Settlement Class Members acknowledge and agree that the Settlement Class Members' Settlement Awards constitute payment in full of any and all amounts allegedly due to them in connection with all of the claims for wage and hour and payroll practice violations asserted in the Action. In light of the foregoing, Settlement Class Members shall be deemed to have acknowledged and agreed that California Labor Code section 206.5 is not applicable to the Parties hereto. That section provides in pertinent part as follows:

An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.

The release does not extend to claims which by law cannot be released by private agreement, such as claims for worker's compensation or unemployment benefits.

Upon the Court's final approval of the Settlement, the Settlement Class Members shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against any of

the Defendants or based on any actions taken by any of the Defendants that are authorized or required by the Settlement Agreement or by the Court's order approving the Settlement.

None of the above releases include releases of claims arising from a breach of the Settlement Agreement, or otherwise affect the Parties' rights to enforce the terms of the Settlement Agreement. The Settlement Agreement, available at [www._____](http://www._____.com) contains additional information about Released Claims.

HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT?

Settlement Class Members have the right to request exclusion from (i.e., "opt out" of) the Settlement Class by sending a written request for exclusion to the Settlement Administrator postmarked by [DATE]. Written requests for exclusion from the Settlement Class must be submitted (by mail or email) to Class Counsel:

DHILLON LAW GROUP INC.

Harmeet K. Dhillon, Esq.
Krista L. Baughman, Esq.
Gregory R. Michael, Esq.
177 Post Street, Suite 700
San Francisco, CA 94108
United States of America
Tele: +1 (415) 433-1700
Fax: +1 (415) 520-6593
GFDPsettlement@dhillonlaw.com;

Requests for exclusion must include: (a) the case name and case number of the Action (*Hu, et al. v. Plehn-Dujowich, et al.*, Case No. 3:18-cv-01791-EDL); (b) the Settlement Class Member's legal name, address, telephone number, and, if available, an email address; (c) a statement that the Settlement Class Member wishes to exclude himself or herself from the Settlement Class; and (d) the Settlement Class Member's signature. No request for exclusion will be valid unless it complies with these requirements.

A person wishing to exclude themselves from the Settlement Class may do so by completing and following all instructions set forth in the Opt-Out Form available on the Settlement Website, www._____.com.

Persons falling within the definition of the Settlement Class who validly and timely request exclusion from the Settlement Class shall not be Settlement Class Members, shall not be bound by the Settlement and shall not be eligible to make a Claim for any benefit(s) under the terms of the Settlement.

HOW DO I OBJECT TO THE SETTLEMENT?

You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

Any Settlement Class Member who intends to object to the Settlement Agreement must do so in writing, no later than [DATE]. In order to object, the Settlement Class Member (or his or her attorney) must file with the Court and provide a copy to Class Counsel and Defendants' Counsel, a hand signed document that includes:

- (a) the case name and number (*Hu, et al. v. Plehn-Dujowich, et al.*, Case Number 3:18-cv-01791-EDL);
- (b) the legal name, address, telephone number, and email address (if any) of the person objecting, and if he/she is represented by counsel, the same contact information for his/her counsel;
- (c) specify in writing each objection and the grounds for each objection, accompanied by any legal support for the objection;
- (d) whether he/she intends to appear at the Final Approval Hearing, either with or without counsel;
- (e) a statement sufficient to establish his/her membership in the Settlement Class, including all information required by the Claim Form;
- (f) A detailed list of any other objections submitted by the Settlement Class Member, and/or his/her counsel, to any class actions submitted in any court, whether state or federal, in the United States in the previous five (5) years. If the Settlement Class Member or his/her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the objection to this Settlement Agreement;
- (g) any and all agreements that relate to the objection or the process of objecting, whether written or verbal, between Objector or Objector's counsel and any other person or entity; and
- (h) the Objector's signature on the written objection (an attorney's signature is not sufficient).

Any objection must be sent to the Court, Class Counsel, and Defendants' Counsel at the following addresses:

Court	Class Counsel/Settlement Administrator	Defendants' Counsel
Class Action Clerk United States District Court, Northern District of California 450 Golden Gate Avenue San Francisco, CA 94102 United States of America	DHILLON LAW GROUP INC. Harmeet K. Dhillon, Esq. Krista L. Baughman, Esq. Gregory R. Michael, Esq. 177 Post Street, Suite 700 San Francisco, CA 94108 United States of America GFDPsettlement@dhillonlaw.com;	Loren Kieve, Esq. KIEVE LAW OFFICES 2655 Steiner Street San Francisco, CA 94115 United States of America lk@kivelaw.com

DO I NEED TO HIRE A LAWYER IF I JOIN THIS CASE?

No. The attorneys for the Plaintiffs who brought this case have been appointed “Class Counsel,” as well as “Settlement Administrator,” to represent the interests of all those who participate in this lawsuit. If you have any questions, you may contact Class Counsel listed below.

DHILLON LAW GROUP INC.

Harmeet K. Dhillon, Esq.
Krista L. Baughman, Esq.
Gregory R. Michael, Esq.
177 Post Street, Suite 700
San Francisco, CA 94108
United States of America
Telephone: +1 (415) 433-1700
Facsimile: +1 (415) 520-6593
Email: harmeet@dhillonlaw.com;
kbaughman@dhillonlaw.com;
gmichael@dhillonlaw.com

If you participate in this Class Settlement, you will not be required to pay attorneys’ fees or expenses to Class Counsel; Class Counsel’s attorneys’ fees and costs will be in an amount determined by the Court and paid by Defendants. Class Counsel will make a Motion for attorneys’ fees and costs, seeking an award of fees, costs, and expenses, which the Court will then consider at a final approval hearing, on [DATE]. If you choose to hire a different lawyer, you may do so at your own expense.

All persons who do not exclude themselves from (“opt-out” of) the Settlement Class will have a right to object to any motion for attorneys’ fees. If you want to object to any such motion, you must file a written objection with the Court stating with particularity the basis for the objection.

WHEN WILL THE COURT DECIDE FINAL APPROVAL OF THE SETTLEMENT?

The Court will hold a hearing at [TIME A.M/P.M] on [DAY/MONTH/YEAR], at the United States District Court for the Northern District of California located at 450 Golden Gate Ave., Courtroom E, San Francisco, CA 94102 (the “Final Approval Hearing”) to decide whether to grant final approval of the Class Settlement. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and will also consider Class Counsel’s application for an award of attorneys’ fees and expenses, and the proposed service awards to the Class Representatives. Settlement Class Members are welcome to attend the Final Approval Hearing, but attendance is not necessary for them to receive their benefits under the Settlement. The Settlement will not become final until the Court grants final approval of the Settlement and any appeals have been resolved.

The date and time of the Final Approval Hearing may change without further notice. You may verify the time and date of the hearing by contacting Class Counsel, checking the Settlement Website, or through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>.

WHAT IF I HAVE QUESTIONS?

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at www._____.com, by contacting Class Counsel at GFDPsettlement@dhillonlaw.com, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, located at 450 Golden Gate Ave., San Francisco, CA 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

Additionally, for more information, you may visit the Settlement Website at www._____.com, where you will find the operative First Amended Complaint, as well as copies of this Notice, the Claim Form, and the Opt-Out form.

DO NOT DIRECT QUESTIONS TO THE COURT

The mailing of this Notice to you was authorized by the United States District Court for the Northern District of California. **Do not contact the Court or the Clerk's Office for more information.** If you have questions, contact Class Counsel.

EXHIBIT C

Internal Ref. No.: _____

**CLAIM FORM
CLASS ACTION SETTLEMENT**

Hu, et al. v. Plehn-Dujowich, et al.,
United States District Court
Northern District Of California
Case Number: 3:18-cv-01791-EDL

PLEASE READ CAREFULLY

THIS FORM SHOULD BE SUBMITTED NO LATER THAN _____ 2019, IF YOU WISH TO MAKE A CLAIM FOR FINANCIAL COMPENSATION FROM THE CLASS ACTION SETTLEMENT. ALL CLAIM FORMS MUST BE SUBMITTED TO THE SETTLEMENT ADMINISTRATOR BY MAIL OR THROUGH THE SETTLEMENT WEBSITE:

DHILLON LAW GROUP INC.
177 Post Street, Suite 700
San Francisco, CA 94108
United States of America
Tel: +1 (415) 433-1700
Fax: +1 (415) 520-6593
Email: GFDPsettlement@dhillonlaw.com
Web: www.dhillonlaw.com

IF YOU WISH TO CLAIM FINANCIAL COMPENSATION FROM THE CLASS ACTION SETTLEMENT YOU MUST SIGN THIS FORM AND PROVIDE INFORMATION BELOW:

Name: _____

Former Names/Nick Names (if any): _____

Street Address: _____

City, State, Zip Code: _____

Country: _____

Telephone: _____ Email: _____

Should the Settlement Administrator determine my Claim to be valid, I request that payment be made in the following manner (*check one of four options*):

☐ **OPTION 1:** By check, mailed to the address listed above, or, if so indicated, to the following

address: _____.

Internal Ref. No.: _____

☐ **OPTION 2:** By direct deposit to a U.S. Bank:

Check one: ☐ Checking Account ☐ Savings Account

Account Holder: _____

Bank Name: _____

Branch Address: _____

Routing Number: _____

Account Number: _____

☐ **OPTION 3:** By wire transfer to the following account:

Account Holder: _____

Bank Name: _____

Branch Address: _____

Wire Routing Transit Number: _____

Swift Code: _____

Account Number: _____

☐ **OPTION 4:** By emailing the Settlement Administrator at GFDPsettlement@dhillonlaw.com to make alternative arrangements.

**Please note that any costs associated with delivery of payment will be deducted from your settlement payment. All financial information provided by you will be kept confidential by the Settlement Administrator and destroyed following completion of the settlement process.*

By signing below, I authorize the Settlement Administrator to tender any settlement payment to me in the above-designated manner.

I also declare that I participated in the Global Financial Data Project and paid the following amount as a course fee:

☐ I did not pay any course fee.

☐ I paid \$2,413 as a course fee.

☐ I paid the following amount in the form of a course fee: \$_____.

Internal Ref. No.: _____

I submit the following documentation along with this Claim Form to the Settlement Administrator, as proof of the above payment:

- ☐ An invoice, receipt, or similar document confirming payment.
- ☐ A bank statement, credit card statement, or similar document confirming payment.
- ☐ Other: _____.
- ☐ None / not applicable.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Signature: _____ Date: _____

EXHIBIT D

Internal Ref. No.: _____

REQUEST TO OPT OUT OF CLASS ACTION SETTLEMENT

Hu, et al. v. Plehn-Dujowich, et al.,
United States District Court
Northern District Of California
Case Number: 3:18-cv-01791-EDL

PLEASE READ CAREFULLY

THIS FORM SHOULD BE POSTMARKED NO LATER THAN _____ 2019. IF YOU DO **NOT** WISH TO PARTICIPATE IN THIS LITIGATION THROUGH CLASS MEMBERSHIP, COMPLETE AND SEND THIS FORM BY MAIL ADDRESSED TO CLASS COUNSEL AT THE FOLLOWING ADDRESS:

DHILLON LAW GROUP INC.
177 Post Street, Suite 700
San Francisco, CA 94108
United States of America
Tel: +1 (415) 433-1700
Fax: +1 (415) 520-6593
Email: GFDPsettlement@dhillonlaw.com
Web: www.dhillonlaw.com

IF YOU WISH TO PARTICIPATE IN THIS CLASS ACTION, DO **NOT** SUBMIT THIS FORM.

By signing below, I acknowledge and state that I do **not** wish to participate in this class settlement and choose to exclude myself from the Settlement Class.

Signature: _____ Date: _____

Printed Name: _____

Former Names/Nick Names (if any): _____

Street Address: _____

City, State, Zip Code: _____

Country: _____

Telephone: _____ Email: _____

HARMEET K. DHILLON (SBN: 207873)

harmeet@dhillonlaw.com

KRISTA L. BAUGHMAN (SBN: 264600)

kbaughman@dhillonlaw.com

GREGORY R. MICHAEL (SBN: 306814)

gmichael@dhillonlaw.com

DHILLON LAW GROUP INC.

177 Post Street, Suite 700

San Francisco, California 94108

Telephone: (415) 433-1700

Facsimile: (415) 520-6593

Attorneys for Plaintiffs Class, Subclass, and FLSA
Collective

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

QIUZI HU, an individual, **EDWIN
RAMIREZ**, an individual, **IVAN
RONCERIA**, an individual, **WENZHI FEI**,
an individual, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

**JOSE M. PLEHN-DUJOWICH, a.k.a.
JOSE M. PLEHN**, an individual;
BIZQUALIFY LLC, a California limited
liability company; and **POWERLYTICS,
INC.**, a Delaware corporation,

Defendants.

Case Number: 3:18-cv-01791-EDL

Honorable Elizabeth D. Laporte

**PLAINTIFFS' MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
JOINT MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: October 1, 2019

Time: 9:00 a.m.

Courtroom: E

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1	Fed. R. Civ. P. 23(e)(1)(A).	10
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SECONDARY SOURCES

4	2 H. Newberg & A. Conte, <i>Newberg on Class Actions</i> (3d ed. 1992).	10
5	4 William B. Rubenstein, Albert Conte & Herbert Newberg, <i>Newberg on Class Actions</i> §§ 13:39 <i>et</i>	
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7	Manual for Complex Litigation, Second §30.44 (1993).	10

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Qiuzi Hu, Edwin Ramirez, Ivan Ronceria, and Wenzhi Fei (“Class Representatives”) respectfully submit this Memorandum in support of the Class Representatives and Defendants Jose M. Plehn-Dujowich and BizQualify LLC’s (collectively, “Parties”) Joint Motion for Preliminary Approval of Class Action Settlement. The fully executed Stipulation of Class Action Settlement and Release of Claims (“Class Settlement Agreement” or “Class Settlement”) is filed as Exhibit A to the Joint Motion.

For nearly two years, Class Representatives have diligently sought compensation for themselves and others who enrolled in Defendants’ online educational program, the “Global Financial Data Project” (“GFDP”). The Class Settlement is an excellent result for the Settlement Class, and if there is a fifty-percent claim submission rate then all such Settlement Class Members will receive a full refund of the “course fee” they paid to Defendants. This result is well within the range of possible recoveries warranting preliminary approval by this Court.

Defendants have agreed to commit up to \$695,000 to a Settlement Fund in exchange for a release and dismissal of all claims. This Settlement Fund is to be comprised of the following: (1) \$375,000 to be allocated and paid to the Settlement Class in accordance with the terms of the Class Settlement Agreement; (2) incentive payments to the Class Representatives in an amount to be determined by the Court, and not to exceed a combined total of \$20,000; and (3) attorneys’ fees and costs, in an amount to be determined by the Court, to be paid to Class Counsel, and not to exceed \$300,000.

Though the prospective fee award to be requested by Class Counsel is substantial, this case provided unique challenges, asserted novel claims based on theories of employment, and will result in the Settlement Class receiving the opportunity to claim extraordinary relief. Actual recovery per Settlement Class Member will depend on the number of Settlement Class Members submitting a valid claim for compensation, and what proportion of the Settlement Class submits proof of any payment of a course fee to Defendants.

The Parties reached the proposed Class Settlement through extensive arm's-length negotiations between experienced and informed counsel after more than a year of contentious litigation, motion practice, and discovery. The Class Settlement was reached with the assistance of Chief Magistrate Judge Joseph C. Spero, and is supported by Class Counsel.

In light of the risks of litigation, including the risk associated with attempting to recover funds through enforcement of any judgment, Class Representatives respectfully request that the Court: (1) preliminarily approve the proposed Class Settlement; (2) amend its prior order certifying the Class (Dkt. 80) to certify the Settlement Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3), for settlement purposes only; (3) approve the proposed form and method of notice to the Settlement Class; and (4) schedule a hearing at which the Court will consider final approval of the Class Settlement.

II. NATURE OF THE CASE

A. Factual Background

Between July 2016 to April 2017, the Settlement Class Members (approximately 240 in number), including Class Representatives, enrolled in Defendants' online educational program, the GFDP. Zhang Declaration ISO Class Certification Motion (Dkt. 60-12) ("Zhang Class Cert. Decl."), ¶¶3-5; Fei Declaration ISO Class Certification Motion ("Fei Class Cert. Decl.") (Dkt. 60-8), ¶3; Hu Declaration ISO Class Certification Motion (Dkt. 60-9) ("Hu Class Cert. Decl."), ¶3; Ramirez Declaration ISO Class Certification Motion (Dkt. 60-10) ("Ramirez Class Cert. Decl."), ¶3; Ronceria Declaration ISO Class Certification Motion (Dkt. 60-11) ("Ronceria Class Cert. Decl."), ¶3; Dhillon Declaration ISO Class Certification Motion (Dkt. 60-2) ("Dhillon Class Cert. Decl. "), ¶¶6-12.

Defendants advertised the GFDP as being operated by the University of California ("UC"); it was not. Zhang Class Cert. Decl., Exs. 1-2; Hu Class Cert. Decl., ¶3; Ramirez Class Cert. Decl., ¶3; Ronceria Class Cert. Decl., ¶3; Fei Class Cert. Decl., ¶3. Despite approximately 140 Settlement Class Members paying \$2,413 (and sometimes more) in the form of a "course fee," and committing substantial time and effort to Defendants' program, Defendants failed to provide the promised educational instruction, UC course certifications, or letters of recommendation. Dhillon Class Cert.

Decl., ¶10; Zhang Class Cert. Decl., ¶5, Exs. 1-2; Hu Class Cert. Decl., ¶¶3-9; Ramirez Class Cert. Decl., ¶¶3-9; Ronceria Class Cert. Decl., ¶¶3-9; Fei Class Cert. Decl., ¶¶3-9. This Action followed.

B. Procedural History

Class Representatives initiated this Action on March 22, 2018, asserting individual and putative class and collective action claims against Dr. Plehn-Dujowich and BizQualify. Dkt. #1. On June 29, 2018, Dr. Plehn-Dujowich and BizQualify filed a motion to dismiss claims one through five of the complaint under Fed. R. Civ. P. Rule 12(b)(6) for failure to state a claim. Dkt. #32. Class Representatives responded to the motion on July 31, 2018, by filing the First Amended Complaint (“FAC”).¹

The operative FAC asserts thirteen causes of action for: (1) failure to pay minimum wage in violation of Federal Fair Labor Standards Act (“FLSA”) (29 U.S.C. §§ 201, et seq.); (2) failure to pay minimum wage in violation of state law (Cal. Lab. Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1); (3) failure to provide accurate wage statements (Cal. Lab. Code § 226); (4) failure to reimburse required business expenses (Cal. Lab. Code § 2802); (5) failure to pay earned wages upon discharge (Cal. Lab. Code §§ 201-203); (6) false advertising (Cal. Bus. & Prof. Code § 17500); (7) unfair competition (Cal. Bus. & Prof. Code § 17200); (8) violation of the California Consumer Legal Remedies Act (Cal. Civ. Code § 1750, et seq.); (9) fraud (Cal. Civ. Code §§ 1709, 1710); (10) negligent misrepresentation (Cal. Civ. Code § 1710(2)); (11) breach of implied contract; (12) quantum meruit; and (13) civil theft (Cal. Pen. Code § 496). Dkt. 40. Claim one (FLSA) is asserted by all Class Representatives and the FLSA Collective. Claims two through five (California Labor Code violations) are asserted by Class Representatives Hu, Ramirez, and Fei and the California Subclass. Claims six through thirteen are asserted by all Class Representatives and the Class.

Defendants failed to timely respond to the FAC and the Court entered default against Defendants on September 13, 2018. Dkt. 52. On February 25, 2019, the Court granted Class

¹ The FAC joined Powerlytics, Inc. as a defendant to the Action. On February 19, 2019, the Court granted Class Representatives’ stipulated request to voluntarily dismiss all claims against Powerlytics, Inc. Dkt. 76.

Representatives' motion to certify the Class and California Subclass, and to conditionally certify the FLSA Collective, defined as follows:

Class: All persons who enrolled in the [GFDP]. Excluded from the Class are Defendants' officers and directors and the immediate families of the Defendants' officers and directors. Also excluded from the Class are the Defendants' legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or have had a controlling interest.

California Subclass: All members of the Class who resided in California during any portion of their participation in the [GFDP], and/or who performed work in California for the [GFDP], at any point.

FLSA Collective: All persons who enrolled in the [GFDP] while residing in, or who performed work for the project in, the United States or any territory or possession of the United States.

Dkt. 80. By definition, all members of the California Subclass and FLSA Collective are also members of the Class.

Defendants filed a motion to set aside the defaults entered against them on March 5, 2019, and requested that the Action be stayed and referred to a magistrate judge for a judicial settlement conference, which motion Class Representatives opposed. Dkts. 83, 87, 88. On March 6, 2019, the Court issued an Order Rescinding Authorization to Disseminate Class Notices in light of Defendants' motion to set aside the defaults. Dkt. 84. The Court held a hearing on Defendants' motion to set aside the defaults on April 9, 2019, took Defendants' motion under submission, and referred this matter to Chief Magistrate Judge Joseph C. Spero for a settlement conference to be held on April 23, 2019.

Following an arm's-length negotiation, and with the assistance of Judge Spero, the Parties reached terms of settlement at the April 23, 2019 settlement conference. The Parties thereafter entered into the Class Settlement Agreement. Dhillon Decl., ¶¶16-17; Ex. A. The Parties now request that the Court preliminarily approve the proposed Class Settlement.

III. PROPOSED SETTLEMENT

The proposed Class Settlement Agreement defines the Settlement Class as "all Class Members," including Class Representatives, who do not opt out of the Settlement:

Settlement Class: All Class Members, including Class Representatives, who do not exclude themselves from the Class or Settlement Class, pursuant to the procedures set forth in Section 6.3 of the Settlement Agreement and the Class Notice.

Ex. A, p. 10. Thus, by definition, the proposed Settlement Class is coextensive with the certified Class, which in turn encompasses all members of the California Subclass and FLSA Collective. Following final approval of this Settlement by the Court, the Court may properly decertify the California Subclass and FLSA Collective, enter final judgment as to the Settlement Class and Defendants, and dismiss with prejudice all claims asserted in the Action, while retaining jurisdiction to enforce the Settlement Agreement.

A. Settlement Consideration

In exchange for dismissal and release of all claims against Defendants by the Settlement Class, Defendants have agreed to establish a Settlement Fund in an amount no less than \$375,000 and no greater than \$695,000, comprised of the following:

(1) \$375,000 to be allocated and paid to the Settlement Class in accordance with the terms of the Class Settlement Agreement;

(2) incentive payments to the Class Representatives in an amount to be determined by the Court, and not to exceed a combined total of \$20,000; and

(3) attorneys' fees and costs, in an amount to be determined by the Court and paid to Class Counsel, not to exceed \$300,000. Ex. A § 3.1.

Within ninety days of this Court's final approval of the Class Settlement, Defendants agree to pay \$150,000 into the Settlement Fund, followed by monthly payments of \$10,000 until the Settlement Fund is fully funded. Ex. A § 3.2. Class Counsel, in its capacity as Settlement Administrator, will hold all funds in, and disperse all funds from, a Settlement Account opened and used solely for the purposes of effectuating this Settlement.

Upon final approval of the Class Settlement by the Court, Defendants have also agreed to sign the Joint Stipulation for Conditional Entry of Final Judgment ("Joint Stipulation"), attached as Exhibit 1 to the Settlement Agreement. Ex. A § 3.3. The Joint Stipulation requests that the Court enter a Stipulated Judgment in the amount of \$1,000,000 against Defendants, jointly and severally,

1 in the event that (a) Defendants fail to perform any obligation under the Settlement Agreement; (b)
 2 Class Representatives have given Defendants written notice specifying the failure to perform; and
 3 (c) after the expiration of thirty days following service of such written notice, Defendants have failed
 4 to cure the failure to perform. Defendants agree that upon signing the Joint Stipulation, all factual
 5 admissions stated therein, including the proposed judgment attached thereto, will have preclusive
 6 effect in any future proceeding between either or both Defendants and any Settlement Class
 7 Member.

8 Defendant Plehn-Dujowich has also agreed to sign the Stock Pledge and Security Agreement,
 9 attached as Exhibit 2 to the Settlement Agreement, upon final approval of the Settlement Agreement
 10 by the Court. Ex. A § 3.4. Upon signing, Defendant Plehn-Dujowich will pledge and collaterally
 11 assign shares in Powerlytics, Inc., to the Settlement Administrator, for the benefit of the Settlement
 12 Class. In the event of any default, the Settlement Administrator would be entitled to dispense with
 13 the shares and allocate the proceeds to the Settlement Class.

14 **B. Notice to the Settlement Class**

15 Class Counsel, in its capacity as Settlement Administrator, has agreed to carry out the Notice
 16 Program set forth in Section 6 of the Settlement Agreement. Ex. A § 6. Accordingly, within thirty
 17 days of this Court preliminarily approving the Class Settlement, Class Counsel will disseminate the
 18 Class Settlement Notice (Ex. B to the Joint Motion), by email and WeChat, a Chinese messaging and
 19 social media platform. Class Counsel will also provide notice by physical mail to all Settlement
 20 Class Members with a known mailing address.²

21 **C. Claim Submission, Allocation, and Payment of Settlement Funds**

22 Each Settlement Class Member is entitled to submit one Claim for financial compensation
 23 within sixty days of Class Action Settlement Notice being served. Ex. A § 8. The proposed Claim
 24 Form is attached as Exhibit C to the Joint Motion. Any Settlement Class Member who does not
 25

26 _____
 27 ² The notice methods proposed by the Parties are identical to the methods proposed by Class
 28 Representatives in their earlier class certification motion, which methods this Court approved. Dkt.
 80.

1 submit a valid, timely Claim will not be entitled to any financial compensation from the Settlement
2 Fund.

3 The Settlement creates a Settlement Fund in the total amount of up to \$695,000. The
4 Settlement Fund shall be paid out in the following order:

- 5 (1) Each Class Representative shall be refunded their \$2,413 course fee and shall, subject to
6 Court approval, receive an incentive payment not to exceed a combined total of \$20,000,
7 split amongst the Class Representatives;
- 8 (2) Any award of attorneys' fees and costs approved by the Court shall be paid to Class Counsel
9 under the Settlement Agreement, which amount is not to exceed \$300,000;
- 10 (3) The remaining \$345,348 of the Settlement Fund will be paid to the Settlement Class
11 Members who submit a valid and timely Claim, as set forth below.

12 The Settlement Agreement gives priority to those Settlement Class Members who submit a
13 valid Claim and proof that he or she paid a "course fee" to enroll in the GFDP. Accordingly, if the
14 total amount of documented "course fees" paid by Settlement Class Members is equal to or greater
15 than \$345,348, those Settlement Class Members who fail to submit documentation of any "course
16 fee" will not receive any settlement payment, while those who do submit such documentation will
17 receive a pro rata share of the remaining Settlement Fund, based on the amount he or she paid in
18 comparison to the course fee amounts paid by all other claimants. Ex. A § 8.3.

19 If the total amount of documented "course fees" paid by Settlement Class Members is less
20 than \$345,348, then the funds will be split as follows: all those who submitted proof of payment of a
21 "course fee" will be entitled to a full refund of the amount paid, and pro rata split of any remaining
22 funds; those who do not submit such proof will be entitled to receive a pro rata split of any funds
23 remaining after refunds of course fees have been allocated to the other claimants. Ex. A § 8.3.

24 Defendants are required by the Settlement Agreement to make payments on a monthly basis
25 for approximately five years. Ex. A § 3.2. All disbursements to the Settlement Class Members shall
26 be made in the order that the Claim Forms were received by Class Counsel (in its capacity as
27 Settlement Administrator). Ex. A § 3.5.3. Accordingly, those Settlement Class Members that submit
28

1 a Claim earlier, will be eligible to receive payment earlier, following the final approval of the
2 Settlement by the Court.

3 **D. Settlement Administration**

4 Class Counsel has agreed to serve as the Settlement Administrator for this Settlement. As
5 Settlement Administrator, Class Counsel shall be responsible for all administrative tasks associated
6 with the Settlement, including: (a) arranging for dissemination of the Class Notices and Claim Forms
7 to Settlement Class Members, in accordance with the Notice Program; (b) answering inquiries from
8 Settlement Class Members; (c) receiving and maintaining on behalf of the Court and the Parties any
9 correspondence regarding requests for exclusion from the Settlement; (d) establishing the Settlement
10 Website that posts Class Notices, Claim Forms, and other related documents, including privileged
11 access to an unredacted version of the Settlement Agreement; (e) receiving and processing Claims
12 and distributing cash payments to Class Representatives, Class Counsel, and Settlement Class
13 Members; and (g) otherwise assisting with implementation and administration of the Settlement
14 Agreement terms. Ex. A, §7.

15 The attorneys' fees incurred in connection with Class Counsel's duties as Settlement
16 Administrator are intended to be accounted for in the Fee and Expense Award set by the Court at the
17 final approval hearing. Ex. A, §7.2. Class Counsel will not be entitled to claim any additional fees
18 following completion of its duties as Settlement Administrator. *Id.*

19 **E. Incentive Payments to Class Representatives**

20 The Parties have agreed that as compensation for their diligence in prosecuting this Action on
21 behalf of the Settlement Class that Class Representatives deserve incentive payments in an amount
22 to be determined by the Court. Specifically, the Settlement Agreement proposes the following: Hu
23 shall receive an incentive payment of up to \$6,000; Ramirez shall receive an incentive payment of
24 up to \$7,000; Ronceria shall receive an incentive payment of up to \$5,000; and Fei shall receive an
25 incentive payment of up to \$2,000. Ex. A § 3.5.1.

26 **F. Attorneys' Fees and Costs**

27 Several claims asserted by the Class entitle the Class to recover reasonable attorneys' fees
28 and costs. The Parties have agreed that in conjunction with the final approval of the Settlement

1 Agreement, the Court shall determine the reasonable attorneys' fees and costs recoverable by the
 2 Settlement Class (the "Fee and Expense Award"), which is to be paid to Class Counsel. Ex. A § 11.

3 The Fee and Expense Award will be calculated using a lodestar method (i.e. reasonable
 4 hourly rate multiplied by reasonable hours expended). The Settlement Agreement provides that the
 5 Fee and Expense Award shall not exceed \$300,000. The Fee and Expense Award paid by
 6 Defendants shall constitute full satisfaction of Defendants' obligations to pay amounts to any person,
 7 attorney, or law firm for attorneys' fees or costs in this Action on behalf of Class Representatives
 8 and all Settlement Class Members.

9 Class Counsel will not be separately compensated in connection with its role as Settlement
 10 Administrator. Costs associated with the distribution of settlement payments will either be paid for
 11 from the Settlement Fund or, where possible, deducted from the settlement amount payable to the
 12 claimant on whose behalf the cost is incurred (e.g., if a claimant requests that a check be mailed to
 13 China at a cost of \$2.00, rather than sent by some other less expensive means, that claimant shall
 14 bear the \$2.00 cost associated with that request, via deduction from his/her settlement payment).

15 **G. *Cy Pres***

16 No Settlement Funds are to be returned to Defendants. If, after the final settlement
 17 distribution is made to the Settlement Class Members, any portion of the Settlement Fund remains
 18 unclaimed, those monies will, subject to the Court's final approval, be paid to the Parties' agreed-
 19 upon *cy pres* recipient: UC Berkeley Extension, located at 1995 University Ave., Suite 200,
 20 Berkeley, California 94704-7000, subject to the Court's approval in the Final Approval Order.

21 UC Berkeley Extension offers relatively low cost educational opportunities of a nature
 22 similar to that advertised, but not delivered, by Defendants' GFDP. According to information on its
 23 website, UC Berkeley Extension does not receive funding from the University of California, and
 24 donations it receives are used to develop new curricula and educational formats; create and sustain
 25 new public service programs; renovate classroom facilities; and keep course fees affordable to low-
 26 income students.³ Thus, selection of UC Berkeley Extension as the *cy pres* recipient is highly

27 ³ UC Berkeley's website may be accessed at the following url:
 28 <https://extension.berkeley.edu/static/about/give/?linkid=footernav>.

appropriate, because it offers courses of a nature similar to that in which the Settlement Class Members intended to enroll when enrolling in the GFDP.⁴

IV. THE SETTLEMENT MEETS ALL CRITERIA NECESSARY FOR PRELIMINARY APPROVAL

When a proposed class-wide settlement is reached, the settlement must be submitted to the court for approval. Fed. R. Civ. P. 23(e)(1)(A); 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87. Preliminary approval is the first of three steps that comprise the approval procedure for settlements of class actions. The second step is the dissemination of notice of the settlement to all class members. The third step is a final settlement approval hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented and class members may be heard regarding the settlement. *See Manual for Complex Litigation*, Second §30.44 (1993).

A. Legal Standard

A class action may be settled only with the approval of the Court. *See Fed. R. Civ. P. 23(e)*. The approval procedure set forth in Rule 23(e) can be broken into three principal steps: (1) certification of a settlement class and preliminary approval of the proposed settlement; (2) dissemination of notice of the settlement to all affected class members; and (3) a final approval determination following a fairness hearing at which class members may be heard regarding the settlement, and at which counsel may introduce evidence and present arguments concerning the fairness, adequacy, and reasonableness of the settlement. *See* 4 William B. Rubenstein, Albert Conte & Herbert Newberg, *Newberg on Class Actions* §§ 13:39 *et seq.* (5th ed. 2014). The protections “afforded by [Rule 23(e)] are primarily procedural in nature.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 624 (9th Cir. 1982). Approval of a proposed class action settlement is a matter within the broad discretion of the trial court. *Staton v. Boeing*, 327 F.3d 938, 959 (9th Cir. 2003).

⁴ Defendants created and marketed the GFDP as being operated by UC. As such, it is also reasonable to suspect that UC Berkeley Extension may have also suffered harm as a result of the activities giving rise to this Settlement.

1 The question presented on a motion for preliminary approval of a proposed class action
 2 settlement is whether the proposed settlement is “within the range of possible approval.” *Gautreaux*
 3 *v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982). Preliminary approval is merely the prerequisite to
 4 giving notice so that “the proposed settlement . . . may be submitted to members of the prospective
 5 Class for their acceptance or rejection.” *Philadelphia Housing Authority v. American Radiator &*
 6 *Standard Sanitary Corp.*, 323 F. Supp. 364, 372 (E.D. Pa. 1970). The ultimate question of whether
 7 the proposed settlement is fair, reasonable and adequate is made after notice of the settlement is
 8 given to the class members and a final settlement hearing is conducted by the Court.

9 While courts agree that preliminary approval requires only a determination on whether it is
 10 appropriate to send notice of a proposed settlement to the class, courts do not always use the same
 11 standard to make that determination. In the past, courts have focused only on whether the proposed
 12 agreement appears to be non-collusive, is free of “obvious deficiencies,” and generally falls within
 13 the range of “possible” approval. *See, e.g., In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078,
 14 1079-80 (N.D. Cal. 2007). Recently, some courts in this district have applied the factors set forth in
 15 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998), and *Churchill Village, L.L.C. v.*
 16 *General Electric*, 361 F.3d 566, 575-76 (9th Cir. 2004), which are used by courts to determine
 17 whether a settlement is fair, adequate, and reasonable at the final approval stage.⁵ The requirements
 18 set forth in Rule 23(e)(2) are also informative.⁶

19 ⁵ These factors include: (1) the strength of the plaintiffs’ case; (2) the risk, expense, complexity, and
 20 likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4)
 21 the amount offered in settlement; (5) the extent of discovery completed and the stage of the
 22 proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant;
 23 (8) the reaction of the class members to the proposed settlement; and (9) whether the settlement is a
 product of collusion among the parties. *See Churchill Village*, 361 F.3d at 575-76.

24 ⁶ The considerations are whether (A) the class representatives and class counsel have adequately
 25 represented the class; (B) the proposal was negotiated at arm’s-length; (C) the relief provided by the
 26 settlement is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the
 27 effectiveness of any proposed method of distributing relief including the method of processing class-
 28 member claims, if required; (iii) the terms of any proposed award of attorneys’ fees, including
 timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3) made in
 connection with the proposed settlement; and (D) the proposal treats class members equitably
 relative to each other. Fed. R. Civ. P. 23(e)(2).

Below, Class Representatives endeavor to address the substance of the various factors relied on by courts, many of which overlap.

B. Preliminary Approval Is Proper

1. The Class Settlement is the product of serious, informed, and noncollusive negotiations

“An initial presumption of fairness is usually involved if the settlement is recommended by class counsel after arm’s-length bargaining.” *Harris v. Vector Mktg. Corp.*, No. C-08-5198 EMC, 2011 WL 1627973, at *8 (N.D. Cal. Apr. 29, 2011) (citation omitted); *see also Rodriguez v. W. Publishing*, 563 F.3d 948, 965 (9th Cir. 2009) (“We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution.”).

Here, Class Representatives and Class Counsel have worked diligently for nearly two years prior to agreeing to the terms of the proposed Class Settlement. The parties were at all times adversarial, and past attempts at reaching a resolution, including through private mediation, had failed. Dhillon Class Cert. Decl., ¶14. Class Counsel is well-apprised of the facts of this case, has reviewed financial information and documents disclosed by Defendants prior to reaching the terms of Settlement, and enthusiastically supports the proposed Settlement. Dhillon Decl., ¶18.

The Court will have ultimate discretion over the amount of the attorneys’ fees to be paid to Class Counsel and over the amount of any incentive award paid to Class Representatives. None of the Settlement Fund will revert to Defendants.

2. The Class Settlement falls within the range for approval and has no “obvious deficiencies”

Defendants have agreed to pay the Settlement Class Members \$375,000, to be split amongst the Settlement Class in the manner set forth above. Defendants will also pay Class Counsel an amount to be determined by the Court, and not to exceed \$300,000, to compensate the Settlement Class for reasonable attorneys’ fees, costs, and expenses incurred in connection with securing the Class Settlement.

Class Representatives believe that the evidence gathered strongly supports their case against Defendants. Though Defendants have filed a motion to set aside the default, they remain in default at

1 this time. As with all litigation, however, success is not guaranteed, including because different
 2 jurors may in their view require more or different types of evidence to be convinced at trial. Even
 3 assuming liability could be shown at trial or on a motion for default judgment, the Class's ability to
 4 recover on any judgment or default judgment obtained is doubtful. This problem is magnified when
 5 taking into consideration the additional attorneys' fees and costs that would be incurred by the
 6 Settlement Class if this case were to proceed to trial, appeal, or both. Class Counsel has investigated
 7 the financial status of the Defendants prior to reaching the terms of Class Settlement, and Class
 8 Counsel has concluded that the Class Settlement is fair, adequate, and reasonable in light of these
 9 and other considerations. Dhillon Decl., ¶15.

10 **3. The Class Settlement does not improperly grant preferential treatment to**
 11 **Class Representatives or segments of the Settlement Class**

12 All Settlement Class Members are eligible to submit a Claim Form for compensation from
 13 the Settlement Fund. Those Members who submit documentation of having paid a course fee are to
 14 be are to be given priority when allocating the Settlement Funds, as each such Member has a
 15 recognized loss arising from this dispute.

16 If, for example, half of the approximately 240 Settlement Class Members submit a claim and
 17 documentation establishing that each paid \$2,413 as a "course fee" to Defendants, each such
 18 Member would be entitled to a settlement payment in an amount exceeding \$2,800—more than fully
 19 refunding their "course fee." Dhillon Decl., ¶19. This estimation of a possible per-claim settlement
 20 payment is reasonable in light of the fact that Class Representatives have discovered the existence of
 21 146 invoices indicating payment of any course fee, and because in response to Class
 22 Representatives' efforts to identify mailing addresses from the putative Settlement Class Members,
 23 only approximately 60 Members provided any such address. Dhillon Decl., ¶¶6, 19.

24 Additionally, while Class Representatives are eligible to receive an incentive payment under
 25 the Settlement Agreement, any such amount will be determined and approved by the Court at the
 26 hearing for final approval of the Class Settlement and will be based on a showing of the
 27 contributions each Class Representative has made in order to secure this Settlement on behalf of the
 28 Settlement Class. *See* Dhillon Decl., ¶24 (describing the contributions of Class Representatives).

4. The proceedings are sufficiently advanced to permit preliminary approval of the Settlement

Class Representatives initiated this Action in March 2018. Since that time, they and Class Counsel have diligently sought to discover information and evidence relevant to the Class claims asserted in this Action. Such efforts include: Class Representatives' independent efforts to investigate and compile information, correspondence, and other materials prior to retaining counsel; Class Counsel's interviewing of witnesses and pursuit of voluntary production of information and documents by Defendants; Class Counsel's issuance of several subpoenas to third-parties, including Bank of America, Intuit, Massachusetts Institute of Technology, the University of California, and WholeRen, in response to which a majority of the subpoenaed entities produced responsive documents; and obtaining the depositions of Defendant Plehn-Dujowich and the CEO of Powerlytics, Inc. Dhillon Decl., ¶¶3-8.

The terms of Class Settlement were reached only after the foregoing investigation and discovery took place, and after Class Counsel reviewed documents pertaining to Defendants' financial status. Dhillon Decl., ¶15. Based on Class Counsel's review of the facts, evidence, law, and Defendants' financial information, Class Counsel believes the Class Settlement to be fair, adequate, and reasonable. Dhillon Decl., ¶18.

V. THE COURT SHOULD AMEND ITS PRIOR CLASS CERTIFICATION ORDER TO CERTIFY THE SETTLEMENT CLASS

On February 25, 2019, the Court granted Class Representatives' motion to certify the Class under Rules 23(a) and (b)(3). Dkt. 80. The proposed Settlement Class is defined to include "[a]ll Class Members, including Class Representatives, who do not exclude themselves from the Class or Settlement Class," pursuant to the terms of the Settlement Agreement. Joint Motion, p. 4; Ex. A, p. 10. As such, the Settlement Class is entirely coextensive with the certified Class.

Class Representatives submit that certification of the Settlement Class pursuant to Rules 23(a) and (b)(3), for settlement purposes only, is proper for all reasons set forth in their earlier class certification motion and in the Court's Order certifying the Class. Dkt. 80.

VI. THE FORM AND METHOD OF CLASS NOTICE IS APPROPRIATE

1 Class Representatives request that the Court preliminarily approve the Notice Plan set forth
 2 in Section 6.1 of the Settlement Agreement, and approve the proposed Class Action Settlement
 3 Notice (Ex. B), Claim Form (Ex. C), and Opt-Out Form (Ex. D) for dissemination to the Settlement
 4 Class.

5 Rule 23(c)(2)(B) requires that “[f]or any class certified under Rule 23(b)(3), the court must
 6 direct to class members the best notice that is practicable under the circumstances, including
 7 individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P.
 8 23(c)(2)(B). Courts increasingly permit notice to be sent by email or other electronic means to
 9 potential collective and class action participants, particularly where the recipients of the notice are
 10 likely to be capable of communicating electronically, and where other modes of providing notice are
 11 not possible or are less likely to effectuate notice. *See, e.g., Lewis v. Wells Fargo & Co.*, 669 F.
 12 Supp. 2d 1124, 1129 (N.D. Cal. 2009) (noting that email is likely to be just as, if not more, likely to
 13 effectuate notice than first class mail); *Noll v. eBay, Inc.*, 309 F.R.D. 593, 601 (N.D. Cal. 2015)
 14 (permitting notice to class by email); *Evans v. Linden Research, Inc.*, No. C-11-01078 DMR, 2014
 15 WL 1724891, at *3 (N.D. Cal. Apr. 29, 2014) (same); *Fuentes v. Compadres, Inc.*, No. 17-cv-01180-
 16 CMA-MEH, 2018 WL 2126840, at *7 (D. Colo. May 9, 2018) (concluding that social media was an
 17 efficient method, particularly where potential opt-ins are young and transient, because email and
 18 physical addresses may not be reliable or durable forms of contact); *Woods v. Vector Mktg. Corp.*,
 19 No. C-14-0264 EMC, 2015 WL 1198593, at *5 (N.D. Cal. Mar. 16, 2015) (approving the use of
 20 Facebook to supplement notice methods, finding it particularly useful where most potential opt-ins
 21 are college-aged).

22 Class Representatives submit that notice by email and/or WeChat is the most effective
 23 method of providing notice to the Settlement Class. In connection with their enrollment in the
 24 GFDP, each participant provided Defendants with an email address, as well as (in most cases) a
 25 WeChat (Chinese messaging and social media platform) username. Zhang Class Cert. Decl., ¶12.
 26 This information is now in Class Counsel’s possession. Dhillon Class Cert. Decl., ¶13. To the best of
 27 Class Representatives’ knowledge, the physical addresses of the Class members (several of whom
 28 are believed to reside abroad, including in China) are not, and were never, made known to

Defendants. Zhang Class Cert. Decl., ¶13; Dhillon Class Cert. Decl., ¶6 (Dr. Plehn-Dujowich and BizQualify's former counsel stated by email: "[y]ou have asked for contact information including phone, address, etc. but since this was an online course, Jose was never given access to that information. The best we have is the email addresses listed here.").

Additionally, as set forth in Section 6.1.1 of the Settlement Agreement, notice of the proposed Class Settlement will also be sent by mail to all Settlement Class Members with known mailing addresses. Ex. A § 6.1.1.

Collectively, the proposed Notice Plan is designed to provide ample notice to the Settlement Class of the proposed Settlement and their rights, benefits, and obligations therein. Class Representatives respectfully request that the Court grant the Joint Motion and issue an order directing implementation of the Notice Plan set forth in Section 6.1 of the Settlement Agreement.

VII. CONCLUSION

For the foregoing reasons, Class Representatives respectfully request that the Court grant the Parties' Joint Motion for Preliminary Approval of Class Action Settlement and issue an order to: (1) preliminarily approve the proposed Class Settlement Agreement; (2) amend its prior order certifying the Class (Dkt. 80) to certify the Settlement Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3), for settlement purposes only; (3) approve the proposed form and method of notice to the Settlement Class; and (4) schedule a hearing at which the Court will consider final approval of the Settlement, as well as determine the amounts to be paid by Defendants in the form of incentive payments to Class Representatives and reasonable attorneys' fees and costs to Class Counsel.

Respectfully submitted,

Date: August 10, 2019

DHILLON LAW GROUP INC.

By: /s/ Harmeet K. Dhillon

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

QIUZI HU, an individual, **EDWIN RAMIREZ**,
an individual, **IVAN RONCERIA**, an individual,
WENZHI FEI, an individual, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

JOSE M. PLEHN-DUJOWICH, a.k.a. JOSE
M. PLEHN, an individual; **BIZQUALIFY LLC**,
a California limited liability company; and
POWERLYTICS, INC., a Delaware corporation,

Defendants.

Case Number: 3:18-cv-01791-EDL

Honorable Elizabeth D. Laporte

DECLARATION OF HARMEET K.
DHILLON IN SUPPORT OF JOINT
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: October 1, 2019

Time: 9:00 a.m.

Courtroom: E

1 I, Harmeet K. Dhillon, declare as follows:

2 1. I am an attorney in good standing duly admitted to practice before all Courts of the
3 State of California since 2000, and in New York since 1995. I am the managing partner of the Dhillon
4 Law Group Inc., counsel of record for Plaintiffs Qiuzi Hu, Edwin Ramirez, Ivan Ronceria, and
5 Wenzhi Fei ("Class Representatives"), the Class, California Subclass, and FLSA Collective. Dkt. 80. I
6 have personal knowledge of the matters set forth herein, and if called as a witness could and would
7 competently testify thereto.

8 2. My firm, on behalf of Class Representatives, filed the initial complaint, and
9 subsequently the operative First Amended Complaint ("FAC") in this Action. Dkt. 1

10 3. Both before and after initiating this action, my firm and Class Representatives worked
11 diligently to investigate the facts and circumstances giving rise to this dispute, including by reviewing
12 emails, documents, and invoices from persons that participated in the Global Financial Data Project
13 ("GFDP"); interviewing several GFDP participants; and attempting to reach resolution of Class
14 Representatives' claims prior to filing suit.

15 4. After filing the complaint, my office also worked diligently with Defendant Plehn-
16 Dujowich and BizQualify LLC's then-counsel, attorneys with the law firm Cozen O'Connor LLP, to
17 exchange documents and information in an effort to achieve class-wide settlement.

18 5. During the course of this litigation, my office has issued several subpoenas to third-
19 parties for documents, to which we received responses and, in most cases, responsive documents. The
20 entities subpoenaed include the following: Bank of America, N.A.; Intuit Inc.; Massachusetts Institute
21 of Technology; University of California, Berkeley; University of California, Los Angeles; WholeRen
22 LLC; and Powerlytics, Inc.

23 6. As set forth in my earlier filed declaration in support of Class Representatives' motion
24 for class certification (Dkt. 60-2), Defendants Plehn-Dujowich and BizQualify disclosed to my office
25 146 unique invoices identifying differently named individuals who I reasonably believe have paid
26 \$2,413 or more to Defendants to enroll in Defendants' GFDP.

27 7. Upon reviewing spreadsheets and emails acquired through discovery and from third
28 party witnesses, my office has identified 93 additional unique names and email addresses of persons

likely to be members of the Class and proposed Settlement Class. I am informed and believe that each of these individuals participated in the GFDP.

8. As such, I am informed and believe that approximately 239 individuals participated in the GFDP.

9. On June 19, 2018, I, along with my associate, Gregory R. Michael, and Class Representative Edwin Ramirez attended mediation with Defendants Jose M. Plehn-Dujowich and BizQualify LLC before Judge Raul A. Ramirez (Ret.) in San Francisco, California. All other Class Representatives were available by phone. The mediation was ultimately unsuccessful.

10. Thereafter, Defendants' initial counsel in this Action withdrew their representation of Defendants in this action (Dkt. 46), and Defendants failed to timely respond to the FAC (*see* Dkt. 51).

11. The Court subsequently granted Class Representatives' request that default be entered as to both Defendants. Dkt. 52.

12. In filing the FAC, Class Representatives joined Powerlytics, Inc. as a defendant to this Action. Powerlytics, Inc. thereafter filed a motion to dismiss, which was granted in part and denied in part by the Court. Dkt. 69. I subsequently deposed the Chief Executive Officer of Powerlytics, Inc., Kevin Sheetz, following Powerlytics' voluntary disclosure of certain documents related to this action. Following this deposition, Class Representatives agreed to voluntarily dismiss all claims asserted against Powerlytics, Inc.

13. On February 25, 2019, the Court granted Class Representatives' motion to certify the Class and California Subclass, and to conditionally certify the FLSA Collective. Dkt. 80. Though Powerlytics, Inc. filed an opposition brief to that motion, in response to which Class Representatives filed a reply, Powerlytics subsequently withdrew its opposition following Class Representatives' unconditional request for voluntary dismissal of all claims asserted against Powerlytics.

14. On March 5, 2019, Defendants filed a motion to set aside the defaults entered against them. Dkt. 83. Class Representatives, on behalf of the certified Class, California Subclass, and FLSA Collective, opposed the motion. Dkt. 87. The Court held a hearing on Defendants' motion on April 9, 2019, took the motion under submission, and referred this matter to Chief Magistrate Judge Joseph C. Spero for a settlement conference. Dkts. 89-90.

1 15. Prior to the settlement conference, my office requested to review information and
2 documents relating to Defendants' current financial status, which documents and information was
3 provided to my office and reviewed prior to the settlement conference.

4 16. On April 23, 2019, my associate, Gregory R. Michael, and Class Representative Edwin
5 Ramirez attended the settlement conference with Judge Spero and Defendants. With the assistance of
6 Judge Spero, and following an arms-length negotiation, the Parties were able to agree to the terms of
7 Class Settlement.

8 17. Thereafter, my office, working in collaboration with Defendants' counsel, prepared the
9 proposed Class Settlement Agreement, which was fully executed on August 8, 2019. A copy of the
10 executed Class Settlement Agreement is attached as Exhibit A to the Parties' Joint Motion.

11 18. It is my opinion, based on my extensive experience as a civil litigator in this district
12 (which experience is set forth in my earlier declaration filed with the Court, *see* Dkt. 60-2), and
13 knowledge of and experience with past class action settlements, that the terms and conditions of the
14 Class Settlement are fair, adequate, and reasonable. I base this opinion on my review and
15 understanding of the facts, evidence, and law supporting the Class claims asserted in this action; the
16 risks attendant to litigation and the collection of monies through enforcement of any judgment or
17 default judgment; and my review and understanding of Defendants' financial status and ability to
18 compensate the Class following the issuance of any such judgment for compensatory and/or punitive
19 damages, as well as attorneys' fees.

20 19. If 120 Settlement Class Members (amounting to half of the 240 putative Settlement
21 Class Members) were to submit a valid Claim pursuant to the terms of the Settlement Agreement, and
22 each had submitted documentation establishing their having paid \$2,413 as a "course fee" to the
23 Defendants, each such Member would be entitled to receive payment from the Settlement Fund in an
24 amount exceeding \$2,800. Based on my experience as a civil litigator in this district, and the fact that
25 approximately 60 Class Members responded to Class Representatives' efforts to identify mailing
26 addresses, that this approximation of the number of expected claimants and settlement payment
27 amounts is reasonable.

28 20. Class Representatives and the putative Settlement Class have incurred reasonable

attorneys' fees in connection with this litigation and in reaching the proposed Class Settlement. According to our billing records (redacted copies of which will be filed in conjunction with any motion for attorneys' fees and costs) the fees incurred by Class Representatives and the putative Settlement Class exceed \$500,000, as of the date of this declaration. Gregory R. Michael, an associate with my firm, spent more than 800 hours on matters related to the litigation and settlement of this dispute, including the drafting of the complaint, FAC, class certification motion, opposition to Defendants' motion to set aside entry of default, Class Settlement Agreement, and the Joint Motion, in addition to work performed in connection with a variety of other discovery and settlement activities in this case. His usual hourly rate has increased from \$300 to \$400 per hour during the course of this Action. I have spent a total of more than 180 hours on this litigation and settlement related activities. My usual hourly rate has increased from \$700 to \$1000 per hour during the course of this litigation. Other attorneys and administrative staff have also spent considerable time, at varying rates, on this litigation during the nearly two years that my firm has represented the Class Representatives in this dispute.

21. I reasonably expect that Class Representatives and the Settlement Class will incur additional attorneys' fees, costs, and expenses in securing final approval of this settlement.

22. I also reasonably expect that I and other lawyers and staff at my firm will spend substantial additional time to carry out the duties of Settlement Administrator, which my firm, Dhillon Law Group Inc., has agreed to do in order to effectuate the terms of the Class Settlement Agreement, and to increase the likelihood that the Settlement Class will be adequately and fairly compensated.

23. Despite incurring reasonable fees and costs exceeding \$500,000 in this action, which amount is likely to grow substantially as the Parties seek final approval of the Class Settlement, the Settlement Agreement caps the fee award at \$300,000. Based on the fees incurred by Class Representatives and the putative Settlement Class to date, we intend to request that the Court award the full \$300,000 in conjunction with the Parties' anticipated request to seek final approval of the Class Settlement following the notice and claims submission process detailed in the agreement.

24. I am informed and believe that the Class Representatives have also devoted significant time and resources to prosecuting this Action on behalf of themselves and the putative Settlement

1 Class. These efforts have included:

- 2 a. Class Representative Ramirez's collection of documents and communication relating to
3 this dispute; attendance at mediation; appearance at his deposition; efforts to identify
4 mailing addresses for approximately 60 of the Settlement Class Members; review of
5 filings in this Action; submission of written testimony in support of class certification;
6 attendance at the settlement conference; correspondence with my office; and advising
7 Class Counsel on matters pertinent to the Class Settlement;
- 8 b. Class Representative Hu's collection of documents and communication relating to this
9 dispute; identification and retention of legal representation for herself and the then-
10 putative Class; review of filings in this Action; correspondence with my office;
11 submission of written testimony in support of class certification; and advising Class
12 Counsel on matters pertinent to the Class Settlement;
- 13 c. Class Representative Ronceria's investigation and accumulation of material pertinent
14 to the Action; review of filings in this Action; correspondence with my office;
15 submission of written testimony in support of class certification; and advising Class
16 Counsel on matters pertinent to the Class Settlement;
- 17 d. Class Representative Fei's review of filings in this Action; correspondence with my
18 office; submission of written testimony in support of class certification; and advising
19 Class Counsel on matters pertinent to the Class Settlement;

20 25. To my knowledge, there remain no other actions pending against Defendants in
21 relation to matters set forth in the FAC.

22 26. To my knowledge, there are no discernable conflicts of interest between my firm, the
23 Class Representatives in the action, or the putative Settlement Class members, as defined in the Joint
24 Motion filed herewith.

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

27 Date: August 10, 2019

28 By:



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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

QIUZI HU, an individual, **EDWIN RAMIREZ**, an individual, **IVAN RONCERIA**, an individual, **WENZHI FEI**, an individual, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

JOSE M. PLEHN-DUJOWICH, a.k.a. JOSE M. PLEHN, an individual;
BIZQUALIFY LLC, a California limited liability company; and **POWERLYTICS, INC.**, a Delaware corporation,

Defendants.

Case Number: 3:18-cv-01791-EDL

Honorable Elizabeth D. Laporte

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

Date: October 1, 2019

Time: 9:00 a.m.

Courtroom: E

1 Plaintiffs Qiuzi Hu, Edwin Ramirez, Ivan Ronceria, and Wenzhi Fei (“Plaintiffs” or “Class
2 Representatives”) and Defendants Jose M. Plehn-Dujowich and BizQualify LLC’s (“Defendants”) Joint
3 Motion for Preliminary Approval of Class Action Settlement pursuant to Rule 23(e) of the Federal
4 Rules of Civil Procedure came on regularly for hearing on October 1, 2019, in this Court. The terms of
5 the settlement are set forth in the Stipulation of Class Action Settlement and Release of Claims
6 (“Settlement Agreement” or “Class Settlement”) filed as Exhibit A to the Joint Motion.

7 The Court has preliminarily considered the Class Settlement to determine, among other things,
8 whether to certify a class for settlement purposes only, and whether the Class Settlement is sufficient to
9 warrant the issuance of notice to members of the Settlement Class. Upon reviewing the Settlement
10 Agreement and motion papers relating to the request for preliminary approval of the Class Settlement, it
11 is hereby ORDERED, ADJUDGED AND DECREED as follows:

12 1. **Class Findings:** The Court amends its prior certification of the Class¹ (Dkt. 80) to
13 define the settlement class (“Settlement Class”) under Fed. R. Civ. P. 23(b)(3) in this litigation, for
14 settlement purposes only, as follows:

15 **Settlement Class:** All Class Members, including Class Representatives, who do
16 not exclude themselves from the Class or Settlement Class, pursuant to the
17 procedures set forth in Section 6.3 of the Settlement Agreement and the Class
Notice.

18 2. **Appointment of Class Representatives and Class Counsel:** The Court continues the
19 appointment of the Class Representatives to represent the Settlement Class, and Dhillon Law Group Inc.
20 as Class Counsel pursuant to Fed. R. Civ. P. 23(e) and (g).

21 3. **Preliminary Findings Regarding Proposed Settlement:** The Court preliminarily finds
22 the following:

23 a. The proposed Class Settlement resulted from arm’s-length negotiations;
24

25 ¹ The Class is defined as follows:

26 “All persons who enrolled in the [GFDP]. Excluded from the Class are Defendants’ officers and
27 directors and the immediate families of the Defendants’ officers and directors. Also excluded
28 from the Class are the Defendants’ legal representatives, heirs, successors, or assigns, and any
entity in which Defendants have or have had a controlling interest.” Dkt. 80.

- b. The Settlement Agreement was executed only after Class Counsel had conducted substantial discovery, including by taking discovery from third-parties, deposing Defendant Plehn-Dujowich, and obtaining relevant documents;
- c. Class Counsel has concluded that the Class Settlement is fair, reasonable, and adequate; and
- d. The Class Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the Class Settlement to the Settlement Class.

4. **Final Approval Hearing:** A hearing is hereby set for _____, 2019 (the “Final Approval Hearing”) to determine, among other things:

- a. Whether the Class Settlement should be approved as fair, reasonable, and adequate;
- b. Whether the notice and dissemination thereof was performed fairly, as directed by this Court;
- c. Whether the motion for attorneys’ fees and costs, to be filed by Class Counsel no later than 14 calendar days before the Final Approval Hearing, should be approved, and in what amount; and
- d. Whether the motion for compensation to Class Representatives should be approved, and in what amount.

5. **Settlement Administrator:** Pursuant to the Settlement Agreement, Class Counsel shall serve as Settlement Administrator and perform all duties required of it by the Settlement Agreement, absent any further order from this Court.

6. **Class Notice:** The Court finds that the proposed form of Class Action Settlement Notice filed by the Parties with their motion as Exhibit B, fairly and adequately:

- a. Describes the terms and effect of the Settlement Agreement;
- b. Notifies the Settlement Class of their opportunity to submit a claim pursuant to the terms of the Settlement Agreement;
- c. Notifies the Settlement Class that Class Counsel will seek compensation from the Settlement Fund for the Class Representatives and for attorneys’ fees, costs, and expenses;

- d. Gives notice to the Settlement Class of the time and place of the Final Approval Hearing; and
- e. Describes how recipients of the notice may submit a claim for compensation, object to any of the relief requested, or opt-out of the Settlement Class entirely.

The Parties have proposed giving Settlement Class Members notice via email and WeChat, a Chinese messaging and social media platform, because that is how Defendants communicated with the members of the Settlement Class. The Parties also offer to provide notice by physical mail to all Settlement Class Members with a known mailing address, which the Court requires them to do.

The Court approves the proposed manner of notice. Accordingly, Class Counsel, acting as Settlement Administrator, shall, within thirty days of this Order, cause the Class Action Settlement Notice, with such non-substantive modifications thereto as may be agreed by the Parties, to be provided to the Settlement Class in the manner set forth above and in the Settlement Agreement.

7. **Objections to Settlement:** Any member of the Settlement Class may file an Objection for the purposes of objecting to the fairness, reasonableness, or adequacy of the Class Settlement; to any term of the Settlement Agreement; to the proposed award of attorneys' fees and costs; and/or to any request for compensation for the Class Representatives. An objector wishing to make an objection shall satisfy all obligations set forth in section 6.4 of the Settlement Agreement. Any Settlement Class Member wishing to object and/or appear who fails to follow the procedures set forth therein may, in the Court's discretion, be precluded from doing so. The addresses for filing objections with the Court and service on counsel are as follows:

Court	Class Counsel / Settlement Administrator	Defendants' Counsel
Class Action Clerk United States District Court, Northern District of California 450 Golden Gate Avenue San Francisco, CA 94102 United States of America	DHILLON LAW GROUP INC. Harmeet K. Dhillon, Esq. Krista L. Baughman, Esq. Gregory R. Michael, Esq. 177 Post Street, Suite 700 San Francisco, CA 94108 United States of America Tel: +1 (415) 433-1700 Fax: +1 (415) 520-6593 GFDPSettlement@dhillonlaw.com;	Loren Kieve, Esq. KIEVE LAW OFFICES 2655 Steiner Street San Francisco, CA 94115 United States of America Tel: 415.364.0060 lk@kivelaw.com

All objections must be filed with the Court, which may be accomplished by mailing the objection to the above-listed Court address, and served on counsel no later than sixty days after the Class Action Settlement Notice is served on the objector. Any party wishing to file a response to any objection may do so. All such responses must be filed and served on all counsel listed above no later than ten days before the Final Approval Hearing.

8. **Opting Out from the Settlement Class:** Any Settlement Class Member may opt out of the Settlement Class by submitting a signed Opt-Out Notice to the Settlement Administrator at the address set forth in the Class Action Settlement Notice. To be valid, the Opt-Out Notice must substantially comply with the requirements of section 6.3 of the Settlement Agreement. Upon signing and mailing a valid Opt-Out Notice, the Class Member shall no longer be deemed a Settlement Class Member and shall not be entitled to receive any benefit from the Class Settlement.

9. **Claim Form Submission:** Each Settlement Class Member shall be entitled to submit one claim for a cash payment pursuant to the terms of the Settlement Agreement. Any claim that does not substantially comply with the requirements set forth in section 8 of the Settlement Agreement and the Class Action Settlement Notice will be deemed invalid. All valid claim forms must be received by the Settlement Administrator by _____.

10. **Termination of Settlement:** If the Class Settlement is terminated in accordance with the Settlement Agreement, this Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions as though the Parties never executed the Settlement Agreement.

11. **Continuance of Final Approval Hearing:** The Court reserves the right to continue the Final Approval Hearing without further written notice to the Settlement Class Members.

12. **Partial Stay of Action:** the Court stays all proceedings in this Action unrelated to the Class Settlement and pending final approval of the Settlement Agreement.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____

Hon. Elizabeth D. Laporte
United States District Judge