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and the putative Class*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JANET SIHLER, Individually and On  
Behalf of All Others Similarly Situated;  
CHARLENE BAVENCOFF, Individually  
and On Behalf of All Others Similarly  
Situated,

Plaintiffs,

v.

THE FULFILLMENT LAB, INC;  
RICHARD NELSON; BEYOND  
GLOBAL INC.; BRIGHTREE  
HOLDINGS CORP.; BMOR GLOBAL  
LLC; DAVID FLYNN; RICKIE JOE  
JAMES; and JOHN DOES 1-10,

Defendants.

Case No.: 3:20-cv-01528-LL-DDL

**MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

**Date:** November 20, 2024

**Time:** \*

**Ctrm:** 2B

**Judge:** Hon. Linda Lopez

\*PER CHAMBERS RULES, NO ORAL  
ARGUMENT UNLESS SEPARATELY  
ORDERED BY THE COURT

Complaint Filed: August 6, 2020

TABLE OF CONTENTS

1

2 I. INTRODUCTION..... 1

3 II. THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT CLASS..... 1

4 III. THE CLASS SETTLEMENT SHOULD BE PRELIMINARILY APPROVED..... 2

5 A. The Icebreaker Settlements Are In The Interests of the Class ..... 3

6 B. Plaintiffs Considered Estoppel Risks in Evaluating the Settlements ..... 6

7 C. Defendants’ Financial Condition Justifies Settlement..... 6

8 D. Injunctive Relief Has Value to the Class..... 9

9 E. The Strength of the Plaintiff’s Case..... 10

10 F. The Risk, Expense, Complexity, and Likely Duration of Further Litigation... 10

11 G. The Risk of Maintaining Class Action Status Throughout the Trial..... 12

12 H. The Amount Offered in Settlement ..... 12

13 I. The Relief Provided to the Class Is Adequate ..... 13

14 J. The Class Representative and Class Counsel Have Adequately Represented the  
Class ..... 14

15 K. The Extent of Discovery Completed and the Stage of Proceedings..... 15

16 L. The Proposal Was Negotiated At Arms’ Length..... 17

17 M. The Experience and Views of Counsel..... 18

18 N. The Remaining Factors ..... 19

19 IV. THE COURT SHOULD APPROVE THE PROPOSED METHOD OF NOTICE ..20

20 V. CONCLUSION ..... 22

21

22

23

24

25

26

27

28

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787 F.3d 1218 (9th Cir. 2015) .....21

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No. 13-cv-00533-BAS(BGS),  
2014 U.S. Dist. LEXIS 168986 (S.D. Cal. Dec. 5, 2014) ..... 19

*Banales v. Autoclaims Direct, Inc.*,  
No. 11cv2914-DHB, 2012 U.S. Dist. LEXIS 201160 (S.D. Cal. Dec. 20, 2012).....20

*Beaver v. Tarsadia Hotels*,  
No. 11-cv-01842-GPC-KSC,  
2017 U.S. Dist. LEXIS 80648 (S.D. Cal. May 24, 2017).....24

*Briseño v. Henderson*,  
998 F.3d 1014 (9th Cir. 2021) ..... 3

*Burnett v. Realtors*,  
No. 4:19-CV-00332-SRB,  
2024 U.S. Dist. LEXIS 101100 (W.D. Mo. May 9, 2024) ..... 5

*Cavazos v. Salas Concrete, Inc.*,  
No. 1:19-cv-00062-DAD-EPG,  
2022 U.S. Dist. LEXIS 132056 (E.D. Cal. July 25, 2022) ..... 8

*Chan v. Brady*,  
No. 20-CV-06569-LHK,  
2021 U.S. Dist. LEXIS 153096 (N.D. Cal. Aug. 13, 2021) ..... 14

*Class Plaintiffs v. Seattle*,  
955 F.2d 1268 (9th Cir. 1992) .....3, 8

*Couser v. Comenity Bank*,  
125 F. Supp. 3d 1034 (S.D. Cal. 2015)..... 13

*Friedman v. Guthy-Renker, LLC*,  
No. 2:14-cv-06009-ODW(AGRx),

1 2016 U.S. Dist. LEXIS 149900 (C.D. Cal. Oct. 28, 2016).....26  
 2 *Hester v. Vision Airlines, Inc.*,  
 3 No. 2:09-CV-00117-RLH-NJK,  
 4 2014 U.S. Dist. LEXIS 48360 (D. Nev. Apr. 7, 2014)..... 7, 9  
 5 *Hudson v. Libre Tech. Inc.*,  
 6 No. 3:18-cv-1371-GPC-KSC,  
 7 2020 U.S. Dist. LEXIS 84576 (S.D. Cal. May 12, 2020)..... 17  
 8 *In re Celera Corp. Sec. Litig.*,  
 9 No. 5:10-cv-02604-EJD,  
 10 2015 U.S. Dist. LEXIS 157408 (N.D. Cal. Nov. 20, 2015) ..... 13  
 11 *In re Datatec Sys. Sec. Litig.*,  
 12 No. 04-CV-525 (GEB), 2007 U.S. Dist. LEXIS 87428 (D.N.J. Nov. 28, 2007) ..... 9  
 13 *In re Domestic Airline Travel Antitrust Litig.*,  
 14 378 F. Supp. 3d 10 (D.D.C. 2019)..... 4  
 15 *In re Linerboard Antitrust Litig.*,  
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 17 *In re Packaged Seafood Prods. Antitrust Litig.*,  
 18 No. 3:15-md-02670 DMS-MDD,  
 19 2022 U.S. Dist. LEXIS 16471 (S.D. Cal. Jan. 26, 2022)..... 4  
 20 *In re Packaged Seafood Prods. Antitrust Litig.*,  
 21 No. 3:15-md-2670 DMS-MDD,  
 22 2023 U.S. Dist. LEXIS 42200 (S.D. Cal. Mar. 13, 2023) ..... 25  
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 24 No. 3:15-md-2670 JLS-MDD,  
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 27 No. MDL No. 2328,  
 28 2014 U.S. Dist. LEXIS 181773 (E.D. La. Sep. 26, 2014)..... 5  
*In re Processed Egg Prods. Antitrust Litig.*,  
 284 F.R.D. 249 (E.D. Pa. 2012)..... 5

1 *In re Subway Footlong Sandwich Mktg. & Sales Practices Litig.*,  
 2 869 F.3d 551 (7th Cir. 2017)..... 12  
 3 *Jeter-Polk v. Casual Male Store, LLC*,  
 4 No. EDCV 14-891-VAP (DTBx),  
 5 2016 U.S. Dist. LEXIS 204837 (C.D. Cal. June 29, 2016) ..... 12  
 6 *Jones v. GN Netcom, Inc. (In re Bluetooth Headset Prods. Liab. Litig.)*,  
 7 654 F.3d 935 (9th Cir. 2011).....21, 22  
 8 *Klee v. Nissan N. Am., Inc.*,  
 9 No. CV 12-08238 AWT (PJWx),  
 10 2015 U.S. Dist. LEXIS 88270 (C.D. Cal. July 7, 2015).....24  
 11 *Krell v. Prudential Ins. Co. of Am. (in Re Prudential Ins. Co. Am. Sales Practice Litig.*  
 12 *Agent Actions)*,  
 13 148 F.3d 283 (3d Cir. 1998)..... 15  
 14 *Lloyd v. Navy Fed. Credit Union*,  
 15 No. 17-cv-1280-BAS-RBB,  
 16 2019 U.S. Dist. LEXIS 89246 (S.D. Cal. May 28, 2019).....23  
 17 *Loomis v. Slendertone Distribution*,  
 18 No. 19-cv-854-MMA (KSC),  
 19 2021 U.S. Dist. LEXIS 44047 (S.D. Cal. Mar. 8, 2021) ..... 17  
 20 *Maree v. Deutsche Lufthansa AG*,  
 21 No. 8:20-cv-00885-SVW-MRW,  
 22 2023 U.S. Dist. LEXIS 25130 (C.D. Cal. Feb. 13, 2023) ..... 19  
 23 *Morgan v. Pub. Storage*,  
 24 301 F. Supp. 3d 1237 (S.D. Fla. 2016) .....26  
 25 *Mossberg v. Indymac Fin.*,  
 26 No. CV07-1635-GW(VB1(x),  
 27 2013 U.S. Dist. LEXIS 205686 (C.D. Cal. Jan. 28, 2013) ..... 15  
 28 *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*,  
 221 F.R.D. 523 (C.D. Cal. 2004) ..... 13, 16, 23  
*Nigh v. Humphreys Pharmacal, Inc.*,  
 No. 12cv2714-MMA-DHB,

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3 No. 21-CV-168 JLS (BLM),

4 2022 U.S. Dist. LEXIS 75256 (S.D. Cal. Apr. 25, 2022)..... 25

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6 563 F.3d 948 (9th Cir. 2009)..... 16

7 *Sengvong v. Probuild Co. LLC*,

8 No. 3:19cv2231-MMA-JLB,

9 2021 U.S. Dist. LEXIS 189993 (S.D. Cal. Oct. 1, 2021) ..... 18

10 *Shahbazian v. Fast Auto Loans*,

11 No. 2:18-cv-03076-ODW (KSx),

12 2019 U.S. Dist. LEXIS 231416 (C.D. Cal. June 20, 2019) ..... 12

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15 2024 U.S. Dist. LEXIS 143497 (M.D. Fla. Aug. 13, 2024) ..... 14

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18 *Sonterra Capital Master Fund, Ltd. v. Barclays Bank PLC*,

19 No. 15-CV-3538 (VSB),

20 2023 U.S. Dist. LEXIS 95908 (S.D.N.Y. June 1, 2023) ..... 5

21 *Steinberg v. Corelogic Credco, LLC*,

22 No. 3:22-cv-00498-H-SBC,

23 2023 U.S. Dist. LEXIS 177325 (S.D. Cal. Oct. 2, 2023) ..... 3

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26 *Zepeda v. Paypal, Inc.*,

27 No. C 10-2500 SBA,

28 2015 U.S. Dist. LEXIS 150577 (N.D. Cal. Nov. 5, 2015) ..... 26

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3 **Rules**

4 Fed. R. Civ. P. 23 .....passim

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1 **I. INTRODUCTION**

2 Plaintiffs and the Defendants in this lawsuit have agreed to three separate Class  
3 Settlements which would collectively resolve the putative Class’s claims against the  
4 Defendants in this matter in exchange for \$200,000, injunctive relief against the TFL  
5 Defendants, and “icebreaker” cooperation by Mr. Flynn and Mr. James in the Florida action  
6 currently being pursued in parallel on behalf of the Class. This agreement came after a  
7 lengthy litigation period of more than three years, an Early Neutral Evaluation (ENE) before  
8 Magistrate Judge Berg, and three settlement conferences before Magistrate Judge Leshner.  
9 While the monetary amount is not large, Class Counsel has spent considerable effort and  
10 investigation verifying representations by the Defendants that they do not have significant  
11 additional assets to satisfy the claims. The cooperation agreed to in the settlement will be  
12 of significant value to the Class in pursuing monetary recovery from other defendants in the  
13 Florida action. The settlement is, at a minimum, in “the range of possible approval,” and  
14 thus the Court should grant preliminary approval and schedule the necessary proceedings  
15 for a final approval hearing after notice to the Class.

16 **II. THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT CLASS**

17 Approval of a class action settlement proceeds in three stages. First, the parties present  
18 a proposed settlement to the court for preliminary approval. Second, if the court  
19 preliminarily approves the settlement, notice of the proposed settlement is sent to the class,  
20 and class members are given an opportunity to object or opt out of the settlement. Third,  
21 after holding a final fairness hearing, the court decides whether to give final approval to the  
22 settlement. *See* Fed. R. Civ. P. 23(e); 4 NEWBERG AND RUBENSTEIN ON CLASS ACTIONS §  
23 13:1 (6th ed.). At the first stage, preliminary approval, the parties must show “that the court  
24 will likely be able to: (i) approve the proposal under Rule 23(e)(2) ; and (ii) certify the class  
25 for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1)(B). “[W]hen considering  
26 certification of a settlement class, the court need not weigh whether further litigation would  
27 present case management difficulties as provided in Rule 23(b)(3)(D).” *In re Packaged*  
28 *Seafood Prods. Antitrust Litig.*, No. 3:15-md-2670 JLS-MDD, 2021 U.S. Dist. LEXIS

1 90054 at \*61 (S.D. Cal. May 11, 2021). The Court has already certified the Class and  
2 considered the factors for certification. Dkt. 183. The question is thus whether the proposed  
3 settlement meets the standards for preliminary approval.

### 4 **III. THE CLASS SETTLEMENT SHOULD BE PRELIMINARILY APPROVED**

5 “Assessing a settlement proposal requires the district court to balance a number of  
6 factors: the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration  
7 of further litigation; the risk of maintaining class action status throughout the trial; the  
8 amount offered in settlement; the extent of discovery completed and the stage of the  
9 proceedings; the experience and views of counsel; the presence of a governmental  
10 participant; and the reaction of the class members to the proposed settlement.” *Hanlon v.*  
11 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) “To survive appellate review, the  
12 district court must show it has explored comprehensively all factors.” *Id.* Federal Rule of  
13 Civil Procedure 23(e)(2) as amended in 2018 adds additional factors that must be  
14 considered: whether “the class representatives and class counsel have adequately  
15 represented the class,” “the proposal was negotiated at arm's length,” “the relief provided  
16 for the class is adequate” taking into account certain factors, and whether “the proposal  
17 treats class members equitably relative to each other.”

18 “[A]t the preliminary approval stage, a court need only review the parties' proposed  
19 settlement to determine whether it is within the permissible ‘range of possible approval’ and  
20 thus, whether the notice to the class and the scheduling of a fairness hearing is appropriate.”  
21 *Steinberg v. Corelogic Credco, LLC*, No. 3:22-cv-00498-H-SBC, 2023 U.S. Dist. LEXIS  
22 177325 at \*17-18 (S.D. Cal. Oct. 2, 2023). “Preliminary approval of a settlement and notice  
23 to the class is appropriate if (1) ‘the proposed settlement appears to be the product of serious,  
24 informed, and non-collusive negotiations’; (2) ‘has no obvious deficiencies’; (3) ‘does not  
25 improperly grant preferential treatment to class representatives or segments of the class’;  
26 and (4) ‘falls within the range of possible approval.’ *Id.* (citations omitted).

27 “[T]here is a strong judicial policy that favors settlements, particularly where complex  
28 class action litigation is concerned.” *Briseño v. Henderson*, 998 F.3d 1014, 1031 (9th Cir.

2021) (quoting *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)). Plaintiff submits that on these facts, the proposed settlements with the TFL Defendants, David Flynn, and Rick James are collectively a reasonable settlement given (1) their lack of assets sufficient to provide further recovery to the Class, (2) the injunctive relief TFL and Mr. Nelson have agreed to, and (3) the value of the evidence the Class has obtained as a result of these settlements.

**A. The Icebreaker Settlements Are In The Interests of the Class**

The settlement proposes agreement to “icebreaker” settlements which are of significant additional value to the Class in pursuing claims against the Chargebacks911 Defendants in the Florida action. This proposal—which was negotiated at a settlement conference with the assistance of the Honorable Magistrate Judge David D. Leshner—is a fair method of arriving at reasonable damages for the nationwide Class.

An icebreaker settlement is an initial settlement in multi-defendant litigation that often “breaks the ice” and causes other defendants to consider entering serious negotiations. A court in this District approving an icebreaker settlement in a class action described them as follows: “In assessing the amount recovered here, the Court considers that, as the ‘first settlement in the litigation,’ this agreement carries additional ‘significant value’ because it may ‘break the ice’ and bring other defendants to the point of serious negotiations.” *In re Packaged Seafood Prods. Antitrust Litig.*, No. 3:15-md-02670 DMS-MDD, 2022 U.S. Dist. LEXIS 16471 at \*58 (S.D. Cal. Jan. 26, 2022).

The *In re Packaged Seafood* court also noted that where, as here, the settling defendants have agreed to cooperate against other defendants, it provides significant value to the Class: “Courts typically approve settlements that offer the first settling party a discount due to ‘the significant value in and of itself as an icebreaker settlement,’ particularly when, as here, the settling defendants have agreed to cooperate in the remaining litigation.” *Id.*

Courts in various other districts have approved icebreaker settlements in class actions, and have noted that the key drivers of value justifying discounts in such settlements are (1) the very fact of having broken the ice and its effect on future settlement prospects, and (2)

1 the value of the cooperation provided by the settling defendants. *See In re Domestic Airline*  
2 *Travel Antitrust Litig.*, 378 F. Supp. 3d 10, 18-19 (D.D.C. 2019); *In re Linerboard Antitrust*  
3 *Litig.*, 292 F. Supp. 2d 631, 643 (E.D. Pa. 2003); *Burnett v. Realtors*, No. 4:19-CV-00332-  
4 SRB, 2024 U.S. Dist. LEXIS 101100 at \*18-19 (W.D. Mo. May 9, 2024); *Sonterra Capital*  
5 *Master Fund, Ltd. v. Barclays Bank PLC*, No. 15-CV-3538 (VSB), 2023 U.S. Dist. LEXIS  
6 95908 at \*12 (S.D.N.Y. June 1, 2023); *In re Processed Egg Prods. Antitrust Litig.*, 284  
7 F.R.D. 249, 276 (E.D. Pa. 2012); *In re Pool Prods. Distribution Mkt. Antitrust Litig.*, No.  
8 MDL No. 2328, 2014 U.S. Dist. LEXIS 181773 at \*41 (E.D. La. Sep. 26, 2014).

9 Crucial to Plaintiffs' assessment of the value of the settlements was the existence of  
10 the parallel lawsuit on behalf of the Class in the Middle District of Florida, *Sihler et al v.*  
11 *Global E-Trading, LLC (d/b/a Chargebacks911), et al*, No. 8:23-cv-1450. That lawsuit was  
12 filed as a result of discovery obtained in this action, in particular a large volume of Skype  
13 messages produced by an employee of Brightree Holdings which revealed the details of  
14 their partnership with Chargebacks911. Plaintiffs have recently completed a damages report  
15 in that action, and estimates that after trebling and pre-judgment interest, that action could  
16 result in recovery of in excess of \$70 million on behalf of the Class. Decl. of K. Kneupper  
17 at ¶ 31. The District Court in that case recently granted class certification over the  
18 Defendants' opposition, suggesting that the case is strong. *Id.* Any cooperation that  
19 increases the odds of success for the Class members in that case is thus of significant value  
20 to the Class.

21 Two of the settlements in this case required substantial cooperation by the settling  
22 Defendants (David Flynn and Rick James). Both Mr. Flynn and Mr. James agreed to five  
23 key forms of cooperation which would assist the Class in the Florida action: (1) providing  
24 copies of all written communications with any Defendants in the Florida action or their  
25 employees; (2) providing sworn declarations authenticating those documents; (3) providing  
26 sworn declarations consenting to a subpoena to Microsoft<sup>1</sup> for messages in their Skype  
27

28 <sup>1</sup> From experience in other matters, Class Counsel is aware that Microsoft will refuse to comply with such subpoenas citing to federal law absent consent of one of the parties to the conversations.

1 accounts with key individuals; (4) providing reasonable assistance in pursuing a subpoena  
2 to Microsoft; and (5) voluntarily appearing at a two-day deposition in the Florida action and  
3 testifying truthfully. Ex. 1 to K. Kneupper Decl. at § IV; ex. 2 at § IV.

4 The cooperation has thus far been extremely valuable to the Class in that matter. Mr.  
5 Flynn has sat for a two-day deposition in the Florida action (ensuring that Class Counsel  
6 would have adequate time to question him, rather than splitting a single day with the  
7 Defendants). Decl. of K. Kneupper at ¶ 32. This cooperation particularly crucial because  
8 Mr. Flynn, a resident of Nevada, is not within trial subpoena range of the Orlando court.<sup>2</sup>

9 Plaintiffs are in the process of subpoenaing Microsoft to ensure complete records of  
10 the Skype chats in the Florida action, a key set of contemporaneous evidence supporting the  
11 Class’s claims. Decl. of K. Kneupper at ¶ 33. Plaintiffs had previously had Skype chats to  
12 which an employee of Brightree, Mike Campbell, was a party. But after Mr. Flynn and Mr.  
13 James voluntarily provided Skype chats pursuant to the settlements, those chats included a  
14 crucial new additional conversation—a lengthy set of messages between Brightree Holdings  
15 employees, Chargebacks911 employees, and an individual named Johnny DeLuca, whose  
16 actions are at the core of the allegations in the Florida action. *Id.* The Skype chats also  
17 revealed that employees of Chargebacks911—one of the Defendants in the Florida action—  
18 had not been telling the truth in making certain claims about their supposed inability to  
19 access those chats themselves in discovery. *Id.* And the chats included key evidence for a  
20 jury, including statements by participants that their conduct would raise “red flags” with  
21 payment processors and the statement about their conduct: “Someone is doing something  
22 very illegal there.” *Id.*

23 In addition, Mr. Flynn produced e-mails with Gary Cardone, a Defendant in the Florida  
24 action, which showed Mr. Cardone’s personal involvement in the scheme, including flying  
25 Mr. Flynn on a private jet to multiple cities to introduce him to additional payment  
26 processors. *Id.*

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<sup>2</sup> Mr. James is a Florida resident and likely would be subject to a trial subpoena.

1           **B. Plaintiffs Considered Estoppel Risks in Evaluating the Settlements**

2           An additional risk Plaintiffs considered was the risk of facing some form of estoppel  
3 after a negative jury verdict. Decl. of K. Kneupper at ¶ 34. At the time of settlement, this  
4 matter was tracked such that it could well have gone to trial before the Florida action. No  
5 jury trial is without risk, no matter how strong the facts. *Hester v. Vision Airlines, Inc.*, No.  
6 2:09-CV-00117-RLH-NJK, 2014 U.S. Dist. LEXIS 48360 at \*10 (D. Nev. Apr. 7, 2014)  
7 (“While the Class stood a strong chance of prevailing at trial on its punitive damages claim,  
8 given the Class'[s] success in the first trial of this Lawsuit, there is always risk inherent in a  
9 jury trial and that risk cannot be discounted.”); *Weber v. Gov't Emples. Ins. Co.*, 262 F.R.D.  
10 431, 445 (D.N.J. 2009) (finding that “as the Court of Appeals has recognized, a jury trial  
11 carries an inherent risk for both sides of a case”).

12           And *pro se* Defendants act as a “wild card”—while they are at an extreme  
13 disadvantage, once the trial commences, the very fact that they have no lawyer may draw  
14 sympathy from jurors. If, for example, Mr. Flynn appeared and successfully persuaded a  
15 jury to find in his favor, it could have dramatically complicated the Florida action. The  
16 Defendants in Florida would surely argue that if Mr. Flynn was found not liable, it defeated  
17 any allegations of a RICO conspiracy. In other words, if one jury were to find that Mr. Flynn  
18 and his associates did not violate RICO, the court in Florida might find that this foreclosed  
19 the possibility of a RICO action against others based on their actions.

20           If there were a possibility of significant financial recovery from the Defendants in this  
21 case, Plaintiffs’ counsel may have made a different decision as to settlement. But as  
22 explained further herein, Plaintiffs’ counsel do not believe the Defendants here have  
23 significant assets, which makes this risk of estoppel outweigh any chance that this  
24 assessment about their assets is incorrect.

25           **C. Defendants’ Financial Condition Justifies Settlement**

26           One factor which courts consider in approving settlements—and which Counsel must  
27 consider in deciding whether to settle for less than they hoped to—is the financial condition  
28 of the defendants. Here, Class Counsel believes, after a review of numerous financial

1 documents during and attendant to the settlement conferences, that any assets of the settling  
2 defendants would likely be exhausted by continued litigation and would preclude any  
3 additional recovery. Decl. of K. Kneupper at ¶ 34.

4 A settlement can be fair if the cost of continuing to pursue the defendants would not  
5 be justified given their financial condition. *See Class Plaintiffs v. Seattle*, 955 F.2d 1268,  
6 1295 (9th Cir. 1992) (holding that “a settling defendant's ability to pay may be a proper  
7 factor to be considered in evaluating a proposed class action settlement”); *Cavazos v. Salas*  
8 *Concrete, Inc.*, No. 1:19-cv-00062-DAD-EPG, 2022 U.S. Dist. LEXIS 132056 at \*12-13  
9 (E.D. Cal. July 25, 2022) (holding that it “weighs heavily in favor of granting final  
10 approval” where class counsel has reviewed financial documents suggesting that a  
11 defendant’s financial condition is precarious); *Hester v. Vision Airlines, Inc.*, No. 2:09-cv-  
12 00117-RLH-NJK, 2014 U.S. Dist. LEXIS 97172 at \*24-25 (D. Nev. July 17, 2014) (“The  
13 Settlement will allow the Class to suspend its costly collection efforts in multiple  
14 jurisdictions, which have further increased the Class’[s] costs, yet recovered no assets on  
15 behalf of the Class because of Vision's financial condition.”); *In re Datatec Sys. Sec. Litig.*,  
16 No. 04-CV-525 (GEB), 2007 U.S. Dist. LEXIS 87428 at \*11-12 (D.N.J. Nov. 28, 2007)  
17 (approving a small settlement where “[a]fter reviewing confidential financial documents  
18 from Gaon, Lead Plaintiffs' counsel asserts that a contribution of \$ 25,000 to the Settlement  
19 was a fair and plausible sum”).

20 Importantly, Class Counsel did not accept Defendants’ representations about their  
21 financial condition at face value. Class Counsel refused to agree to a settlement at the initial  
22 settlement conferences when Defendants first made these representations. Dkts. 196; 200.  
23 It was only after additional investigation and an additional settlement conference that  
24 Counsel concluded additional litigation would not financially benefit the Class. This  
25 included review of Mr. Flynn’s tax returns and other financial documentation which had  
26 not previously been provided, investigation into TFL and Mr. Nelson’s assets and into  
27 claims about the business’s operations, and investigation into Mr. James (as well as  
28 verifying at his deposition that he was being deposed while inside the cab of a semi-truck

1 and appeared to be telling the truth about now being a truck driver with no significant  
2 assets). Decl. of K. Kneupper at ¶ 34.

3 With respect to Mr. Flynn and Brightree Holdings (the parent company for the other  
4 corporate defendants), it was also significant to Counsel that both of them have been subject  
5 to multiple judgments from vendors associated with Brightree Holdings. One of these  
6 judgments is for \$376,572.26. Ex. 4. That judgment does not appear to have been satisfied  
7 in any way, and collection efforts by the company that obtained the judgment in October  
8 2022 have been ongoing for almost two years. They continue to be ongoing and active based  
9 on a review of the docket for the action and a domestication of the judgment in Nevada in  
10 August 2024. Decl. of K. Kneupper at ¶ 34. A second judgment against Mr. Flynn and  
11 Brightree Holdings was for the amount of \$429,557.44 and was obtained by another vendor  
12 on May 10, 2022. Ex. 5. This means that creditors with judgments totaling \$806,129.70  
13 have already had a two-year head start on the Class and have yet to satisfy those  
14 judgments—heavily suggesting that the Class will not be able to locate any additional assets  
15 after a trial.

16 An additional fact that Counsel considered was that Mr. Flynn, Mr. James, and the  
17 Brightree Holdings-related companies had three separate law firms in this case withdraw  
18 from representing them for non-payment of fees. Dkts. 61, 114, 158.

19 Class Counsel initially had significant skepticism that a company such as Brightree  
20 that made around \$100 million in revenue would have no assets left, but after investigation,  
21 believes that this is, in fact, the truth. Contemporaneous Skype chats suggest that most of  
22 the money was spent on vendors and that there are no significant assets left from the  
23 Brightree Defendants to satisfy a judgment. For example, Defendant David Flynn messaged  
24 on June 9, 2020 stating that they were “upside down by about \$300k...” Ex. 6. Other Skype  
25 chats with vendors include litigation threats over non-payment: “Ok guys this is no time for  
26 this crap. Seriously, If a \$2k good faith payment (let alone the ACTUAL \$12k bill) is too  
27 much for you we’ll just let all our colleagues know about it.... I’ll let the boss know to move  
28 forward with litigation.” Ex. 7. Plaintiffs’ counsel’s review of these Skype chats revealed

1 various other requests for payment from vendors and employees, and has led Plaintiffs’  
2 counsel to believe that Brightree’s business activities were likely grossly mismanaged to  
3 the point that no money is left. Decl. of K. Kneupper at ¶ 34. Plaintiffs’ counsel considered  
4 as to these Skype chats that they were being sent contemporaneously and without any  
5 apparent knowledge that they might later be revealed in a lawsuit.

6 While there is never a certainty that assets have not been hidden, Plaintiffs’ Counsel  
7 would not have agreed to these settlements if they believed that to be the case.

8 **D. Injunctive Relief Has Value to the Class**

9 Plaintiff has negotiated injunctive relief with Defendants TFL and Richard Nelson  
10 designed to identify potential bad actors and prevent them from being able to utilize TFL’s  
11 services. This includes a requirement that TFL and Mr. Nelson review and save the websites  
12 for any new clients they onboard, that they contractually require that those websites contain  
13 the actual prices consumers will be charged, that they will not knowingly ship products for  
14 a client if they know the client is misrepresenting the sales price to consumers, and that they  
15 will not enter into contracts with companies if they do not intend to provide fulfillment  
16 services for them. Ex. 3 at § V.

17 Injunctive relief as part of a proposed settlement “is valuable to the Class as well as  
18 consumers generally, especially considering that absent settlement, Defendant would  
19 oppose Plaintiff’s standing for injunctive relief.” *Nigh v. Humphreys Pharmacal, Inc.*, No.  
20 12cv2714-MMA-DHB, 2013 U.S. Dist. LEXIS 161215 at \*21-22 (S.D. Cal. Oct. 23, 2013).  
21 When examining a settlement that includes injunctive relief, it is “the complete package  
22 taken as a whole, rather than the individual component parts” that the Court considers for  
23 fairness. *Id.* “[T]he Ninth Circuit has cautioned district courts against assigning a monetary  
24 value to injunctive relief for the purpose of determining an award of attorneys’ fees.” *Id.* at  
25 \*32. But for the purpose of approving a settlement as fair, the Court may consider whether  
26 “the injunctive relief is a substantial benefit to the Class and the general public.” *Id.*

27 Importantly, this is not a case in which Counsel horse-traded worthless injunctive relief  
28 in exchange for a settlement which enriches class counsel who pay themselves hefty

1 attorney’s fees, a situation which some courts have expressed concern over. *See, e.g., In re*  
2 *Subway Footlong Sandwich Mktg. & Sales Practices Litig.*, 869 F.3d 551, 557 (7th Cir.  
3 2017). In fact, considering this lawsuit in isolation, Counsel will likely take a significant  
4 loss and likely not even recover their full expenses. Decl. of K. Kneupper at ¶ 35.

5 **E. The Strength of the Plaintiff’s Case**

6 Even where a court believes a Plaintiff’s case to be strong, courts have still held this  
7 factor to weigh in favor of settlement where the litigation is complex. *See Jeter-Polk v.*  
8 *Casual Male Store, LLC*, No. EDCV 14-891-VAP (DTBx), 2016 U.S. Dist. LEXIS 204837  
9 at \*8-9 (C.D. Cal. June 29, 2016) (considering the case to be strong, but subject to “risks  
10 and costs associated with future complex litigation”). Courts have recognized the inherent  
11 risks in litigation, even where a party believes its case to be strong. *Shahbazian v. Fast Auto*  
12 *Loans*, No. 2:18-cv-03076-ODW (KSx), 2019 U.S. Dist. LEXIS 231416 at \*18 (C.D. Cal.  
13 June 20, 2019) (“Here, as with most class actions, there is risk to both parties in continuing  
14 towards trial.”).

15 While Plaintiff believes their substantive case to be very strong, there is always an  
16 inherent risk of losing. Plaintiff still has to win a jury trial and win an anticipated appeal.  
17 There are risks inherent to litigation that this settlement avoids by providing certainty to the  
18 Class.

19 **F. The Risk, Expense, Complexity, and Likely Duration of Further**  
20 **Litigation**

21 “In most situations, unless the settlement is clearly inadequate, its acceptance and  
22 approval are preferable to lengthy and expensive litigation with uncertain results.” *Nat’l*  
23 *Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (quoting  
24 4 A Conte & H. Newberg, *Newberg on Class Actions*, § 11:50 at 155 (4th ed. 2002)).  
25 “Immediate receipt of money through settlement, even if lower than what could potentially  
26 be achieved through ultimate success on the merits, has value to a class, especially when  
27 compared to risky and costly continued litigation.” *In re Celera Corp. Sec. Litig.*, No. 5:10-  
28 cv-02604-EJD, 2015 U.S. Dist. LEXIS 157408 at \*16 (N.D. Cal. Nov. 20, 2015). “It has

1 been held proper to take the bird in hand instead of a prospective flock in the bush.” *Couser*  
2 *v. Comenity Bank*, 125 F. Supp. 3d 1034, 1041 (S.D. Cal. 2015) (citations omitted).

3 As described above, there are significant risks, even if Plaintiff believes the case on  
4 the merits to be strong. Other courts have recognized that “RICO claims are complex claims  
5 that are expensive and time-consuming to litigate.” *Chan v. Brady*, No. 20-CV-06569-LHK,  
6 2021 U.S. Dist. LEXIS 153096 at \*11 (N.D. Cal. Aug. 13, 2021). There are 257 docket  
7 entries in this lawsuit already, and the Defendants have vigorously disputed the claims and  
8 can be expected to continue to do so absent settlement. It could take an additional two years  
9 (or more) to reach finality after an appeal.

10 Most important to this case as to this factor is that Plaintiffs’ counsel has assessed  
11 that the expense of taking this lawsuit to trial would exceed the assets of the settling  
12 Defendants. This assessment was made after the exchange of financial information under  
13 the supervision of Magistrate Judge Leshner at three settlement conferences. This means  
14 that even if Plaintiffs continued to pursue the case to trial, there would likely not be a net  
15 monetary recovery at all for the Class, at least in this matter.

16 Plaintiffs have also considered the risks that losing this lawsuit could have for the  
17 pending Florida action, which seeks to recover money for the same class members. Two of  
18 the Defendants, Mr. James and Mr. Flynn, are not represented by counsel. This makes their  
19 behavior and performance at trial—and the jury’s reaction to it—more difficult to predict.  
20 While Mr. James has had minimal participation in the lawsuit, Mr. Flynn has actively  
21 participated, and there is no way to know how a jury will react to him defending himself or  
22 whether they will find him sympathetic as he attempts to navigate a trial without assistance.  
23 The TFL Defendants are represented by able counsel from a respected law firm, but this  
24 creates its own risks—namely, that those counsel may prevail either at trial or on significant  
25 pretrial issues.

26 Notably, in certifying the class in the Florida action, the court there repeatedly looked  
27 to the prior order of this Court on that issue as persuasive. *Sihler v. Glob. E-Trading, LLC*,  
28 No. 8:23-cv-1450-VMC-JSS, 2024 U.S. Dist. LEXIS 143497 at \*12, 14, 20, 29, 30, 31

1 (M.D. Fla. Aug. 13, 2024). While this was advantageous to the class in that instance, it  
2 highlights a risk as well: that Plaintiffs would be fighting a two-front war, in two different  
3 courts, where a decision in one could significantly affect the other. If Plaintiffs were to lose  
4 a significant pretrial motion or evidentiary issue in this Court, it could well be persuasive to  
5 the Florida court in the same way—and vice versa. A loss at a jury trial in this matter could  
6 create *res judicata* or collateral estoppel issues for the Florida action, which is a serious risk  
7 given that there would likely be no monetary recovery for the Class in this action, but likely  
8 will be if the Florida action is successful.

9 This factor thus weighs in favor of approval of the settlement.

### 10 **G. The Risk of Maintaining Class Action Status Throughout the Trial**

11 On this factor, the Court considers the risk of whether a class action can be maintained  
12 as a class throughout the trial. *Mossberg v. Indymac Fin.*, No. CV07-1635-GW(VB1(x)),  
13 2013 U.S. Dist. LEXIS 205686 at \*9 (C.D. Cal. Jan. 28, 2013) (“Although the Court has  
14 certified a class in this case, there was always the chance that Perry could move for  
15 decertification or modification of the class... This factor, therefore, also favors settlement  
16 approval.”); *see also Krell v. Prudential Ins. Co. of Am. (in Re Prudential Ins. Co. Am. Sales*  
17 *Practice Litig. Agent Actions)*, 148 F.3d 283, 321 (3d Cir. 1998) (recognizing that  
18 ordinarily, analysis of this factor in a settlement context is perfunctory because there is  
19 always such a risk). This factor therefore favors approval.

### 20 **H. The Amount Offered in Settlement**

21 “[I]t is well-settled law that a proposed settlement may be acceptable even though it  
22 amounts to only a fraction of the potential recovery that might be available to the class  
23 members at trial.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527  
24 (C.D. Cal. 2004). In the context of statutes with treble damages provisions, the Ninth Circuit  
25 has held that a District Court may analyze the reasonableness of the amount of a proposed  
26 settlement against either single damages, treble damages, or both. *Rodriguez v. W. Publ’g*  
27 *Corp.*, 563 F.3d 948, 964-65 (9th Cir. 2009) (“It is our impression that courts generally  
28 determine fairness of an antitrust class action settlement based on how it compensates the

1 class for past injuries, without giving much, if any, consideration to treble damages.... We  
2 have never precluded courts from comparing the settlement amount to both single and treble  
3 damages. By the same token, we do not require them to do so in all cases.”).

4 Plaintiff’s estimate of the actual damages for a nationwide class is very high—over  
5 \$19 million in actual damages, and likely over \$70 million with trebling, prejudgment  
6 interest, and attorney’s fees. Decl. of K. Kneupper at ¶ 31. The settlement of \$200,000 is  
7 small in monetary terms when compared to this amount, and largely will be used to offset  
8 costs of litigation. It will not be sufficient to distribute any amount to the Class, particularly  
9 because the cost of doing so would exceed the amount available to distribute. But “you  
10 cannot squeeze blood from a turnip”—in other words, a person cannot pay money into a  
11 settlement if they do not have it. The information available to Class Counsel heavily  
12 suggests that at least for the Defendants in this litigation, further litigation would serve only  
13 to exhaust remaining assets, and the Class’s efforts at recovery are better focused on the  
14 Florida action.

15 **I. The Relief Provided to the Class Is Adequate**

16 FRCP 23(e)(2)(C) requires that the relief provided in a class settlement be adequate,  
17 taking into account “(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness  
18 of any proposed method of distributing relief to the class, including the method of  
19 processing class-member claims; (iii) the terms of any proposed award of attorney's fees,  
20 including timing of payment; and (iv) any agreement required to be identified under Rule  
21 23(e)(3). As to whether the relief is adequate, “[t]he amount offered in the proposed  
22 settlement agreement is generally considered to be the most important consideration of any  
23 class settlement.” *Hudson v. Libre Tech. Inc.*, No. 3:18-cv-1371-GPC-KSC, 2020 U.S. Dist.  
24 LEXIS 84576 at \*17 (S.D. Cal. May 12, 2020).

25 The adequacy of the amount negotiated has been addressed above. The costs, risks,  
26 and delay of trial and appeal have likewise been addressed above.

1 As to “the effectiveness of any proposed method of distributing relief to the class,  
2 including the method of processing class-member claims,” the key questions are whether  
3 these methods are unduly burdensome and whether they deter or defeat illegitimate claims.  
4 *Loomis v. Slendertone Distribution*, No. 19-cv-854-MMA (KSC), 2021 U.S. Dist. LEXIS  
5 44047 at \*17-18 (S.D. Cal. Mar. 8, 2021). The settlement proposes to create pre-populated  
6 claim forms based on the granular class member data available from Defendants’ databases.  
7 Ex. 3 at section VI ¶ 1. The forms may be submitted via mail or via a website portal. *Id.* In  
8 *Loomis*, the Court held that “any subjective burden by a Class Member would be sufficiently  
9 mitigated by the toll-free helpline and settlement website to provide assistance.” *Loomis*,  
10 2021 U.S. Dist. LEXIS 44047 at \*17. This settlement provides for both. Ex. 3 at section VII  
11 ¶ 1(b). Epiq, the settlement administrator, has further provided a declaration describing how  
12 this claims process will be tailored to ensure that claims are easy to file. Decl. of C. Azari  
13 at ¶ 25-27, 31-32. As for illegitimate claims, because both Quick Box and Konnektive have  
14 produced spreadsheets with detailed information about the class members and their  
15 identities, it is unlikely that illegitimate claims would be successful.<sup>3</sup>

16 As to the terms of any proposed award of attorney’s fees, including timing of  
17 payment, the amount of any attorney’s fees have not been negotiated, and will be subject to  
18 approval by motion. Further, Plaintiffs’ counsel anticipates that they will be seeking only  
19 reimbursement of expenses; they will not seek to recover any fees.

20 As to “any agreement required to be identified under Rule 23(e)(3),” there is no such  
21 agreement, and the terms of the executed settlement were the only agreement made by the  
22 parties in connection with this settlement proposal. Decl. of K. Kneupper at ¶ 38.

23 **J. The Class Representative and Class Counsel Have Adequately**  
24 **Represented the Class**

25 FRCP 23(e)(2)(A) requires consideration of whether “the class representatives and  
26 class counsel have adequately represented the class.” As to this factor, courts consider in  
27

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28 <sup>3</sup> This issue is more of a concern in class actions with no identifying records for the class, for example,  
when class members bought products in a retail store.

1 part the experience of counsel. *See Sengvong v. Probuild Co. LLC*, No. 3:19cv2231-MMA-  
2 JLB, 2021 U.S. Dist. LEXIS 189993 at \*7-8 (S.D. Cal. Oct. 1, 2021). Class Counsel are  
3 experienced in both complex litigation and consumer law. Decl. of K. Kneupper at ¶ 1-29;  
4 decl. of C. Covey at ¶ 1-22. The adequacy of the value of the cooperation of the Defendants,  
5 who do not have substantial monetary assets to recover from, is further evidence that both  
6 counsel and Plaintiffs Sihler and Bavencoff have adequately represented the Class.  
7 Plaintiffs Sihler and Bavencoff have further represented the Class and actively participated  
8 in this litigation for more than four years, and are continuing to do so in the ongoing Florida  
9 action to attempt to recover a substantial monetary payment for the Class.

10 **K. The Extent of Discovery Completed and the Stage of Proceedings**

11 In considering “the extent of discovery completed and the stage of the proceedings,”  
12 courts have focused on whether “sufficient discovery has been taken or investigation  
13 completed to enable counsel and the Court to act intelligently....” *Maree v. Deutsche*  
14 *Lufthansa AG*, No. 8:20-cv-00885-SVW-MRW, 2023 U.S. Dist. LEXIS 25130 at \*25-26  
15 (C.D. Cal. Feb. 13, 2023) (quoting Herbert B. Newberg, *NEWBERG ON CLASS ACTIONS* §  
16 11.41 (4th ed. 2013)). Courts consider the extent of both formal and informal discovery as  
17 to this factor. *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459  
18 (9th Cir. 2000) (“However, ‘in the context of class action settlements, ‘formal discovery is  
19 not a necessary ticket to the bargaining table’ where the parties have sufficient information  
20 to make an informed decision about settlement.””).

21 Courts have previously found this factor to weigh in favor of approval in cases that  
22 have been litigated for several years with multiple mediations. *See Arellano v. Kellermeyer*  
23 *Bldg. Servs., LLC*, No. 13-cv-00533-BAS(BGS), 2014 U.S. Dist. LEXIS 168986 at \*23-24  
24 (S.D. Cal. Dec. 5, 2014). Similarly, in a case where Defendants had produced 3,000 pages  
25 of documents, a substantial amount of ESI, and had taken multiple depositions, the court  
26 found this to be extensive discovery that justified settlement approval. *Banales v.*  
27 *Autoclaims Direct, Inc.*, No. 11cv2914-DHB, 2012 U.S. Dist. LEXIS 201160 at \*5-6 (S.D.  
28 Cal. Dec. 20, 2012).

1 This case was filed on August 6, 2020 and has been pending for more than four years.  
2 Prior to filing this lawsuit, Plaintiff's counsel spent more than eight months investigating  
3 the specific claims in this lawsuit in detail. Decl. of K. Kneupper at ¶ 37. Plaintiff's counsel  
4 further had been conducting an industry-wide investigation into similar allegations against  
5 other companies which lasted much longer. *Id.* Those informal investigations continued  
6 during the pendency of the lawsuit. *Id.* The TFL Parties, Mr. Flynn, and Mr. James provided  
7 confidential information regarding their financial assets pursuant to the settlement  
8 conferences held under the direction of Magistrate Judge Leshner. *Id.* This information  
9 included relevant tax returns. *Id.* Plaintiff's counsel further obtained publicly available  
10 information about (1) real estate assets held by the Defendants, (2) corporations in which  
11 the Defendants had a financial interest; (3) vehicles or boats registered to the defendants;  
12 and (4) publicly available information from LinkedIn profiles or online posts showing  
13 changes in the number of employees at Defendant TFL. *Id.* Plaintiffs obtained detailed  
14 information about the transaction volume for the Keto Products sold during discovery. *Id.*  
15 Plaintiffs further obtained detailed financial information about Brightree Holdings during  
16 discovery. *Id.* Plaintiffs' counsel also questioned Mr. Flynn under oath about the financial  
17 status of several of the Defendants during hearing in a bankruptcy case filed by Beyond  
18 Global, Inc. *Id.*

19 There have been numerous discovery issues resolved by the Court, including eight  
20 discovery conferences conducted either by Magistrate Judge Berg or Magistrate Judge  
21 Leshner addressing various discovery disputes. Dkt. 53, 55, 75, 83, 87, 165, 172, 203. The  
22 TFL Defendants produced more than 15,000 pages of documents. Decl. of K. Kneupper at  
23 ¶ 37. Beyond Global, Inc. further produced financial data about itself. *Id.* A third party  
24 witness, Mike Campbell, produced more than 10,000 pages of Skype messages. *Id.* Each of  
25 the individual defendants was deposed. *Id.* Multiple TFL employees were deposed as well.  
26 *Id.* David Flynn was questioned under oath at a bankruptcy hearing regarding the financial  
27 status of Beyond Global, Inc. *Id.* Plaintiffs' counsel submitted requests to various state  
28 attorney generals under state freedom of information laws and obtained documents through

1 these requests. *Id.*

2 In addition, Plaintiff had insight into the merits of the lawsuit both from the Court’s  
3 rulings on multiple rounds of motions to dismiss (dkt. 31, 45) and its ruling granting class  
4 certification (dkt. 183).

5 Plaintiff’s counsel thus had more than adequate information available to assess the  
6 strength of their case.

7 **L. The Proposal Was Negotiated At Arms’ Length**

8 Rule 23(e)(2)(B), as amended in 2018, now requires that the Court consider whether  
9 the proposed class settlement “was negotiated at arm’s length.” The Ninth Circuit has laid  
10 out certain factors which Courts should consider in conducting the “higher level of scrutiny  
11 for evidence of collusion or other conflicts of interest” that is required for pre-certification  
12 settlements. *See Allen v. Bedolla*, 787 F.3d 1218, 1224 (9th Cir. 2015). This includes a  
13 requirement that the Court look for certain “subtle signs that class counsel have allowed  
14 pursuit of their own self-interests . . . to infect the negotiations.” *Id.* (quoting *Jones v. GN*  
15 *Netcom, Inc. (In re Bluetooth Headset Prods. Liab. Litig.)*, 654 F.3d 935, 947 (9th Cir.  
16 2011)).

17 Those signs of self-dealing include: (1) when counsel receive a disproportionate  
18 distribution of the settlement; (2) when the parties negotiate a ‘clear sailing’ arrangement’  
19 (i.e., an arrangement where defendant will not object to a certain fee request by class  
20 counsel); and (3) when the parties create a reverter that returns unclaimed fees to the  
21 defendant. *Id.*

22 None of these signs exist here. There is nothing in the proposed agreement as to the  
23 amount that counsel will receive. Instead, that issue has been left for the Court itself to  
24 resolve via motion. *See, e.g.*, Ex. 3 at section IV ¶ 5(a); section IX. It is likely that there will  
25 not be enough left after expenses to make a distribution to the Class economically feasible,  
26 which weighs against a conclusion that there has been any collusion.

27 As to the second sign of self-dealing, a clear sailing arrangement, there is none in this  
28 settlement.

1 As to the third sign of self-dealing, an agreement to revert unclaimed fees to the  
2 defendants, again, there is none.

3 Not only are there no signs of self-dealing, but there are many signs to the contrary.  
4 The settlement was negotiated only after an initial Early Neutral Evaluation before  
5 Magistrate Judge Berg, dkt. 49, as well as three subsequent settlement conferences with  
6 Magistrate Judge Leshner, dkt. 196; 200; 247. *See Bluetooth*, 654 F.3d at 948 (holding that  
7 the “presence of a neutral mediator,” while not dispositive, is “a factor weighing in favor of  
8 a finding of non-collusiveness”).

9 Other aspects of the settlement discussed herein further suggest a lack of collusion.  
10 The case was not one in which class counsel sought a quick settlement: it was instead a  
11 hard-fought one with extensive discovery, as well as extensive investigation pre-suit, and  
12 an amount that reflects Class Counsel’s willingness to pursue the case zealously as far as  
13 needed to secure a favorable recovery for the Class. Counsel pursued the claims until they  
14 had satisfied themselves that it was unlikely that any significant recovery would be made  
15 on behalf of the Class from these Defendants if the case were pursued to trial, and only after  
16 the Defendants agreed to nonmonetary benefits to the Class in the form of either cooperation  
17 in the Florida action or injunctive relief.

18 **M. The Experience and Views of Counsel**

19 “Great weight is accorded to the recommendation of counsel, who are most closely  
20 acquainted with the facts of the underlying litigation. This is because parties represented by  
21 competent counsel are better positioned than courts to produce a settlement that fairly  
22 reflects each party's expected outcome in the litigation.” *Lloyd v. Navy Fed. Credit Union*,  
23 No. 17-cv-1280-BAS-RBB, 2019 U.S. Dist. LEXIS 89246 at \*33 (S.D. Cal. May 28, 2019)  
24 (quoting *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal.  
25 2004)).

26 Counsel for Plaintiff in this case are highly experienced in complex litigation. *See Decl.*  
27 *of K. Kneupper at ¶¶ 1-29; Decl. of C. Covey at ¶ 1-22.* Counsel are further highly  
28 experienced in consumer law cases, and the law firm of Kneupper & Covey currently

1 maintains a docket of over 200 active individual consumer law cases in either arbitration or  
2 litigation. Decl. of K. Kneupper at ¶ 29. The law firm has settled or recovered judgments in  
3 over 500 individual consumer law cases, and counsel are regularly involved in numerous  
4 mediations or settlement discussions. *Id.* at ¶ 30. In 2023, these individually settled or  
5 recovered cases by Kneupper & Covey amounted to more than \$2.5 million. *Id.*

6 Based on their experience, Counsel for Plaintiff believe this is a favorable settlement  
7 for the Class. With respect to TFL and Mr. Nelson, the settlement provides for injunctive  
8 relief designed to identify bad actors in the future and prevent any further involvement with  
9 them. This includes a requirement that TFL and Mr. Nelson review and save the websites  
10 for any new clients they onboard, that they contractually require that those websites contain  
11 the actual prices consumers will be charged, that they will not knowingly ship products for  
12 a client if they know the client is misrepresenting the sales price to consumers, and that they  
13 will not enter into contracts with companies if they do not intend to provide fulfillment  
14 services for them.

15 With respect to Mr. Flynn, Mr. Nelson, and the Brightree Holdings-related companies,  
16 Counsel believes they have no assets and are no longer selling these products. They have  
17 also provided additional evidence in the form of Skype chats and other evidentiary materials  
18 for use on behalf of the Class in the Florida action.

19 When weighed against their financial condition, which in Counsel’s view would likely  
20 not support any further recovery, Counsel believes that this was the best result that could be  
21 obtained for the Class from these Defendants.

22 **N. The Remaining Factors**

23 As to the presence of a governmental participant, “[n]o government entity participated  
24 in this case. Under these circumstances, this factor is neutral.” *Klee v. Nissan N. Am., Inc.*,  
25 No. CV 12-08238 AWT (PJWx), 2015 U.S. Dist. LEXIS 88270 at \*28 (C.D. Cal. July 7,  
26 2015). With respect to the reaction of the class members to the proposed settlement, “[t]he  
27 Class has yet to be notified of the Settlement and given an opportunity to object; thus it is  
28 premature to assess this factor.” *Beaver v. Tarsadia Hotels*, No. 11-cv-01842-GPC-KSC,

1 2017 U.S. Dist. LEXIS 80648 at \*17 (S.D. Cal. May 24, 2017).

2 As to whether “the proposal treats class members equitably relative to each other,”  
3 Plaintiffs do not expect there to be a distribution because the amount recovered is not  
4 significantly in excess of the notice costs. The settlement is treats class members equitably  
5 relative to one another.

6 While Plaintiffs intend to seek an incentive award in line with 9th Circuit authority,  
7 see Ex. 3 at section X(2), the amount was not negotiated as part of the settlement and the  
8 Court will ultimately determine whether such an award is proper, and if so, the amount.  
9 Such incentive awards do not constitute inequitable treatment of class members. *Preston v.*  
10 *Porch.Com, Inc.*, No. 21-CV-168 JLS (BLM), 2022 U.S. Dist. LEXIS 75256 at \*19 (S.D.  
11 Cal. Apr. 25, 2022).

12 **IV. THE COURT SHOULD APPROVE THE PROPOSED METHOD OF NOTICE**

13 After the Court has determined that a settlement should be preliminarily approved, it  
14 must order that the parties provide notice to the settlement class. *See* Fed. R. Civ. P.  
15 23(e)(1). The parties must provide the absent class with the “best notice practicable” under  
16 the circumstances. *See Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994). While this  
17 standard does not demand individual notice to every class member, it does require  
18 “individual notice to all members who can be identified through reasonable effort.” Fed. R.  
19 Civ. P. 23(c)(2); *see In re Packaged Seafood Prods. Antitrust Litig.*, No. 3:15-md-2670  
20 DMS-MDD, 2023 U.S. Dist. LEXIS 42200 at \*46 (S.D. Cal. Mar. 13, 2023). Notice may  
21 be provided to the class via “United States mail, electronic means, or other appropriate  
22 means.” Fed. R. Civ. P. 23(c)(2)(B).

23 The Class has previously received notice of this action via postcard, e-mail notice,  
24 and website notice after the class was initially certified. Given that the amount being  
25 recovered is relatively low, and given this prior notice, the parties propose that notice of this  
26 settlement be made via e-mail notice and website, with supplemental postcard notice to  
27 Class members for whom e-mail notice is not possible due to invalid e-mail addresses or  
28 other reasons.

1 This method has specifically been approved in class actions involving the sale of  
2 online products. *See Friedman v. Guthy-Renker, LLC*, No. 2:14-cv-06009-ODW(AGRx),  
3 2016 U.S. Dist. LEXIS 149900 at \*33 (C.D. Cal. Oct. 28, 2016) (“Because the majority of  
4 WEN hair product sales were made online, e-mail is already the primary method of  
5 communicating receipts, promotions, and delivery information.”); *Zepeda v. Paypal, Inc.*,  
6 No. C 10-2500 SBA, 2015 U.S. Dist. LEXIS 150577 at \*24 (N.D. Cal. Nov. 5, 2015)  
7 (“Here, notice to the Settlement Class will be sent by e-mail, which is the primary method  
8 that PayPal uses to communicate with its subscribers.”); *see also Morgan v. Pub. Storage*,  
9 301 F. Supp. 3d 1237, 1264 (S.D. Fla. 2016) (“[E]mail notice in class actions is used  
10 regularly and has been approved in many federal courts throughout the United States.”)  
11 (collecting cases).

12 Also of note is that Federal Rule of Civil Procedure 23 does not require the best  
13 possible notice, but “the best notice that is practicable under the circumstances....” The  
14 2018 Advisory Committee notes to Federal Rule of Civil Procedure 23 state: “the amended  
15 rule relies on courts and counsel to focus on the means or combination of means most likely  
16 to be effective in the case before the court. The court should exercise its discretion to select  
17 appropriate means of giving notice.”

18 One key factor to this is that there are several hundred thousand class members—  
19 meaning that cost is a significant factor given the size of the settlement. Given that the Class  
20 has already received notice once, e-mail notice is likely to be sufficient. The parties have  
21 agreed to a notice plan designed to make sure that as much of the Class receives notice as  
22 possible. The proposed notice forms are attached as Exhibits 4-8 to the executed settlement  
23 with The Fulfillment Lab. Ex. 3. They have been drafted in plain English in an attempt to  
24 make them easily readable to Class members. The parties have agreed to consult with the  
25 Class Administrator regarding additional targeted notice via internet advertising and other  
26 procedures. *Id.* at section VI(2)(e). These include, for example, re-mailing postcards using  
27 new address data for any that are returned. Decl. of C. Azari at ¶ 24.  
28

1 The parties have selected Epiq Class Action and Claims Solutions as the settlement  
2 administrator to handle the notice plan. Ex. 3 at section II(39). Epiq handled the prior notice  
3 in this matter. While Plaintiffs previously intended to seek a joint notice with the Florida  
4 action, the judge in that matter ordered separate notice for that case.

5 **V. CONCLUSION**

6 Plaintiff respectfully requests that the Court should grant preliminary approval and  
7 schedule the necessary proceedings for a final approval hearing after notice to the Class.  
8

9 DATED: October 16, 2024

**KNEUPPER & COVEY, PC**

/s/Kevin M. Kneupper

Kevin M. Kneupper, Esq.

*Attorneys for Plaintiffs Janet Sihler,  
Charlene Bavencoff, and the putative  
Class*

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and the putative Class*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JANET SIHLER, Individually and On  
Behalf of All Others Similarly Situated;  
CHARLENE BAVENCOFF, Individually  
and On Behalf of All Others Similarly  
Situated,

Plaintiffs,

v.

THE FULFILLMENT LAB, INC;  
RICHARD NELSON; BEYOND  
GLOBAL INC.; BRIGHTREE  
HOLDINGS CORP.; BMOR GLOBAL  
LLC; DAVID FLYNN; RICKIE JOE  
JAMES; and JOHN DOES 1-10,

Defendants.

Case No.: 3:20-cv-01528-LL-DDL

**DECLARATION OF KEVIN  
KNEUPPER IN SUPPORT OF  
PLAINTIFF’S MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

**Date:** November 20, 2024

**Time:** \*

**Ctrm:** 2B

**Judge:** Hon. Linda Lopez

**\*PER CHAMBERS RULES, NO ORAL  
ARGUMENT UNLESS SEPARATELY  
ORDERED BY THE COURT**

Complaint Filed: June 12, 2020

I, Kevin M. Kneupper, do hereby declare as follows:

1 1. I am a partner at Kneupper & Covey PC, counsel for Janet Sihler and Charlene  
2 Bavencoff. I am licensed to practice law in the States of California and Texas. I make this  
3 declaration to the best of my knowledge, information, and belief of the facts stated herein.

4 2. I am highly experienced in complex litigation, in particular litigation  
5 involving technological issues. I am further highly experienced in consumer protection  
6 litigation, both in individual cases and in class actions.

7 3. I graduated from the University of Texas School of Law in 2005, ranked 4th  
8 in my class of more than five hundred students. From 2005 through 2007 I clerked for the  
9 Honorable Judge James L. Dennis on the Fifth Circuit Court of Appeals. I was recognized  
10 by name in an *en banc* Fifth Circuit opinion for my contributions as a clerk to work on a  
11 complex series of death penalty cases. *Nelson v. Quarterman*, 472 F.3d 287, 316 n.1 (5th  
12 Cir. 2006) (Dennis, J., concurring).

13 4. From 2007 through 2016 I worked for the law firm of McKool Smith PC, and  
14 was ultimately a principal in the firm. McKool Smith is one of the most highly regarded  
15 plaintiff's law firms in the country, and is particularly known for its strength in complex  
16 technological cases. I worked on a number of lawsuits there, a selection of which are  
17 discussed below, and was a member of the trial team in eight complex lawsuits that went  
18 to jury trials.

19 5. I represented Versata and was a member of the trial team in *Versata Software,*  
20 *Inc. Et Al v. SAP America, Inc. et Al*, 2:07-cv-153 in the Eastern District of Texas, a patent  
21 infringement case involving enterprise software called a "pricer" that automated price  
22 determinations and discount applications. There were two trials in the case—a first trial in  
23 which Versata won \$139 million in damages, and after an intervening change in Federal  
24 Circuit law on the calculation of damages, a \$345 million verdict in a separate retrial of the  
25 damages issues. I represented Versata in both trials and managed a team of attorneys in the  
26 retrial of damages.

27 6. I represented Versata and was a member of the trial team in *Autodata*  
28 *Solutions, Inc. v. Versata Software, Inc. et al*, 2:12-cv-704 in the Eastern District of Texas,

1 a patent infringement case involving enterprise software. I managed discovery in the case  
2 and presented one of the key witnesses at trial.

3 7. I represented Versata and was a member of the trial team in *Versata Software,*  
4 *Inc. et al v. Sun Microsystems, Inc.*, 2:06-cv-358 in the Eastern District of Texas, a patent  
5 infringement case involving enterprise software called a “configurator” that automatically  
6 configured the parts used in manufacturing by large corporations as product designs are  
7 changed.

8 8. I represented KeyBank and was a member of the trial team in *Datatreasury*  
9 *Corporation v. Wells Fargo & Company et al*, 2:06-cv-72 in the Eastern District of Texas,  
10 a patent infringement case involving check imaging technology. The case settled mid-trial.

11 9. I represented Unwired Planet in *Unwired Planet, LLC v. Apple, Inc.*, 3:13-cv-  
12 4134 in the Northern District of California, a patent infringement lawsuit involving a  
13 number of technologies relating to mobile phones. I was in charge of managing the case  
14 and leading the discovery team. I further participated in the technical analysis of various  
15 iPhone features, including Siri and the gyroscopic technology used in the iPhone.

16 10. I represented Halliburton in *Myklatun et al v. Halliburton Energy Services Inc*  
17 *et al*, 5:09-cv-770 in the Western District of Oklahoma, a breach of contract and tortious  
18 interference case involving microemulsion technology, a chemical used to enhance oil well  
19 production. I managed the lawsuit in its entirety for much of the case, and after successfully  
20 excluding the damages expert for Myklatun on *Daubert*, my client settled its portion of  
21 case the night before the first day of trial.

22 11. I represented Rambus, Inc. in *Rambus, Inc. v. Hynix Semiconductor, Inc. et*  
23 *al*, and was part of the trial team in a jury trial in the Northern District of California. The  
24 case involved DRAM technology, a kind of memory used in computers.

25 12. I was a member of a technical team analyzing the Deepwater Horizon oil spill  
26 incident and its causes for Halliburton as part of the Deepwater Horizon litigation.

27 13. I represented Parkervision in *Parkervision, Inc. v. Qualcomm Incorporated,*  
28 3:11-cv-719 in the Middle District of Florida, a patent infringement case involving cell

1 phone signal downconversion technology. I was a member of the trial team which obtained  
2 a jury verdict of \$173 million in damages on behalf of Parkervision.

3 14. I represented Solid State Storage Solutions in *Solid State Storage Solutions,*  
4 *Inc. v. Stec, Inc. et al*, 2:11-cv-391, in a patent infringement case involving hard drive  
5 technology. I led discovery efforts and was in charge of brief writing.

6 15. I have worked on numerous other cases, including in shareholder litigation  
7 and other patent infringement and complex business litigation.

8 16. From 2016 through 2018 I spent a sabbatical writing novels, short stories, and  
9 screenplays.

10 17. In mid-2018 I began studying class action law and consumer law in  
11 preparation to found my own law firm.

12 18. In August 2019, I formed Kneupper & Covey PC and am a founding partner  
13 in the firm.

14 19. I have represented or currently represent consumers in numerous consumer  
15 class action cases since starting our firm. For example, I am currently co-counsel in  
16 *McKinney v. Corsair Gaming, Inc.*, No. 3:22cv312 (N.D. Cal.), a case alleging that RAM  
17 products used for gaming were sold using various misrepresentations and omissions related  
18 to “overclocking” of the chip speeds. Our firm partnered with Dovel & Luner, a highly  
19 respected consumer law firm, to pursue those claims. As another example, several of our  
20 other class action suits targeted the “free trial scam,” a long-running scam which has  
21 plagued consumers online in which they are signed up for fake free trials, but then billed  
22 hundreds of dollars every month that they never agreed to. Using methods ranging from  
23 source code and server analysis to a John Doe lawsuit with subpoenas, we have  
24 successfully identified a number of participants who have been engaging in the scam for  
25 years without being caught and had gone to great lengths to hide themselves. Our firm  
26 developed customized software designed not only to archive websites to preserve evidence  
27 of these scams, but we developed a “crawler” which automatically searched online to locate  
28 websites that were utilizing a kind of illegal software called a “load balancer” which rotates

1 merchant accounts from various shell companies as part of credit card laundering schemes  
2 commonly used in these scams.

3 20. Our “free trial scam” lawsuits have resulted in the defendants in one of our  
4 cases being named as unindicted co-conspirators in a criminal indictment in the Southern  
5 District of New York. Our investigation and lawsuit revealed that those Defendants were  
6 also helping operate an investment scam to defraud investors in a publicly traded cannabis  
7 company on the Canadian stock exchange.

8 21. I have further represented hundreds of individual consumers in various  
9 consumer protection cases. Along with my partner, A. Cyclone Covey, I have been in  
10 charge of three mass arbitrations, in which we have filed large numbers of arbitration  
11 claims against the same defendants. The first of these has settled and the details are  
12 confidential, but involved around 100 consumers. That mass arbitration involved cases  
13 around the country and involved claims brought under the consumer laws of more than 30  
14 states.

15 22. The second mass arbitration was against Vroom, an online car dealer, under  
16 warranty claims that generally involve a failure to provide title to purchasers of cars. I  
17 represented roughly 250 consumers in that mass arbitration, and the bulk of them involved  
18 Texas’s Deceptive Trade Practices Act (an analogue consumer statute to California’s  
19 CLRA). Those claims also involve breach of warranty and UCC claims, the federal  
20 Magnuson-Moss Warranty Act, and breach of the warranty of title. Many of our clients  
21 had been unable to drive their cars for months (or even years) at a time due to the risk of  
22 impoundment or arrest. Our firm’s efforts to force Vroom to properly title the cars it sold  
23 to our clients have been featured in multiple media outlets. *See* Justin Gray, *Vroom*  
24 *customers say months after buying cars, they still can’t legally drive them*, WSB-TV (June  
25 29, 2022), available at [https://www.wsbtv.com/news/local/vroom-customers-say-months-](https://www.wsbtv.com/news/local/vroom-customers-say-months-after-buying-cars-they-still-cant-legally-drive-them/JGNLZ7X26FBIJG32MPALCO2HUE/)  
26 [after-buying-cars-they-still-cant-legally-drive-](https://www.wsbtv.com/news/local/vroom-customers-say-months-after-buying-cars-they-still-cant-legally-drive-them/JGNLZ7X26FBIJG32MPALCO2HUE/)  
27 [them/JGNLZ7X26FBIJG32MPALCO2HUE/](https://www.wsbtv.com/news/local/vroom-customers-say-months-after-buying-cars-they-still-cant-legally-drive-them/JGNLZ7X26FBIJG32MPALCO2HUE/), Jason Stugenke, ‘*A rat race*’: *Driver*  
28 *blames Vroom for license plate issues*, WSOC-TV (June 2, 2022), available at

1 [https://www.wsoctv.com/news/local/rat-race-driver-blames-vroom-license-plate-](https://www.wsoctv.com/news/local/rat-race-driver-blames-vroom-license-plate-issues/JUUZNBEL5HDNHQ3QAPTYU4FE4/)  
2 [issues/JUUZNBEL5HDNHQ3QAPTYU4FE4/](https://www.wsoctv.com/news/local/rat-race-driver-blames-vroom-license-plate-issues/JUUZNBEL5HDNHQ3QAPTYU4FE4/); Karin Price Mueller, *He bought a car*  
3 *from Vroom, but 2 years later he still doesn't have the title. Now it's in an impound lot,*  
4 NJ.COM (Sept. 26, 2022), available at [https://www.nj.com/news/2022/09/he-bought-a-](https://www.nj.com/news/2022/09/he-bought-a-car-from-vroom-but-2-years-later-he-still-doesnt-have-the-title-now-its-in-an-impound-lot.html)  
5 [car-from-vroom-but-2-years-later-he-still-doesnt-have-the-title-now-its-in-an-impound-](https://www.nj.com/news/2022/09/he-bought-a-car-from-vroom-but-2-years-later-he-still-doesnt-have-the-title-now-its-in-an-impound-lot.html)  
6 [lot.html](https://www.nj.com/news/2022/09/he-bought-a-car-from-vroom-but-2-years-later-he-still-doesnt-have-the-title-now-its-in-an-impound-lot.html),

7 23. Our firm is also pursuing a third mass arbitration involving a bankrupt solar  
8 panel provider, Pink Energy, which was accused of a number of improper and fraudulent  
9 practices affecting tens of thousands of people. Many of those people have non-functioning  
10 solar power systems as a result, or were never compensated for fraudulent sales  
11 representations or damage to their homes during installation. We have onboarded a number  
12 of clients to pursue the lenders under the FTC Holder Rule. As a result of my work trying  
13 to protect victims of fraudulent practices in the solar power industry, I was interviewed by  
14 Time Magazine. See Alana Semuels, *Rooftop Solar Power Has a Dark Side*, TIME, Sept.  
15 26, 2023, available at <https://time.com/6317339/rooftop-solar-power-failure/>.

16 24. I have represented a number of different consumers in individual arbitrations  
17 as well. For example, I have represented a consumer with non-functioning solar panels who  
18 were being billed using faked power generation data or consumers whose solar panels were  
19 improperly installed resulting in damage to their homes. I regularly represent consumers in  
20 arbitrations under EFTA or TILA involving banks who refuse to conduct a proper  
21 investigation of fraud claims or credit their accounts.

22 25. I also routinely represent individual consumers in California in both state and  
23 federal court. For example, I have represented a consumer who was sold a vehicle service  
24 contract by a company that refused virtually all car repairs from its customers and  
25 consumers who were sold programming courses for tens of thousands of dollars but ended  
26 up with shoddy and overhyped course materials. I have represented consumers against  
27 unfair debt collection efforts under both the Fair Debt Collection Practices Act and the Fair  
28 Credit Reporting Act. I have represented a consumer faced with a 90% interest loan whose

1 bank accounts were being garnished even after she had paid far more than the original  
2 principal, and I succeeded in lifting a default judgment that had been issued more than five  
3 years earlier by proving that the metadata in contemporaneous photographs she took  
4 showed that the affidavit of service was false because she was not at home at the time five  
5 years earlier. I have also represented an elderly consumer who was deceived into  
6 purchasing solar panels (and whose contract was signed by the salesperson).

7 26. I have represented consumers not only under the main California consumer  
8 protection statutes (the Consumer Legal Remedies Act (“CLRA”), the Unfair Competition  
9 Law (“UCL”), and the False Advertising Law (“FAL”), but have also represented  
10 consumers from other states in numerous arbitrations under various state consumer  
11 protection laws.

12 27. As part of my writing hobby, I filed a *pro se* trademark challenge against a  
13 trademark on the word “cocky” which was being asserted against various romance  
14 novelists who used the word in the titles of their books. The challenge resulted in the  
15 cancellation of the trademark and ensured that authors of romance novels could use the  
16 word freely without risk of legal action against them.

17 28. My efforts to protect consumers and others have received international media  
18 attention in a variety of news publications, including Courthouse News, Bloomberg, Vox,  
19 The Guardian, Slate, The Daily Mail, Bustle, and The Verge, all of which have reported on  
20 lawsuits I was involved in.

21 29. At any given time, Kneupper & Covey represents more than 350 clients in  
22 active matters in consumer law cases. Our firm currently employs five full-time attorneys  
23 (other than Mr. Covey and myself). We employ another part time attorney who primarily  
24 handles intake matters. Mr. Covey and I as well as one of these full-time attorneys are  
25 barred in California, while the other full-time attorneys are barred in Georgia and New  
26 York/Texas. In the event of a jury trial, we expect that our other attorneys would be able  
27 to file *pro hac vice* applications to participate and would meet the standards for doing so.  
28 The other attorneys working full-time at our firm have excellent academic records at top-

1 ranked schools such as Stanford Law School (ranked 2<sup>nd</sup> best law school nationally), Yale  
2 Law School (ranked best law school nationally), and Emory University School of Law  
3 (ranked 30<sup>th</sup> best law school nationally), and they come to work for us for the opportunity  
4 to help make socially impactful change using the legal system. Our firm has adequate  
5 resources and staff to pursue this class action.

6 30. I reviewed our firm’s internal data regarding our settlements. Our law firm  
7 has either settled or recovered judgments in over 200 individual consumer law cases in  
8 2023. We are regularly involved in numerous mediations or settlement discussions in those  
9 cases (whose settlements are negotiated individually even if they are categorized as part of  
10 a mass arbitration). In 2023, these individually settled or recovered cases by Kneupper &  
11 Covey amounted to more than \$2.5 million. We have settled over 500 consumer cases in  
12 total.

13 31. In a parallel action in the Middle District of Florida, *Sihler et al v. Global E-*  
14 *Trading, LLC (d/b/a Chargebacks911), et al*, No. 8:23-cv-1450, in which our firm also  
15 represents the plaintiffs, we have submitted a damages report from an expert witness, and  
16 based on that report I believe that the ultimate potential damages after trebling, pre-  
17 judgment interest, and attorneys’ fees will likely exceed \$70 million. The District Court in  
18 that case has granted class certification and appointed our firm as counsel. *Sihler v. Glob.*  
19 *E-Trading, LLC*, No. 8:23-cv-1450-VMC-JSS, 2024 U.S. Dist. LEXIS 143497 (M.D. Fla.  
20 Aug. 13, 2024).

21 32. Mr. Flynn has sat for a two-day deposition in the Florida action (ensuring that  
22 Class Counsel would have adequate time to question him, rather than splitting a single day  
23 with the Defendants). I understand Mr. Flynn to be a resident of Las Vegas, Nevada, which  
24 means he would not be in trial subpoena range for the Middle District of Florida.

25 33. Plaintiffs are in the process of subpoenaing Microsoft to ensure complete  
26 records of the Skype chats in the Florida action, a key set of contemporaneous evidence  
27 supporting the Class’s claims. Plaintiffs had previously had Skype chats to which an  
28 employee of Brightree, Mike Campbell, was a party. But after Mr. Flynn and Mr. James

1 voluntarily provided Skype chats pursuant to the settlements, those chats included a crucial  
2 new additional conversation—a lengthy set of messages between Brightree Holdings  
3 employees, Chargebacks911 employees, and an individual named Johnny DeLuca, whose  
4 actions are at the core of the allegations in the Florida action. The Skype chats also revealed  
5 that employees of Chargebacks911—one of the Defendants in the Florida action—had not  
6 been telling the truth in making certain claims about their supposed inability to access those  
7 chats themselves in discovery. And the chats included key evidence for a jury, including  
8 statements by participants that their conduct would raise “red flags” with payment  
9 processors and the statement about their conduct: “Someone is doing something very  
10 illegal there.” In addition, Mr. Flynn produced e-mails with Gary Cardone, a Defendant in  
11 the Florida action, which showed Mr. Cardone’s personal involvement in the scheme,  
12 including flying Mr. Flynn on a private jet to multiple cities to introduce him to additional  
13 payment processors.

14 34. My partner and I considered a number of different things in determining that  
15 this settlement was a good one for the class. We considered the risk of facing some form  
16 of estoppel after a negative jury verdict (whether in whole or in part), particularly given  
17 that it appeared that this case would be tracked ahead of the Florida action. We considered  
18 that *pro se* Defendants act as a “wild card”—while they are at an extreme disadvantage,  
19 once the trial commences, the very fact that they have no lawyer may draw sympathy from  
20 jurors.

21 We also considered the assets of the Defendants, and after reviewing confidential  
22 documents during the settlement conferences before Magistrate Judge Leshner, as well as  
23 our own independent investigation, we concluded that continuing on in this case would  
24 likely exhaust the assets of the settling defendants with minimal (or potentially even no  
25 recovery at all). We did not accept Defendants’ representations about their financial  
26 condition at face value, even after being shown supporting documentation. We refused to  
27 agree to a settlement at the initial settlement conferences when Defendants first made these  
28 representations. We demanded additional documentation, including review of Mr. Flynn’s

1 tax returns and other financial documentation which had not previously been provided. We  
2 conducted our own investigation into TFL and Mr. Nelson's assets and into claims about  
3 the business's operations, which included asset searches as well as verification of certain  
4 information through online investigation. With respect to Mr. James, he claimed to  
5 currently be a truck driver with no significant assets. We investigated his assets as well,  
6 and also were influenced by the fact that he appeared at his deposition to testify from inside  
7 the cab of a semi-truck, and activities in the background of the video (including individuals  
8 approaching his truck) provided confirmation of this. With respect to Mr. Flynn, our  
9 investigation revealed existing judgments against him as well as Brightree Holdings which  
10 were actively being collected upon, which suggested to us not only (1) that if he had assets,  
11 we would be beaten to them by the other parties, and (2) that if he had significant assets  
12 these other attorneys would likely have found them already, but they did not appear to have  
13 been able to. We reviewed the dockets for those cases, as well as a domestication of a  
14 Florida judgment in Nevada in August 2024, which suggested that they had not yet been  
15 satisfied. An additional fact that Counsel considered was that Mr. Flynn, Mr. James, and  
16 the Brightree Holdings-related companies had three separate law firms in this case  
17 withdraw from representing them for non-payment of fees, which suggests they no longer  
18 had money to pay for attorneys. Dkts. 61, 114, 158. Mr. Flynn and Mr. James testified that  
19 they have no money left, which is corroborated by various Skype messages from vendors  
20 to Mr. Flynn complaining about non-payment or threatening litigation. Plaintiffs' Counsel  
21 believes, based on all of the materials reviewed and their investigation, that Brightree's  
22 business activities were likely grossly mismanaged to the point that no money is left.

23 35. If the settlements in this lawsuit are considered in isolation (i.e., without  
24 including any potential recovery from the Florida action), Plaintiffs' Counsel will likely  
25 take a significant loss given the amount of time that was spent investigating and pursuing  
26 the claims, and will likely not even recover their full expenses after the costs of notice  
27 (including the prior notice sent after the class was certified) are included.

28 36. This case involved a lengthy pre-suit investigation of more than eight months.

1 Our investigation continued as the suit progressed, and we have informally obtained a  
2 number of materials that we believe allow us to make an informed decision about the value  
3 of the case in conjunction with discovery. While the case-specific investigation here began  
4 in roughly October 2019, I had been informally investigating the affiliate marketing  
5 industry and the “free trial scam” generally for a significant period of time prior to that.

6 37. The TFL Defendants have produced more than 15,000 pages of documents in  
7 this lawsuit. Beyond Global, Inc. further produced financial data about itself. A third party  
8 witness, Mike Campbell, produced more than 10,000 pages of Skype messages. Each of  
9 the individual defendants was deposed. Multiple TFL employees were deposed as well. *Id.*  
10 David Flynn was questioned under oath at a bankruptcy hearing regarding the financial  
11 status of Beyond Global, Inc. Plaintiffs’ counsel submitted requests to various state  
12 attorney generals under state freedom of information laws and obtained documents through  
13 these requests.

14 38. My partner and I only agreed to Epiq after we conducted an interview with  
15 them for a prior matter and were satisfied with, in particular, their technical understanding  
16 of targeted Internet advertising, as well as their performance in the prior matter.

17 39. There are no agreements required to be identified under Rule 23(e)(3). The  
18 parties did not make any “side agreements” as part of the settlement and incorporated the  
19 entire agreement into the executed settlement.

20 40. Attached as **Exhibit 1** is a true and correct copy of the fully executed  
21 settlement agreement with Defendant David Flynn.

22 41. Attached as **Exhibit 2** is a true and correct copy of the fully executed  
23 settlement agreement with Defendant Rick James.

24 42. Attached as **Exhibit 3** is a true and correct copy of the fully executed  
25 settlement agreement with Defendants The Fulfillment Lab, Inc. and Richard Nelson.

26 43. Attached as **Exhibit 4** is a true and correct copy of a judgment in favor of  
27 Affiliati Network, LLC against David Flynn and Brightree Holdings.

28 44. Attached as **Exhibit 5** is a true and correct copy of a judgment in favor of

1 Cogent, LLC against David Flynn and Brightree Holdings.

2 45. Attached as **Exhibit 6** is a true and correct copy of an excerpt of a Skype chat  
3 produced by third party Mike Campbell titled core1.

4 46. Attached as **Exhibit 7** is a true and correct copy of an excerpt of a Skype chat  
5 produced by third party Mike Campbell titled with one of Brightree’s vendors.

6 I declare and state under penalty of perjury pursuant to the laws of the State of  
7 California that the foregoing is true and correct, and that this Declaration was executed this  
8 16th day of October, 2024 in San Francisco, California.

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14 Kevin M. Kneupper, Esq.  
15 Declarant  
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# EXHIBIT 1

## SETTLEMENT AGREEMENT

### I. INTRODUCTION

1. This Settlement Agreement is entered into by Plaintiffs on behalf of themselves and the Class, and Defendants David Flynn, Bmor Global LLC, Brightree Holdings Corp., and Beyond Global, Inc. (“Flynn Defendants”). Together, the Flynn Defendants and Plaintiffs Janet Sihler and Charlene Bavencoff are referred hereto collectively as the “Parties.” Capitalized terms used herein are defined in Section III of this Settlement Agreement or indicated in parentheses.
2. Subject to Court approval, the Parties stipulate and agree that, in consideration for the promises and covenants set forth in this Settlement Agreement and upon entry by the Court of a Final Judgment and Order Approving Settlement and the occurrence of the Effective Date, the Action as it relates to the Flynn Defendants shall be settled and compromised upon the terms and conditions contained herein.

### II. RECITALS

1. WHEREAS, on August 6, 2020, Plaintiffs filed a class action complaint against the Flynn Defendants, among other parties, in the United States District Court for the Southern District of California captioned *Sihler et al. v. The Fulfillment Lab Inc., et al.*, 3:20-cv-01528, on behalf of themselves and similarly situated consumers as part of a nationwide and California state sub-class (the “Action”); and
2. WHEREAS, on June 23, 2023, the court certified the class against the Action’s Defendants, including the Flynn Defendants; and
3. WHEREAS, in June 2023, Plaintiffs’ counsel has filed a related action against multiple defendants including Chargebacks911, Monica Eaton, and Gary Cardone in federal court in the Middle District of Florida alleging that those defendants are also liable to the same Class for their participation in the enterprise that resulted in damages to the Class in the case styled *Sihler et al. v. Global e-Trading LLC dba Chargebacks911 et al.*, 8:23-cv-01450 (the “Florida Action”); and
4. WHEREAS it appears to Plaintiffs’ Counsel that Mr. Flynn is in possession of written communications with the defendants in the

Florida Action that would substantially assist the Plaintiffs in pursuing their claims against the defendants in the Florida Action; and

5. WHEREAS without this Settlement Agreement Plaintiffs would be unable to access these written communications from the Flynn Defendants as discovery has closed in this Action and Plaintiffs are unable to obtain additional documents from any Defendant in this Action that was not already produced; and
6. WHEREAS, Plaintiff's Counsel have determined that it is in the best interests of the Class to pursue an icebreaker settlement with the Flynn Defendants that will provide the class potential evidence against defendants in the Florida Action;
7. WHEREAS Plaintiffs' Counsel has determined that the time and expense of collecting any possible judgment against the Flynn Defendants may exceed the benefit to the Class; and
8. WHEREAS, the Flynn Defendants, to avoid costs, disruption and distraction of further litigation has concluded that it is desirable that the claims against him be settled and dismissed on the terms in this Settlement Agreement;
9. NOW, THEREFORE, this Settlement Agreement is entered into by and among the Parties, and the Parties agree that: (1) upon the Effective Date, the Action and all Released Claims shall be fully, finally, and forever settled and compromised as between Plaintiff and the Settlement Class on the one hand, and the Flynn Defendants on the other hand; and (2) upon final approval of the Settlement Agreement, the Final Judgment and Order Approving Settlement shall be entered dismissing the Action with prejudice and releasing all Released Claims against the Flynn Defendants.

### **III. DEFINITIONS**

1. "Class" means all individuals included in the class certified by the Court in its June 23, 2023 order.
2. "Plaintiffs' Counsel" means Kneupper and Covey PC, and includes Kevin Kneupper and Cyclone Covey.

3. “Released Claims” means all claims included in Plaintiffs’ Second Amended Complaint asserted against the Flynn Defendants.

#### **IV. CONSIDERATION**

In consideration of the release provided by the Plaintiffs herein the Flynn Defendants agrees as follows:

1. To provide Plaintiffs’ Counsel full and complete copies of all written communications in his possession with any defendant or employee of a defendant in the Florida Action, including without limitation emails, Skype chats, and Telegram chats.
2. To provide Plaintiffs’ Counsel a sworn declaration authenticating the documents the Flynn Defendants provide to Plaintiffs’ counsel pursuant to Section IV.1 above.
3. To provide Plaintiffs’ Counsel a sworn declaration consenting to a subpoena by Plaintiffs’ Counsel to Microsoft for any Skype chats or Skype group conversations to which Mr. David Flynn may have been a party that include any of the following individuals or screen names:
  1. Nicholas Carroll
  2. Skype screen name: n.carroll\_6
  3. Johnny DeLuca
  4. Anthony Pugliese
  5. Skype screen name: apugliese\_12
  6. Brandon Figueroa
  7. Skype screen name: brandontfigueroa
  8. Aurora Marshall
  9. Skype screen name: a.marshall\_24
  10. Benjamin Scrancher (aka Ben Scrancher)

11. Skype screen name: b.scrancher
12. Meghan O'Donnell
13. Skype screen name: m.odonnell\_19
14. Skype screen name: m.jacula
15. Melissa Flipski
16. Skype screen name: melflipski
17. Gary Cardone
18. Monica Eaton (aka Monica Cardone)

4. To provide reasonable assistance to Plaintiffs' Counsel in obtaining Skype chats from Microsoft via the document subpoena contemplated in Section IV.3 above including providing additional confirmation of Mr. Flynn's consent to the subpoena that Microsoft may require.
5. To appear at a two-day deposition and testify truthfully in the matter *Sihler v. Global E-Trading LLC dba Chargbacks911*.

Mr. Flynn represents that, contemporaneously with the execution of this Settlement Agreement he has provided all items in his possession outlined in Section IV.1 above and has provided the declaration contemplated in Section IV.2 above. In the event that Mr. Flynn discovers additional communications covered by Section IV.1 above he will promptly provide copies to Plaintiffs' counsel and will update any authenticating declaration as necessary.

## **V. COURT JURISDICTION**

1. The Court shall retain exclusive and continuing venue and jurisdiction over the Parties and the Class Members to interpret and enforce the terms, conditions, and obligations under the Settlement Agreement and any disputes over such issues shall be brought in this Court.
2. This Settlement Agreement is subject to and conditioned upon the issuance by the Court of a Final Order Approving Settlement.

Agreed as of: 04/30/2024

The Flynn Defendants:

*David Flynn*

Verified by signNow  
04/30/2024 21:24:27 UTC  
88630fa95c7241878595

*David Flynn*

Verified by signNow  
04/30/2024 21:24:27 UTC  
c9fd866ffa1f485c9a03

*David Flynn*

Verified by signNow  
04/30/2024 21:24:27 UTC  
5fed0a9437494406a101

*David Flynn*

Verified by signNow  
04/30/2024 21:24:27 UTC  
4cedb84c67934d0288fd

Plaintiffs, individually and on behalf of the Class:

*Janet R. Sihler*

Verified by signNow  
05/04/2024 18:19:46 UTC  
f4c35131206748238ee2

Janet Sihler

*Charlene Bavericoff*

Verified by signNow  
05/04/2024 18:32:49 UTC  
09c105c015784dca463

Charlene Bavericoff

## DECLARATION OF DAVID FLYNN

1. My name is David Flynn. My Skype screen name is xcellent.choice.
2. On April 20, 2024 I took screenshots of various Skype and Telegram chats in which I was a party. On April 30, 2024 I produced those screenshots to Plaintiffs' counsel in the *Sihler v. The Fulfillment Lab* matter. My production includes at least <sup>283</sup> files. Those screenshots are true and accurate copies of the chats.
3. On April 30, 2024, I performed an export of the same Skype chats using the process detailed on the following web page:  
<https://support.skype.com/en/faq/FA34894/how-do-i-export-or-delete-my-skype-data>. I provided the results of that export to Plaintiffs' counsel that same day. That same day I also exported copies of emails between me and Gary Cardone. I provided those emails to Plaintiffs' counsel.
4. I understand Plaintiffs' counsel may seek to subpoena additional Skype chats in additional litigation in which Plaintiffs or Plaintiffs' counsel is engaged. I hereby consent to any third party, including Microsoft, producing to Plaintiffs or Plaintiffs' counsel any Skype chats in their possession, custody or control that include me or my Skype ID if such Skype chats or conversations include any of the following individuals or Skype IDs:
  - Nicholas Carroll
  - Skype screen name: n.carroll\_6
  - Johnny DeLuca
  - Anthony Pugliese

- Skype screen name: apugliese\_12
- Brandon Figueroa
- Skype screen name: brandontfigueroa
- Aurora Marshall
- Skype screen name: a.marshall\_24
- Benjamin Scrancher (aka Ben Scrancher)
- Skype screen name: b.scrancher
- Meghan O'Donnell
- Skype screen name: m.odonnell\_19
- Skype screen name: m.jacula
- Melissa Flipski
- Skype screen name: melflipski
- Gary Cardone
- Monica Eaton (aka Monica Cardone)

This consent to production applies without regard to whether I have been removed from the chat or conversation or have cleared the chat or conversation history or otherwise no longer have access to the chats or conversations in question.

I hereby declare the above statements are true and correct under the penalty of perjury under Federal law.

This 30<sup>th</sup> day of April, 2024

*David Flynn*

Verified by signNow  
04/30/2024 21:24:27 UTC  
eb31cc8e8d794a468abd

Declarant

# EXHIBIT 2

## SETTLEMENT AGREEMENT

### I. INTRODUCTION

1. This Settlement Agreement is entered into by Plaintiffs on behalf of themselves and the Class, and Defendant Rick James (“James”). Together, James and Plaintiffs Janet Sihler and Charlene Bavencoff are referred hereto collectively as the “Parties.” Capitalized terms used herein are defined in Section III of this Settlement Agreement or indicated in parentheses.
2. Subject to Court approval, the Parties stipulate and agree that, in consideration for the promises and covenants set forth in this Settlement Agreement and upon entry by the Court of a Final Judgment and Order Approving Settlement and the occurrence of the Effective Date, the Action as it relates to James shall be settled and compromised upon the terms and conditions contained herein.

### II. RECITALS

1. WHEREAS, on August 6, 2020, Plaintiffs filed a class action complaint against the Flynn Defendants, among other parties, in the United States District Court for the Southern District of California captioned *Sihler et al. v. The Fulfillment Lab Inc., et al.*, 3:20-cv-01528, on behalf of themselves and similarly situated consumers as part of a nationwide and California state sub-class (the “Action”); and
2. WHEREAS, on June 23, 2023, the court certified the class against the Action’s Defendants, including James; and
3. WHEREAS, in June 2023, Plaintiffs’ counsel has filed a related action against multiple defendants including Chargebacks911, Monica Eaton, and Gary Cardone in federal court in the Middle District of Florida alleging that those defendants are also liable to the same Class for their participation in the enterprise that resulted in damages to the Class in the case styled *Sihler et al. v. Global e-Trading LLC dba Chargebacks911 et al.*, 8:23-cv-01450 (the “Florida Action”); and
4. WHEREAS it appears to Plaintiffs’ Counsel that Mr. James is in possession of written communications with the defendants in the

Florida Action that would substantially assist the Plaintiffs in pursuing their claims against the defendants in the Florida Action; and

5. WHEREAS without this Settlement Agreement Plaintiffs would be unable to access these written communications from James as discovery has closed in this Action and Plaintiffs are unable to obtain additional documents from any Defendant in this Action that was not already produced; and
6. WHEREAS, Plaintiff's Counsel have determined that it is in the best interests of the Class to pursue an icebreaker settlement with James that will provide the class potential evidence against defendants in the Florida Action;
7. WHEREAS Plaintiffs' Counsel has determined that the time and expense of collecting any possible judgment against James may exceed the benefit to the Class; and
8. WHEREAS, James, to avoid costs, disruption and distraction of further litigation has concluded that it is desirable that the claims against him be settled and dismissed on the terms in this Settlement Agreement;
9. NOW, THEREFORE, this Settlement Agreement is entered into by and among the Parties, and the Parties agree that: (1) upon the Effective Date, the Action and all Released Claims shall be fully, finally, and forever settled and compromised as between Plaintiff and the Settlement Class on the one hand, and James on the other hand; and (2) upon final approval of the Settlement Agreement, the Final Judgment and Order Approving Settlement shall be entered dismissing the Action with prejudice and releasing all Released Claims against James.

### **III. DEFINITIONS**

1. "Class" means all individuals included in the class certified by the Court in its June 23, 2023 order.
2. "Plaintiffs' Counsel" means Kneupper and Covey PC, and includes Kevin Kneupper and Cyclone Covey.
3. "Released Claims" means all claims included in Plaintiffs' Second Amended Complaint asserted against James.

#### IV. CONSIDERATION

In consideration of the release provided by the Plaintiffs herein James agrees as follows:

1. To provide Plaintiffs' Counsel full and complete copies of all written communications in his possession with any defendant or employee of a defendant in the Florida Action, including without limitation emails, Skype chats, and Telegram chats.
2. To provide Plaintiffs' Counsel a sworn declaration authenticating the documents James provides to Plaintiffs' counsel pursuant to Section IV.1 above.
3. To provide Plaintiffs' Counsel a sworn declaration consenting to a subpoena by Plaintiffs' Counsel to Microsoft for any Skype chats or Skype group conversations to which Mr. James may have been a party that include any of the following individuals or screen names:
  1. Nicholas Carroll
  2. Skype screen name: n.carroll\_6
  3. Johnny DeLuca
  4. Anthony Pugliese
  5. Skype screen name: apugliese\_12
  6. Brandon Figueroa
  7. Skype screen name: brandontfigueroa
  8. Aurora Marshall
  9. Skype screen name: a.marshall\_24
  10. Benjamin Scrancher (aka Ben Scrancher)
  11. Skype screen name: b.scrancher
  12. Meghan O'Donnell

13.Skype screen name: m.odonnell\_19

14.Skype screen name: m.jacula

15.Melissa Flipski

16.Skype screen name: melflipski

17.Gary Cardone

18.Monica Eaton (aka Monica Cardone)

4. To provide reasonable assistance to Plaintiffs' Counsel in obtaining Skype chats from Microsoft via the document subpoena contemplated in Section IV.3 above including providing additional confirmation of Mr. James's consent to the subpoena that Microsoft may require.
5. To appear at a two-day deposition and testify truthfully in the matter *Sihler v. Global E-Trading LLC dba Chargbacks911*.

Mr. James represents that, contemporaneously with the execution of this Settlement Agreement he has provided all items in his possession outlined in Section IV.1 above and has provided the declaration contemplated in Section IV.2 above. In the event that Mr. James discovers additional communications covered by Section IV.1 above he will promptly provide copies to Plaintiffs' counsel and will update any authenticating declaration as necessary.

## **V. COURT JURISDICTION**

1. The Court shall retain exclusive and continuing venue and jurisdiction over the Parties and the Class Members to interpret and enforce the terms, conditions, and obligations under the Settlement Agreement and any disputes over such issues shall be brought in this Court.
2. This Settlement Agreement is subject to and conditioned upon the issuance by the Court of a Final Order Approving Settlement.

Agreed as of: 06/04/2024

Rick James:

*Rick James*

Verified by signNow  
06/04/2024 21:42:49 UTC  
f2095bcca5f04d9dbbee8

Plaintiffs, individually and on behalf  
of the Class:

*Janet R. Simer*

Verified by signNow  
06/06/2024 05:28:00 UTC  
4b74f10631ec47a784d9

Janet Simer

*Charlene Bavencoff*

Verified by signNow  
06/07/2024 17:53:26 UTC  
e3fc0d4a53cb4a2389d1

Charlene Bavencoff

## DECLARATION OF RICK JAMES

1. My name is Rick James. My Skype screen name is instantlyfamous.
2. I am currently employed as a commercial truck driver. I am no longer in the business of selling keto products online and do not intend to return to that line of work.
3. My current net worth is negative. The IRS has a lien on my house and my vehicles are financed.
4. On June 1, 2024 I searched my Skype chat history for chats with Chargebacks911 employees. I produced those screenshots to Plaintiffs' counsel in the *Sihler v. The Fulfillment Lab* matter. My production includes two screen recordings of chats with Chargebacks911 employees and searches for all the individuals requested by Plaintiffs' counsel. The screen recordings are true and accurate copies of the chats that they recorded.
5. I understand Plaintiffs' counsel may seek to subpoena additional Skype chats in additional litigation in which Plaintiffs or Plaintiffs' counsel is engaged. I hereby consent to any third party, including Microsoft, producing to Plaintiffs or Plaintiffs' counsel any Skype chats in their possession, custody or control that include me or my Skype ID if such Skype chats or conversations include any of the following individuals or Skype IDs:
  - Nicholas Carroll
  - Skype screen name: n.carroll\_6

- Johnny DeLuca
- Anthony Pugliese
- Skype screen name: apugliese\_12
- Brandon Figueroa
- Skype screen name: brandontfigueroa
- Aurora Marshall
- Skype screen name: a.marshall\_24
- Benjamin Scrancher (aka Ben Scrancher)
- Skype screen name: b.scrancher
- Meghan O'Donnell
- Skype screen name: m.odonnell\_19
- Skype screen name: m.jacula
- Melissa Flipski
- Skype screen name: melflipski
- Gary Cardone
- Monica Eaton (aka Monica Cardone)

This consent to production applies without regard to whether I have been removed from the chat or conversation or have cleared the chat or conversation history or otherwise no longer have access to the chats or conversations in question.

I hereby declare the above statements are true and correct under the penalty of perjury under Federal law.

This 4\_\_ day of June, 2024

*Rick James*  
  
Rick James  
Declarant

# EXHIBIT 3

1 KEVIN KNEUPPER (CA SBN  
2 325413)  
3 kevin@kneuppercovey.com  
4 A. CYCLONE COVEY (CA SBN  
5 335957)  
6 cyclone@kneuppercovey.com  
7 A. LORRAINE WEEKES  
8 lorraine@kneuppercovey.com  
9 KNEUPPER & COVEY, PC  
10 17011 Beach Blvd., Ste. 900  
11 Huntington Beach, CA 92647-5998  
12 Tel: (512) 420-8407

*Attorneys for Plaintiffs Janet Sihler  
and Charlene Bavencoff*

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402 West Broadway, Suite 140  
San Diego, CA 92101  
Telephone: (619) 241-4810  
Facsimile: (619) 955-5318

DEAN A. KENT (FLORIDA SBN  
0307040, *pro hac vice*)  
DKent@trenam.com  
101 East Kennedy Blvd., Suite 2700  
Tampa, FL 33602  
Telephone: (813) 223-7474  
Fax: (813) 229-6553

*Attorneys for The Fulfillment Lab, Inc.  
and Richard Nelson*

14 **UNITED STATES DISTRICT COURT**  
15 **SOUTHERN DISTRICT OF CALIFORNIA**

17 JANET SIHLER, an individual, on  
18 behalf of herself and all persons  
19 similarly situated; CHARLENE  
20 BAVENCOFF, an individual, on behalf  
21 of herself and all persons similarly  
22 situated,

23 Plaintiffs,

24 v.

25 THE FULFILLMENT LAB, INC., *et*  
*al.*,

26 Defendants

CASE NO. 3:20-cv-01528-LL-DDL

**AGREEMENT OF PARTIAL  
SETTLEMENT**

Judge: Hon. Linda Lopez  
Magistrate Judge: Hon. David Leshner

Complaint filed: August 6, 2020

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**TABLE OF EXHIBITS**

<u><b>Document</b></u>	<u><b>Exhibit Number</b></u>
Preliminary Approval Order .....	1
Final Approval Order .....	2
Final Judgment .....	3
Request for Exclusion Form .....	4
Long-Form Class Notice .....	5
Email Notice .....	6
Postcard Notice .....	7
Pre-Populated Claim Form.....	8

1 **I. RECITALS**

2 1. This Settlement Agreement is entered into by Plaintiffs on behalf of  
3 herself and the Class Members, and Defendants The Fulfillment Lab, Inc. and  
4 Richard Nelson (collectively, the “Defendants” or the “TFL Parties”). Together,  
5 Plaintiffs Janet Sihler, Charlene Bavencoff, and the TFL Parties are referred hereto  
6 collectively as the “Parties.” Capitalized terms used herein are defined in Section II  
7 of this Settlement Agreement or indicated in parentheses.

8 2. Subject to Court approval, the Parties stipulate and agree that, in  
9 consideration for the promises and covenants set forth in this Settlement Agreement  
10 and upon entry by the Court of a Final Judgment and Order Approving Settlement  
11 and the occurrence of the Effective Date, the Action as it relates to the TFL Parties  
12 shall be settled and compromised upon the terms and conditions contained herein.

13 3. WHEREAS, on August 6, 2020, Plaintiffs filed a class action complaint  
14 against the TFL Parties, among other parties, in the United States District Court for  
15 the Southern District of California captioned *Sihler et al v. The Fulfillment Lab, Inc.*  
16 *et al*, Case No. 3:20-cv-1528, on behalf of themselves and similarly situated  
17 consumers as part of a nationwide and California state sub-class; and

18 4. WHEREAS, on June 4, 2022, Plaintiffs filed a motion for class  
19 certification of the putative class, and this motion was granted on June 23, 2020; and

20 5. WHEREAS, the Parties have engaged in substantial litigation and  
21 discovery. In the course of litigation and in preparation for trial: (i) the TFL Parties,  
22 among other defendants, have filed motions to dismiss the operative complaints,  
23 which have been denied in substantial part; (ii) Plaintiffs has taken multiple  
24 depositions; (iii) Plaintiffs’ Counsel reviewed thousands of pages of hard-copy and  
25 electronic documents produced by the TFL Parties and other Defendants or third  
26 parties; and (iv) the Parties have engaged in extensive motion practice, including  
27 numerous disputes over discovery; and

28

1           6.     WHEREAS, the Parties participated in an Early Neural Evaluation  
2 before Magistrate Judge Berg on June 2, 2021, as well as settlement conferences  
3 before Magistrate Judge Leshner on September 11, 2023, September 22, 2023,  
4 September 29, 2023, and April 30, 2024. Throughout the course of mediation  
5 efforts, the Parties were simultaneously engaging in the discovery and litigation  
6 efforts described above; and

7           7.     WHEREAS, Plaintiffs’ Counsel have determined that a settlement of  
8 the Action on the terms reflected in this Settlement Agreement is fair, reasonable,  
9 adequate, and in the best interests of Plaintiffs and the Settlement Class; and

10          8.     WHEREAS, the TFL Parties, to avoid costs, disruption and distraction  
11 of further litigation, and without admitting the truth of any allegations made in or  
12 related to the Action, or any liability with respect thereto, have concluded that it is  
13 desirable that the claims against them be settled and dismissed on the terms in this  
14 Settlement Agreement;

15          9.     NOW, THEREFORE, this Settlement Agreement is entered into by and  
16 among the Parties, by and through their respective counsel and representatives, and  
17 the Parties agree that: (1) upon the Effective Date, the Action and all Released Claims  
18 shall be fully, finally, and forever settled and compromised as between Plaintiffs and  
19 the Settlement Class on the one hand, and the TFL Parties on the other hand; and (2)  
20 upon final approval of the Settlement Agreement, the Final Judgment and Order  
21 Approving Settlement shall be entered dismissing the Action with prejudice and  
22 releasing all Released Claims against the Released Parties.

23 **II.   DEFINITIONS**

24           As used in this Settlement Agreement and the attached exhibits, the  
25 following terms shall have the meanings set forth below, unless this Settlement  
26 Agreement specifically provides otherwise:

27          1.     “Action” means *Sihler et al v. The Fulfillment Lab, Inc. et al*, Case No.  
28

1 3:20-cv-1528 (S.D. Cal.).

2 2. “Affiliate” means, with respect to any specified Person, any other  
3 Person directly or indirectly controlling, controlled by or under common control with  
4 such specified Person; “control” means the possession, directly or indirectly of the  
5 power to direct the management and policies of a Person, whether through the  
6 ownership of voting securities, by contract or otherwise. “Person” means a natural  
7 person or business entity.

8 3. “Attorneys’ Fees and Expenses” means such funds as may be awarded  
9 by the Court to compensate and reimburse Plaintiffs’ Counsel for work performed in  
10 this matter, as set forth in Section IX of this Settlement Agreement.

11 4. “Claim” means a request for Monetary Payment set forth on Claimant’s  
12 Pre-Populated Claim Form which is submitted to the Settlement Administrator in  
13 accordance with the terms of this Settlement Agreement.

14 5. “Claimant” means a Class Member who submits a Claim.

15 6. “Claim Deadline (Original)” or “Original Claim Deadline” means the  
16 date by which all Pre-Populated Claim Forms must be submitted online to the  
17 Settlement Administrator to be considered timely. The Original Claim Deadline shall  
18 be 30 days after the date first set by the Court for the Final Approval Hearing, unless  
19 the Parties agree to a longer period.

20 7. “Claim Deadline (Supplemental)” or “Supplemental Claim Deadline”  
21 means an additional 60 days after the Original Claim Deadline for Class Members to  
22 submit Claims in the event the Net Fund would exceed the value of the aggregate  
23 Claims after pro rata upward adjustment as described in Section IV.4 below.

24 8. “Class Member” means a member of the Settlement Class. Class  
25 Members will be identified via the records produced in this litigation.

26 9. “Class Member Household” means all persons who share a single  
27 physical address or IP address. For all persons who are a legal entity, such as a  
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1 corporation, partnership, business organization or association, or any other type of  
2 legal entity, there can be only one physical address for purposes of this settlement  
3 even if the entity has multiple offices or locations.

4 10. "Class Notice" means, collectively, the Long-form Class Notice and  
5 Email Notice substantially in the forms of the attached Exhibits and as discussed in  
6 Section VI of this Settlement Agreement.

7 11. "Class Notice Program" means the dissemination of Class Notice as  
8 described in Section IV.C below and as described in the attached Exhibits.

9 12. "Class Period" means August 6, 2016 to the date the Preliminary  
10 Approval Order is entered.

11 13. "Class Representatives" or "Plaintiffs" means Janet Sihler and Charlene  
12 Bavencoff.

13 14. "Class Representative Service Award" means such funds as may be  
14 awarded by the Court to compensate Plaintiffs for their service in this matter.

15 15. "Common Fund" means the sum of \$200,000 (\$200,000 dollars). The  
16 fund is to be distributed in the following order: to pay the Settlement Administrator  
17 for notice and settlement administration costs; to pay the Class Representative  
18 Service Award, as awarded by the Court; and to compensate Plaintiffs' Counsel for  
19 their fees and expenses, as awarded by the Court.

20 16. "Court" means the United States District Court for the Southern District  
21 of California, the Honorable Linda Lopez presiding.

22 17. "Defendants" mean the "The TFL Parties."

23 18. "Defendants' Counsel" or "The TFL Parties' Counsel" means  
24 Fitzgerald Knaier LLP and Trenam Law.

25 19. "Direct Notice" means "Direct Notice" means distribution of Class  
26 Notice, as further detailed in Section VI.2, by e-mail, and supplemental notice via  
27 postcard where e-mail notice is not possible. Email Notice shall be substantially in  
28

1 the form of the attached Exhibit 6. Any supplemental Postcard Notice shall be in  
2 substantially the same form as in Exhibit 7. Direct Notice may also include additional  
3 Email Notice or Postcard Notice that the Settlement Administrator, after consultation  
4 with the Parties, deems necessary to accomplish the goals of the Class Notice  
5 Program.

6 20. “Effective Date” means the later in time of: (a) the date on which the  
7 time to appeal has expired if no appeal has been taken from the Final Judgment and  
8 Order Approving Settlement; (b) in the event that an appeal or other effort to obtain  
9 review has been initiated, the date after such appeal or other review has been finally  
10 concluded and is no longer subject to review; or (c) if Settlement Class Counsel and  
11 Defendants agree in writing, any other agreed date that is earlier than the Effective  
12 Date as calculated according to subparagraphs (a) and (b) above.

13 21. “Final Approval Hearing” means the hearing to be conducted by the  
14 Court on such date as the Court may order to determine the fairness, adequacy, and  
15 reasonableness of the Settlement Agreement.

16 22. “Final Judgment and Order Approving Settlement” means, collectively,  
17 the Final Judgment and Final Order Approving Settlement to be entered by the Court  
18 approving the settlement as fair, adequate, and reasonable, confirming the  
19 certification of the Settlement Class, and issuing such other findings and  
20 determinations as the Court and/or the Parties deem necessary and appropriate to  
21 implement the Settlement Agreement. The Final Judgment and Order Approving  
22 Settlement shall be substantially in the form of Exhibits 2 and 3.

23 23. “Keto Products” means any product manufactured, marketed, sold, or  
24 otherwise promoted under the Ultra Fast Keto Boost, Instant Keto, or InstaKeto brand  
25 names.

26 24. “Long-form Class Notice” means the legal notice of the terms of the  
27 proposed Settlement, as approved by the Court, to be distributed according to the  
28

1 Class Notice Program. The Long-form Class Notice shall be substantially in the form  
2 of the attached Exhibit 5.

3 25. “Notice and Claim Administration Expenses” means costs and expenses  
4 incurred by the Settlement Administrator, including all notice expenses, the costs of  
5 administering the Class Notice Program, and the costs of processing claims and  
6 distributing all the Monetary Payment to Claimants.

7 26. “Notice Date” means the date by which the Settlement Administrator  
8 shall commence dissemination of the Class Notice, which shall be within forty-five  
9 (45) days from the Preliminary Approval Order, unless the Parties agree to a different  
10 date, subject to Court approval. The Notice Date will be at least 30 days after the  
11 receipt of sales and consumer data by the Settlement Administrator.

12 27. “Objection Date” means the date by which Class Members must file and  
13 serve objections to the Settlement Agreement and shall be no later than fourteen (14)  
14 days before the date first set for the Final Approval Hearing.

15 28. “Opt-Out Date” means the receipt date by which a Request for  
16 Exclusion must be submitted to the Settlement Administrator, and shall be no later  
17 than fourteen (14) days before the date first set for the Final Approval Hearing.

18 29. “Plaintiffs’ Counsel” means Kneupper & Covey PC.

19 30. “Preliminary Approval Order” means the order to be entered by the  
20 Court conditionally certifying the Settlement Class, preliminarily approving the  
21 Settlement Agreement, setting the date of the Final Approval Hearing, appointing  
22 Settlement Class Counsel for the Settlement Class, approving the Class Notice  
23 Program and forms of Class Notice, and setting the Opt-Out Date, Objection Date,  
24 and Notice Date, the proposed form of which is attached as Exhibit 1.

25 31. “Released Claims” means all claims relating to the sale of any  
26 products sold, shipped, or caused to be sold or shipped by any of the Defendants  
27 under the Ultra Fast Keto Boost, Instant Keto, or InstaKeto or any variation thereof  
28

1 marketed or otherwise promoted by Brightree Holdings Corp.

2 32. “Released Party” or “Released Parties” means Defendants and their  
3 corporate parents, subsidiaries, divisions, departments, agents, affiliates, and  
4 members of their immediate family, and any and all of their past and present officers,  
5 directors, employees, stockholders, agents, successors, attorneys, insurers,  
6 representatives, licensees, licensors, subrogees, and assigns. For the avoidance of  
7 doubt, “Released Party” or “Released Parties” specifically excludes d/b/a Global E-  
8 Trading, LLC d/b/a Chargebacks911 and any of its officers and owners, Monica  
9 Eaton, and Gary Cardone.

10 33. “Releasing Party” means Plaintiffs and each Class Member.

11 34. “Request for Exclusion” means the written communication that must be  
12 submitted to the Settlement Administrator and received by or before the Opt-Out  
13 Date by a Class Member who wishes to be excluded from the Settlement Class. A  
14 Request for Exclusion form that is substantially in the form attached as Exhibit 4  
15 shall be made available on the Settlement Website.

16 35. “Settlement Administrator” means Epiq Class Action and Claims  
17 Solutions, the entity retained by the Parties and approved by the Court to design,  
18 consult on, and implement the Class Notice Program for disseminating Class Notice  
19 and perform overall administrative functions.

20 36. “Settlement Agreement” means this Stipulation of Partial Settlement  
21 (including all Exhibits attached to this Stipulation of Settlement).

22 37. “Settlement Class” means all consumers in the United States who,  
23 within the applicable statute of limitations period until the date notice is  
24 disseminated, were billed for shipments of either three bottles or five bottles of  
25 Ultrafast Keto Boost, InstaKeto, or Instant Keto. Excluded from the Settlement Class  
26 are: (i) jurists and mediators who are or have presided over the Action, Plaintiffs’  
27 Counsel and Defendants’ Counsel, their employees, legal representatives, heirs,  
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1 successors, assigns, or any members of their immediate family; (ii) any government  
2 entity; (iii) The TFL Parties and any entity in which The TFL Parties have a  
3 controlling interest, any of their subsidiaries, parents, affiliates, and officers,  
4 directors, employees, legal representatives, heirs, successors, or assigns, or any  
5 members of their immediate family; and (iv) any persons who timely opt out of the  
6 Settlement Class.

7 38. “Settlement Class Counsel” means Kevin Kneupper, Cyclone Covey,  
8 and A. Lorraine Weekes of Kneupper & Covey.

9 39. “Settlement Costs” means: (i) all Notice and Claim Administration  
10 Expenses; (ii) any award of Attorneys’ Fees and Expenses to Settlement Class  
11 Counsel approved by the Court; and (iii) any Class Representative Service Award to  
12 the Class Representatives approved by the Court.

13 40. “Settlement Website” means the Internet website to be created and  
14 maintained for this settlement by the Settlement Administrator to provide  
15 information to the public and the Settlement Class about this Settlement Agreement.

16 Capitalized terms used in this Settlement Agreement, but not defined in  
17 Section II, shall have the meanings ascribed to them elsewhere in this Settlement  
18 Agreement.

19 **III. CLASS CERTIFICATION**

20 1. Conditional Certification of Class Certification

21 As part of the motion for preliminary approval of the Settlement Agreement,  
22 Plaintiffs will seek preliminary certification of the Settlement Class as defined in  
23 Section II(41). Defendants consent, solely for purposes of settlement, to the  
24 certification of the Settlement Class, to the appointment of Settlement Class Counsel,  
25 and to the approval of Plaintiffs as suitable representatives of the Settlement Class.  
26 However, that if the Court fails to approve this Settlement Agreement or the  
27 Settlement Agreement otherwise fails to be consummated, the Parties agree that the  
28

1 Defendants shall retain all rights they had, including the right to object to the  
2 maintenance of the Action as a class action.

3 **IV. SETTLEMENT RELIEF**

4 1. The Notice and Claims Procedure shall comply with all applicable rules  
5 in the Southern District of California.

6 2. Release of the Common Fund

7 a. Plaintiffs' Motion for Attorneys' Fees and Expenses shall be filed  
8 at least 30 days before the deadline for objecting to the Settlement.

9 b. Within one-hundred and eighty (180) days after the Final  
10 Approval Order, Defendants shall deposit the amount of the Common Fund into a  
11 qualified settlement account.

12 c. On the Effective Date, the Net Fund will be made available to pay  
13 the Court-approved Class Representative Service Award.

14 d. Within twenty-one (21) days after the Effective Date, Settlement  
15 Class Counsel will file a Post-Distribution Accounting.

16 e. Upon order of the Court following submission of the Post-  
17 Distribution Accounting, the remainder of the Attorneys' Fees and Expenses, if any,  
18 shall be paid to Settlement Class Counsel.

19 **V. INJUNCTIVE RELIEF**

20 1. The TFL Parties agree to the following binding injunctive relief.

21 2. During the onboarding process for any new TFL client, and before the  
22 TFL Parties provide fulfillment services for that client, the TFL Parties will first, to  
23 the extent the client has a website, require that the client provide the website address.  
24 The TFL Parties will review and save a copy of the home webpage and sales webpage  
25 of any product that the TFL Parties fulfill which is sold by the client.

26 3. The TFL Parties will require that their clients state in their agreement  
27 with TFL that the price advertised by the client to consumers on its web pages is the  
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1 actual price that the consumers are charged and that the client does not and will not  
2 misrepresent to consumers the prices it charges.

3 4. TFL will not knowingly enter into a contract with a company if TFL  
4 does not actually intend to perform fulfillment services for that company.

5 5. The TFL Parties will not knowingly ship products for any client if the  
6 TFL Parties knows that the client is misrepresenting the actual sales price to  
7 consumers.

8 **VI. ADMINISTRATION AND CLASS NOTICE**

9 1. Settlement Administrator

10 a. Subject to Court approval, the Parties shall retain Epiq Class  
11 Action and Claims Solutions to help implement the terms of the Settlement  
12 Agreement.

13 b. The Settlement Administrator will be tasked with conducting  
14 matters relating to the administration of this Settlement Agreement, as set forth  
15 herein. Those responsibilities include, but are not limited to (1) arranging for  
16 dissemination of the Direct Notice, (2) emailing or arranging for emailing or physical  
17 mail or other distribution of the Class Notice, (3) handling returned mail and email  
18 not delivered to Class Members, (4) locating and identifying any e-mail address of  
19 Class Members where the e-mail is returned or no e-mail address is available, (5)  
20 making any additional mailings required under the terms of this Settlement  
21 Agreement, (6) answering written inquiries from Class Members and/or forwarding  
22 such inquiries to Settlement Class Counsel or their designee, (7) receiving and  
23 maintaining on behalf of the Court and the Parties any Class Member correspondence  
24 and Requests for Exclusion from the Settlement, (8) establishing the Settlement  
25 Website that posts the operative complaint, Settlement Agreement, the Class Notice,  
26 and other related documents, (9) establishing and maintaining a toll-free telephone  
27 number that will provide settlement-related information to Class Members, and (10)

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1 otherwise assisting with administration of the Settlement Agreement.

2 c. The contract with the Settlement Administrator shall obligate the  
3 Settlement Administrator to abide by the following performance standards:

4 i. The Settlement Administrator shall accurately and  
5 neutrally describe, and shall train and instruct its employees and agents to accurately  
6 and objectively describe, the provisions of this Settlement Agreement in  
7 communications with Class Members; and

8 ii. The Settlement Administrator shall provide prompt,  
9 accurate and objective responses to inquiries from Settlement Class Counsel or their  
10 designee, The TFL Parties and/or their Counsel.

11 2. **Class Notice**

12 a. Class Notice: The Class Notice forms will include a Long-form  
13 Class Notice, Email Notice, and Postcard Notice.

14 b. The Long-form Class Notice available on the Settlement Website  
15 and to be sent to Class Members at their request shall be in substantially the form of  
16 Exhibit 5. The Long-form Class Notice shall be available in English. At a minimum,  
17 the Long-form Class Notice shall:

18 i. include a short, plain statement of the background of the  
19 Action and the proposed Settlement Agreement;

20 ii. describe the proposed settlement relief as set forth in this  
21 Settlement Agreement;

22 iii. inform Class Members that, if they do not exclude  
23 themselves from the Settlement Class, they may be eligible to receive relief;

24 iv. describe the procedures for participating in the Settlement,  
25 including all applicable deadlines;

26 v. explain the scope of the Release;

27 vi. state that the settlement is contingent on the Court's final  
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1 approval of the Settlement Agreement;

2           vii.       state the identity of Settlement Class Counsel and the  
3 amount sought in attorneys’ fees and expenses and Class Representative Service  
4 Award;

5           viii.       explain the procedures for opting out of the Settlement  
6 Class including the applicable deadline for opting out;

7           ix.        explain the procedures for objecting to the Settlement  
8 Agreement including the applicable deadline; and

9           x.        explain that any judgment or orders entered in the Action,  
10 whether favorable or unfavorable to the Settlement Class shall include and be binding  
11 on all Class Members who have not been excluded, even if they have objected to the  
12 proposed Settlement Agreement and even if they have another claim, lawsuit, or  
13 proceeding pending against Defendants.

14           c.        Email Notice and supplemental Postcard Notice: The Email  
15 Notice and supplemental Postcard Notice shall be in substantially the form of  
16 Exhibits 6 and 7, and shall include the web address of the Settlement Website and a  
17 telephone number for the Settlement Administrator, a description of the Settlement  
18 Class, a description of relief available to the Settlement Class and the Original Claim  
19 Deadline (or any Supplemental Claim Deadline), and an explanation of the right to  
20 object and/or opt-out of the Settlement Class and the deadlines to exercise these  
21 rights.

22           d.        Website Notice: The Settlement Website shall be created and  
23 maintained by the Settlement Administrator. The Settlement Website shall be  
24 available in English. The Settlement Website shall be activated no later than the  
25 Notice Date and shall remain active until sixty (60) days after the settlement benefits  
26 are distributed to Claimants. The URL of the Settlement Website will be  
27 “[www.KetoTFLSettlement.com],” or another URL descriptive of the settlement.

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1 The Settlement Administrator shall post the Long-form Class Notice, a copy of this  
2 Settlement Agreement and its Exhibits, the Preliminary Approval Motion, the  
3 Preliminary Approval Order, the operative complaint, the Motion for Final Approval  
4 and Motion for Attorneys' Fees and Expenses, the Final Approval Order, answers to  
5 frequently asked questions, the number for the toll-free hotline maintained by the  
6 Settlement Administrator for this Settlement, Settlement-related deadlines, and any  
7 other materials or information the Parties agree to include on the Settlement Website.  
8 These documents shall be available on the Settlement Website for as long as the  
9 Settlement Website is active.

10 e. The Parties agree to consult with the Settlement Administrator  
11 about the possibility of additional notice to the Settlement Class or to individual Class  
12 Members, such as internet advertising and targeting procedures, as part of the Class  
13 Notice Program.

14 f. Class Action Fairness Act Notice: The TFL Parties shall work  
15 with the Settlement Administrator to comply with all notice requirements imposed  
16 by 28 U.S.C. § 1715(b) ("CAFA Notice").

17 g. Dissemination of Class Notice

18 i. Direct Notice: The Email Notice or supplemental Postcard  
19 Notice (as applicable), shall be sent via email, or for those Class Members for whom  
20 an email address is not available but a physical address is available, then via the  
21 United States Postal Service, to every Class Member who can be identified in the  
22 purchase records of Keto Products available from The Fulfillment Lab, Inc. or  
23 otherwise in this litigation. The Parties shall provide the Settlement Administrator  
24 any of the aforementioned Class Member contact information it possesses. After  
25 posting of the Postcard Notice by the Settlement Administrator with the United States  
26 Postal Service, for any such mailed notices returned as undeliverable, the Settlement  
27 Administrator shall utilize the National Change of Address registry in an attempt to  
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1 obtain better addresses for such returned mail notices, and should that registry show  
2 a more current address, the Settlement Administrator shall send the returned Postcard  
3 Notice to the more current address. The Settlement Administrator will promptly  
4 resend any Postcard Notice that is returned as undeliverable with a forwarding U.S.  
5 Mail or email address to such forwarding address.

6 ii. Website Notice: No later than the Notice Date, the  
7 Settlement Administrator will post the Long-form Class Notice on the Settlement  
8 Website, and shall post the additional documents and information discussed in  
9 Section VI.B.5 above as they become available. Such documents and information  
10 may also be posted on Settlement Class Counsel’s website and Plaintiffs’ Counsel’s  
11 websites at their option.

12 iii. Toll-Free Telephone Number: No later than the Notice  
13 Date, the Settlement Administrator shall establish a toll-free telephone number that  
14 will provide Settlement-related information to Class Members via recorded FAQs.

15 iv. Upon Request: The Long-form Class Notice and Pre-  
16 Populated Claim Form shall also be sent via electronic mail or regular mail to Class  
17 Members who so request.

18 **VII. OBJECTIONS AND REQUESTS FOR EXCLUSION**

19 1. Objections

20 a. Any Class Member who intends to object to the fairness of the  
21 Settlement Agreement must do so in writing no later than the Objection Date. The  
22 written objection must be filed with the Court and served on Settlement Class  
23 Counsel and Defendants’ Counsel no later than the Objection Date. The written  
24 objection must include: (a) a heading which refers to the Action; (b) the objector’s  
25 name, address, telephone number and, if represented by counsel, the name, address,  
26 and telephone number of his/her counsel; (c) a statement under oath that the objector  
27 is a Class Member; (d) a statement whether the objector intends to appear at the Final  
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1 Approval Hearing, either in person or through counsel; (e) a statement of the  
2 objection and the specific grounds supporting the objection; (f) a statement whether  
3 the objection applies only to the objector, to a specific subset of the class, or to the  
4 entire class; (g) copies of any papers, briefs, or other documents upon which the  
5 objection is based; and (h) the objector's handwritten, dated signature (the signature  
6 of objector's counsel, an electronic signature, and the annotation "/s" or similar  
7 annotation will not suffice).

8           b. Any Class Member who files and serves a written objection, as  
9 described above, may appear at the Final Approval Hearing, either in person or  
10 through counsel hired at the Class Member's expense, to object to any aspect of the  
11 fairness, reasonableness, or adequacy of this Settlement Agreement. Class Members  
12 or their attorneys who intend to make an appearance at the Final Approval Hearing  
13 must serve a notice of intention to appear on Settlement Class Counsel and  
14 Defendants' Counsel, and file the notice of appearance with the Court, no later than  
15 seven (7) days before the Final Approval Hearing, or as the Court may otherwise  
16 direct. The written notice and objection requirements may be excused by the Court  
17 upon a showing of good cause.

18           c. Absent a showing of good cause, any Class Member who fails to  
19 substantially comply with the provisions of Sections VII.A.1-2 above shall waive and  
20 forfeit any and all rights he or she may have to appear separately and/or to object and  
21 shall be bound by all of the terms of this Settlement Agreement and by all  
22 proceedings, orders and judgments, including, but not limited to, the Release, in the  
23 Action.

24           2. Requests for Exclusion

25           a. Any member of the Settlement Class may request to be excluded  
26 from the Settlement Class. A Class Member who wishes to opt out of the Class must  
27 do so no later than the Opt-Out Date. To opt out, a Class Member must send to the  
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1 Settlement Administrator a written Request for Exclusion that is received no later  
2 than the Opt-Out Date. The Request for Exclusion must be personally signed by the  
3 Class Member and contain a statement that indicates a desire to be excluded from the  
4 Settlement Class. No person may opt out of the Settlement Class for any other person  
5 or be opted-out by any other person, and no Class Member shall be deemed opted-  
6 out of the Settlement Class through any purported “mass” or “class” opt-outs.

7           b. Any Class Member who does not submit a timely, written  
8 Request for Exclusion shall be bound by all subsequent proceedings, orders and the  
9 Final Judgment and Order Approving Settlement in this Action, even if he or she has  
10 pending, or subsequently initiates, litigation, arbitration, or any other proceeding  
11 against Defendants relating to the Released Claims.

12           c. Any Class Member who properly requests to be excluded from  
13 the Settlement Class shall not: (a) be bound by any orders or judgments entered in  
14 the Action relating to the Settlement Agreement; (b) be entitled to submit a Claim,  
15 or be affected by, the Settlement Agreement; (c) gain any rights by virtue of the  
16 Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement  
17 Agreement.

18           d. The Settlement Administrator shall provide Settlement Class  
19 Counsel and Defendants’ Counsel with a final list of all timely Requests for  
20 Exclusion within three (3) days after the Opt-Out Date. Settlement Class Counsel  
21 shall file the final list of all timely Requests for Exclusion prior to or at the Final  
22 Approval Hearing.

23 **VIII. RELEASES**

24           1. Upon the Effective Date, each and every Releasing Party shall by order  
25 of this Court be deemed to have released, waived, forfeited and shall be permanently  
26 barred and enjoined from initiating, asserting, and/or prosecuting any Released Claim  
27 against any Released Party based on the identical factual predicate in any court or  
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1 any forum.

2 2. In addition, with respect to the Released Claims, Plaintiffs specifically  
3 acknowledge and affirmatively waive any rights or benefits available to her under  
4 California Civil Code section 1542. California Civil Code section 1542 provides:

5 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT  
6 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR  
7 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF  
8 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR  
9 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER  
10 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

11 Plaintiffs hereby waive any and all federal and state statutes similar in substance,  
12 meaning or application to California Civil Code section 1542. In the event that any  
13 waiver of the provisions of section 1542 of the California Civil Code or any similar  
14 law of the United States or of any state or territory of the United States provided in  
15 this Settlement should be judicially determined to be invalid, void or unenforceable  
16 for any reason, such waiver to that extent shall be severable from the remaining  
17 provisions of this Settlement Agreement, and the invalidity, voidability, or  
18 unenforceability of the waiver shall not affect the validity, effect, enforceability or  
19 interpretation of the remaining provisions of this Settlement Agreement.

20 3. The Court shall retain exclusive and continuing venue and jurisdiction  
21 over the Parties and the Class Members to interpret and enforce the terms, conditions,  
22 and obligations under the Settlement Agreement and any disputes over such issues  
23 shall be brought in this Court.

24 **IX. ATTORNEYS' FEES AND EXPENSES AND CLASS**  
25 **REPRESENTATIVE SERVICE AWARD**

26 1. The award of Attorneys' Fees and Expenses will be paid from the  
27 Common Fund. The application for an award of Attorneys' Fees and Expenses will  
28 be made by Settlement Class Counsel on behalf of themselves and any other

1 Plaintiffs' Counsel. The TFL Parties shall not be responsible for any other fees or  
2 expenses incurred by Settlement Class Counsel or Plaintiffs.

3 2. Plaintiffs will apply for a Class Representative Service Award. Any  
4 Court-approved service award is in addition to the benefits that the Class  
5 Representatives are entitled to receive as members of the Settlement Class. The  
6 Court-approved service award will be paid from the Common Fund. The service  
7 award shall be paid to the Class Representatives within seven (7) days of the Effective  
8 Date.

9 3. The Court's determination of Attorneys' Fees and Expenses and Class  
10 Representative Service Award will not affect the remainder of the Settlement.

11 **X. FINAL JUDGMENT AND ORDER APPROVING SETTLEMENT**

12 1. This Settlement Agreement is subject to and conditioned upon the  
13 issuance by the Court of the Final Judgment and Order Approving Settlement that  
14 finally certifies the Class for the purposes of this settlement, grants final approval of  
15 the Settlement Agreement, and provides the relief specified herein. Such Final  
16 Judgment and Order Approving Settlement shall be in substantially the form attached  
17 hereto as Exhibits 2 and 3.

18 **XI. NO ADMISSION OF LIABILITY/AGREEMENT FOR SETTLEMENT**  
19 **ONLY**

20 1. This Agreement reflects the compromise and settlement of disputed  
21 claims among the Parties and is for settlement purposes only. Neither the fact of, or  
22 any provision contained in this Agreement or its Exhibits, nor any action taken  
23 hereunder, shall constitute, be construed as, or be admissible in evidence as an  
24 admission of: (a) the validity of any claim or allegation by Plaintiffs, or of any  
25 defense asserted by The TFL Parties, in the Action or any other action or proceeding;  
26 or (b) any wrongdoing, fault, violation of law, or liability of any kind on part of any  
27 Party, Defendants, Released Party, or their respective counsel.

28

1           2.     The terms of this Settlement Agreement are not, and should not be  
2 construed as, an admission of liability or wrongdoing on the part of The TFL Parties.

3 **XII. TERMINATION OF THIS SETTLEMENT AGREEMENT**

4           1.     Any Party may terminate this Settlement Agreement by providing  
5 written notice to the other Parties within ten (10) days of any of the following events:

6                 a.     The Court does not enter a Preliminary Approval Order that  
7 conforms in material respects to Exhibit 1; or

8                 b.     The Court does not enter a Final Judgment and Order Approving  
9 Settlement conforming in material respects to Exhibits 2 and 3, or if entered, such  
10 Final Judgment and Order Approving Settlement is reversed, vacated, or modified in  
11 any material respect by another court.

12           2.     In the event that the number of Requests for Exclusion received pursuant  
13 to Section VII.B exceeds 10% of the number of Pre-Populated Claim Forms sent by  
14 the Settlement Administrator, the TFL Parties may terminate this Settlement  
15 Agreement by providing written notice to Settlement Class Counsel within ten (10)  
16 calendar days of the Opt-Out Date.

17           3.     In the event that this Settlement Agreement terminates for any reason,  
18 all Parties shall be restored to their respective positions as of the date of execution of  
19 the Settlement Agreement. All amounts remaining in the Common Fund will be  
20 refunded to Defendants. In no event will Defendants be entitled to recover any funds  
21 spent for Notice and Claim Administration Expenses prior to termination of this  
22 Settlement Agreement.

23 **XIII. ADDITIONAL PROVISIONS**

24           1.     Entire Settlement Agreement: The Settlement Agreement, including all  
25 Exhibits, shall constitute the entire Settlement Agreement among the Parties with  
26 regard to the Action and shall supersede any previous settlement agreements, terms  
27 sheets, representations, communications and understandings among the Parties with  
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1 respect to the subject matter of the Settlement Agreement.

2       2. Execution in Counterparts: The Settlement Agreement may be executed  
3 by the Parties in one or more counterparts, each of which shall be deemed an original  
4 but all of which together shall constitute one and the same instrument. Facsimile  
5 signatures or signatures sent by email shall be treated as original signatures and shall  
6 be binding.

7       3. Notices: Whenever this Settlement Agreement requires or contemplates  
8 that one Party shall or may give notice to the other, notice shall be provided in writing  
9 by first class U.S. Mail and email to:

10

11           a. If to Plaintiffs or Settlement Class Counsel:

12                           Cyclone Covey  
13                           KNEUPPER & COVEY, PC  
14                           17011 Beach Blvd., Ste. 900  
15                           Huntington Beach, CA 92647-5998  
16                           Tel: 512-420-8407  
17                           cyclone@kneuppercovey.com

18           b. If to Defendants or Defendants' Counsel:

19                           Robert Knaier  
20                           FITZGERALD KNAIER LLP  
21                           402 W Broadway, Suite 1400  
22                           San Diego, CA 92101  
23                           Tel: 619-241-4810  
24                           rknaier@fitzgeraldknaier.com

25       4. Good Faith: The Parties agree that they will act in good faith and will  
26 not engage in any conduct that will or may frustrate the purpose of this Settlement  
27 Agreement. The Parties further agree, subject to Court approval as needed, to  
28 reasonable extensions of time to carry out any of the provisions of the Settlement  
Agreement.

29       5. Publicity: To the extent Defendants or Plaintiffs make any public  
statements regarding the settlement of this Action, any such statements shall be

1 consistent with the Court-approved documents that comprise this Settlement  
2 Agreement or otherwise agreed on by the Parties in writing in advance.

3 6. Binding on Successors: The Settlement Agreement shall be binding  
4 upon, and inure to the benefit of, the heirs, successors and/or assigns of the Released  
5 Parties.

6 7. Arms-Length Negotiations: The determination of the terms and  
7 conditions contained herein and the drafting of the provisions of this Settlement  
8 Agreement has been by mutual understanding after negotiation, with consideration  
9 by, and participation of, the Parties hereto and their counsel. This Settlement  
10 Agreement shall not be construed against any Party on the basis that the Party was  
11 the drafter or participated in the drafting. Any statute or rule of construction that  
12 ambiguities are to be resolved against the drafting party shall not be employed in the  
13 implementation of this Settlement Agreement and the Parties agree that the drafting  
14 of this Settlement Agreement has been a mutual undertaking.

15 8. Waiver: The waiver by one Party of any provision or breach of the  
16 Settlement Agreement shall not be deemed a waiver of any other provision or breach  
17 of the Settlement Agreement.

18 9. Variance: In the event of any variance between the terms of this  
19 Settlement Agreement and any of the Exhibits hereto, the terms of this Settlement  
20 Agreement shall control and supersede the Exhibit(s).

21 10. Taxes: No opinion concerning the tax consequences of the Settlement  
22 Agreement to any Class Member is given or will be given by Defendants,  
23 Defendants' Counsel, Settlement Class Counsel, or Plaintiffs' Counsel; nor is any  
24 Party or their counsel providing any representation or guarantee respecting the tax  
25 consequences of the Settlement Agreement as to any Class Member. Each Class  
26 Member is responsible for his/her tax reporting and other obligations respecting the  
27 Settlement Agreement, if any.

28



1 IN WITNESS WHEREOF, the Parties hereto have caused the Settlement  
2 Agreement to be executed as of the last date set forth below.

3  
4 Dated: 09/16/2024

*Janet R. Sillier*  
Verified by signNow  
09/17/2024 04:45:43 UTC  
706cb086171f4147a9f0  
**Janet Sillier**  
PLAINTIFF

5  
6  
7 Dated: 09/17/2024

*Chariene Bavencoff*  
Verified by signNow  
09/17/2024 19:51:20 UTC  
d4d6430360794833affe  
**Chariene Bavencoff**  
PLAINTIFF

8  
9  
10 Dated: September \_\_\_, 2024

Richard Nelson, in his individual capacity

11  
12  
13 Dated: September \_\_\_, 2024

Richard Nelson, on behalf of The Fulfillment Lab, Inc.

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# EXHIBIT 1

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JANET SIHLER, an individual, on behalf of herself and all persons similarly situated; CHARLENE BAVENCOFF, an individual, on behalf of herself and all persons similarly situated,

Plaintiff,

v.

THE FULFILLMENT LAB, INC., et al.,  
Defendants

NO. 3:20-cv-01528-LL-DDL

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

Judge: Hon. Linda Lopez  
Magistrate Judge: Hon. David Leshner

Complaint filed: August 6, 2020

No. 3:20-cv-01528-LL-DDL  
SIHLER ET AL v. THE FULFILLMENT  
LAB, INC. ET AL

1 WHEREAS, this matter has come before the Court pursuant to Plaintiff’s  
2 Motion for Preliminary Approval of Class Action Settlement (the “Motion”);

3 WHEREAS, the Court finds that it has jurisdiction over the action and each of  
4 the parties for purposes of settlement and asserts jurisdiction over the Class Members  
5 for purposes of effectuating this Settlement and releasing their claims;<sup>1</sup> and

6 WHEREAS, this Court has considered all submissions related to the Motion  
7 and is otherwise fully advised in the premises,

8 IT IS HEREBY ORDERED AS FOLLOWS:

9 **I. PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT**

10 1. The terms of the Settlement Agreement dated August 2024, including  
11 all exhibits thereto (the “Settlement Agreement”),<sup>2</sup> are preliminarily approved as fair,  
12 reasonable and adequate, are sufficient to warrant sending notice to the Settlement  
13 Class, and are subject to further consideration at the Final Approval Hearing  
14 referenced below. Unless otherwise provided herein, the terms defined in the  
15 Settlement Agreement shall have the same meanings in this Order.

16 2. The Settlement Agreement was entered into after extensive arm’s length  
17 negotiations by experienced counsel and with the assistance and oversight of  
18 experienced mediators. The Court preliminarily finds that this Settlement complies  
19 with the class action requirements of Federal Rule of Civil Procedure 23. Further, the  
20 Court finds that the Settlement embodied in the Settlement Agreement is sufficiently  
21 within the range of reasonableness so that notice of the Settlement should be given as  
22 provided in the Settlement Agreement and this Order. In making this determination,  
23 the Court has considered the current posture of this litigation and the risks and benefits  
24 to the Parties involved in both settlement of these claims and continuation of the  
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26 <sup>1</sup> See *In re Hyundai & Kia Fuel Economy Litigation*, 926 F.3d 539 (9th Cir. 2019) (*en banc*).

27 <sup>2</sup> Unless otherwise noted, capitalized terms have the meaning given them in the Settlement  
28 Agreement.

1 litigation.

2 **II. THE CLASS, CLASS REPRESENTATIVES AND CLASS COUNSEL**

3 3. The Court has previously certified the Class, Class Representative, and  
4 Class Counsel. Dkt. 183.

5 4. All proceedings in this Action as to the Settling Defendants, other than  
6 such proceedings as may be necessary to implement the proposed Settlement or to  
7 effectuate the terms of the Settlement Agreement, are hereby stayed and suspended  
8 until further order of this Court.

9 5. All Class Members and their legally authorized representatives, unless  
10 and until they have submitted a valid request for exclusion from the Settlement Class  
11 (hereinafter, "Request for Exclusion"), are hereby preliminarily enjoined: (i) from  
12 filing, commencing, prosecuting, intervening in, or participating as a plaintiff,  
13 claimant, or class member in any other lawsuit or administrative, regulatory,  
14 arbitration, or other proceeding in any jurisdiction based on the Released Claims; (ii)  
15 from filing, commencing, or prosecuting a lawsuit or administrative, regulatory,  
16 arbitration, or other proceeding as a class action on behalf of any Class Members  
17 (including by seeking to amend a pending complaint to include class allegations or  
18 seeking class certification in a pending action), based on the Released Claims; and  
19 (iii) from attempting to effect an opt-out of a group, class, or subclass of individuals  
20 in any lawsuit or administrative, regulatory, arbitration, or other proceeding based on  
21 the Released Claims.

22 6. If the Settlement Agreement is not finally approved by the Court, or for  
23 any reason the Final Judgment and Order Approving Settlement is not entered as  
24 contemplated in the Settlement Agreement, or the Settlement Agreement is  
25 terminated pursuant to its terms for any reason or the Effective Date does not occur  
26 for any reason, then:

27 (a) All orders and findings entered in connection with the Settlement

1 Agreement shall become null and void and have no force or effect whatsoever, shall  
2 not be used or referred to for any purposes whatsoever, and shall not be admissible or  
3 discoverable in this or any other proceeding;

4 (b) Nothing contained in this Order is to be construed as a  
5 presumption, concession or admission by or against any Defendant or Class  
6 Representatives of any default, liability or wrongdoing as to any facts or claims  
7 alleged or asserted in the Action;

8 (c) Nothing in this Order pertaining to the Settlement Agreement shall  
9 be used as evidence in any further proceeding in the Action; and

10 (d) All of the Court's prior Orders having nothing whatsoever to do  
11 with class certification or the Settlement Agreement shall, subject to this Order,  
12 remain in force and effect.

13 **III. NOTICE TO CLASS MEMBERS**

14 7. The Court has considered the proposed Class Notice in the Settlement  
15 Agreement and finds that the forms of Class Notice and methodology for its  
16 publication and dissemination as described in the Settlement Agreement and in the  
17 Declaration of the Settlement Administrator: (a) meet the requirements of due process  
18 and Fed. R. Civ. P. 23(c) and (e); (b) constitute the best notice practicable under the  
19 circumstances to all persons entitled to notice; and (c) satisfy the Constitutional  
20 requirements regarding notice. In addition, the forms of Class Notice: (a) apprise  
21 Class Members of the terms of the proposed Settlement and their rights and deadlines  
22 (including any Supplemental Claim Deadline) under the Settlement; (b) are written in  
23 simple terminology; (c) are readily understandable by Class Members; and  
24 (d) comply with the Federal Judicial Center's illustrative class action notices. The  
25 Court approves, as to form and content, each of the forms of Class Notice as described  
26 in the Class Notice Plan and the methodology for its publication and dissemination as  
27 described in the Settlement Agreement and in the Declaration of the Settlement

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1 Administrator in all respects, and it hereby orders that notice be commenced within  
2 forty-five (45) days of this Order.

3 8. The Court further approves the establishment of an internet website for  
4 the Settlement. This Settlement Website ([URL]) shall include documents relating to  
5 the Settlement Agreement, orders of the Court relating to the Settlement Agreement  
6 and such other information as Class Counsel and Defendant’s Counsel mutually agree  
7 would be beneficial to potential Class Members. The Notice and Claim  
8 Administration Expenses are to be paid in accordance with the Settlement Agreement.  
9 The Parties are hereby authorized to establish the means necessary to implement the  
10 Class Notice and other terms of the Settlement Agreement.

11 9. The Court hereby appoints Epiq Class Action and Claims Solutions to  
12 be the Settlement Administrator. Responsibilities of the Settlement Administrator are  
13 found in the Settlement Agreement.

14 **IV. REQUEST FOR EXCLUSION FROM THE SETTLEMENT CLASS**

15 10. Class Members who wish to be excluded from the Settlement Class must  
16 mail a written request for exclusion, using the form available on the Settlement  
17 Website, or with a letter mailed to the Settlement Administrator received no later than  
18 fourteen (14) days before the date first set for the Final Approval Hearing. A request  
19 for exclusion may also be submitted online at the Settlement Website. Any request  
20 for exclusion must be signed by the potential Class Member and contain the following  
21 information: the name, address, and telephone number of the Class Member; basis  
22 upon which the person claims to be a Class Member; the Class Member’s signature  
23 and date of signature; and a statement that the Class Member wants to be excluded.

24 11. Potential Class Members who timely and validly exclude themselves  
25 from the Settlement Class shall not be bound by the Settlement Agreement, the  
26 settlement, or the Final Judgment and Order Approving Settlement. If a potential  
27 Class Member files a request for exclusion, he/she/it may not assert an objection to

1 the Settlement Agreement. Not later than three (3) days after the Opt-Out Deadline,  
2 the Settlement Administrator shall provide Class Counsel and Defendant’s Counsel  
3 with a final list of timely Requests for Exclusion. Defendant’s Counsel shall file this  
4 list with the Court prior to the Final Approval Hearing.

5 12. Any potential Class Member that does not properly and timely exclude  
6 himself/herself/itself from the Settlement Class shall remain a Class Member and  
7 shall be bound by all the terms and provisions of the Settlement Agreement and the  
8 settlement and the Final Judgment and Order Approving Settlement, whether or not  
9 such Class Member objected to the Settlement Agreement or submits claim form or  
10 otherwise avails himself/herself/itself of the benefits available in the Settlement  
11 Agreement.

12 13. No later than ten (10) days before the date first set for the Final Approval  
13 Hearing, the Settlement Administrator shall prepare an opt-out list identifying all  
14 Persons, if any, who submitted a timely and valid Request for Exclusion from the  
15 Settlement Class, and an Affidavit attesting to the accuracy of the opt-out list.

16 **V. OBJECTIONS**

17 14. Any Class Member who has not requested exclusion and who wishes to  
18 object to the fairness, reasonableness, or adequacy of the Settlement Agreement, or to  
19 the requested award of attorneys’ fees, costs, and expenses, or the requested service  
20 awards to the Class Representatives, must submit a written statement of objections to  
21 the Court either by mailing or by filing it at any location of the United States District  
22 Court for the Southern District of California. The written objection must be filed or  
23 mailed and received no later than fourteen (14) days before the date first set for the  
24 Final Approval Hearing.

25 15. To be considered by the Court, any objection must be in writing and  
26 include the following information: (a) a heading which refers to the case name and  
27 number (*Sihler et al v. The Fulfillment Lab, Inc. et al*, Case Number 3:20-cv-01528);

(b) the objector’s full name, telephone number, and address (the objector’s actual residential address must be included); (c) if represented by counsel, the full name, telephone number, and address of all counsel, and whether counsel will appear at the Final Approval Hearing; (d) all of the reasons for the objection; (e) an explanation of the basis upon which the person claims to be a Class Member; and (f) the objector’s dated, handwritten signature (an electronic signature or attorney’s signature are not sufficient). Any documents supporting the objection must also be attached to the objection. If any testimony is to be given in support of the objection, the names of all persons who will testify must be set forth in the objection. For mailing objections, the Court’s address is as follows:

Clerk of Court  
United States District Court  
Southern District of California  
221 West Broadway, San Diego, CA 92101

16. The Court will require substantial compliance with the requirements above. If the objector does not submit a written objection in accordance with the deadline and procedure set forth above, the objector will waive any right to be heard at the Final Approval Hearing. However, the Court may excuse the objector’s failure to file a written objection upon a showing of good cause, which, if granted, would permit the objector to still appear at the Final Approval Hearing and object to the Settlement.

**VI. FINAL APPROVAL HEARING**

17. The Final Approval Hearing will be held on [120 days after entry of the Preliminary Approval Order, or as soon thereafter as the Court’s schedule permits] at \_\_\_\_\_ Pacific Time before this Court, at the United States District Court for the Southern District of California, 221 West Broadway, San Diego, CA 92101, to consider, *inter alia*, the following: (a) whether the Settlement Class should be

1 certified for settlement purposes; (b) whether the settlement and Settlement  
2 Agreement should be finally approved as fair, reasonable and adequate; and (c) Class  
3 Counsel’s application for attorneys’ fees, costs and expenses (“Fee Request”) and the  
4 Class Representative’s service awards.

5 18. No later than thirty-five (35) days prior to the Final Approval Hearing,  
6 Class Counsel shall file and Defendant may file with the Court any memoranda or  
7 other materials in support of final approval of the Settlement Agreement and also no  
8 later than forty-five (45) days prior the Final Approval Hearing, Class Counsel shall  
9 file any request for attorneys’ fees and expenses with the Court. Any reply briefs  
10 relating to final approval of the Settlement Agreement or Class Counsel’s request for  
11 attorneys’ fees and expenses or responses to objections to the Settlement Agreement  
12 shall be filed no later than seven (7) days prior the Final Approval Hearing.

13 19. Any Class Member who has not excluded himself/herself/itself from the  
14 Settlement Class may appear at the Final Approval Hearing in person or by counsel  
15 (at his/her/its own expense) and may be heard, to the extent allowed by the Court,  
16 either in support of or in opposition to the Settlement Agreement and/or the fee  
17 request. Any Class Member wanting to be heard at the Final Approval Hearing shall  
18 send a letter saying that it is his/her/its “Notice of Intention to Appear in *Sihler et al*  
19 *v. The Fulfillment Lab, Inc.*” Such letter shall be mailed to the Clerk of Court and  
20 received on or before seven (7) days prior to the date first set for the Final Approval  
21 Hearing. In the notice, the Class Member must include his/her/its name, address, and  
22 telephone number, and the name, address, and telephone number of counsel, if any,  
23 that will appear. For mailing notices of intent to appear, the Court’s address is as  
24 follows:

25 Clerk of Court  
26 United States District Court  
27 Southern District of California  
28 221 West Broadway, San Diego, CA 92101

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20. The date and time of the Final Approval Hearing shall be subject to adjournment by the Court without further notice to the Class Members other than that which may be posted at the Court, on the Court’s website, and/or the Settlement Website at [URL].

**VII. OTHER PROVISIONS**

21. The Parties are authorized to take all necessary and appropriate steps to establish the means necessary to implement the Settlement Agreement.

22. The deadlines set forth in this Order, including, but not limited to, adjourning the Final Approval Hearing, may be extended by Order of the Court, for good cause shown, without further notice to the Class Members – except that notice of any such extensions shall be included on the Settlement Website [URL] Class Members should check the Settlement Website regularly for updates and further details regarding extensions of these deadlines.

23. Class Counsel and Defendant’s Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement Agreement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the Settlement Agreement, to the form or content of the Class Notice or to any other exhibits that the parties jointly agree are reasonable or necessary.

24. This Court shall maintain continuing jurisdiction over these settlement proceedings to assure the effectuation thereof for the benefit of the Settlement Class.

**IT IS SO ORDERED.**

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HONORABLE LINDA LOPEZ  
UNITED STATES DISTRICT JUDGE

# EXHIBIT 2

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JANET SIHLER, an individual, on behalf of herself and all persons similarly situated; CHARLENE BAVENCOFF, an individual, on behalf of herself and all persons similarly situated,

Plaintiff,

v.

THE FULFILLMENT LAB, INC., et al.,  
Defendants

NO. 3:20-cv-01528-LL-DDL

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

Judge: Hon. Linda Lopez  
Magistrate Judge: Hon. David Leshner

Complaint filed: August 6, 2020

No. 3:20-cv-01528-LL-DDL  
SIHLER ET AL V. THE FULFILLMENT LAB,  
INC. ET AL

1 THIS MATTER is before the Court following a hearing on [\_\_\_\_\_, \_\_, 2024,  
2 at \_\_\_\_]. The Court has considered the Settlement Agreement dated [ ] (the  
3 “Settlement Agreement”). An opportunity to be heard having been given to all other  
4 persons desiring to be heard as provided in the Notice and having considered all of  
5 the submissions and arguments, and good cause appearing therefore;

6 IT IS HEREBY ORDERED AS FOLLOWS:

7 1. This Final Order incorporates herein and makes a part hereof the  
8 Settlement Agreement, including the Exhibits thereto, and incorporates by reference  
9 the definitions in the Settlement Agreement, and all terms used herein shall have the  
10 same meanings as set forth in the Settlement Agreement unless set forth differently  
11 herein.

12 2. The Court has jurisdiction over the subject matter of this action, and all  
13 Parties to the action for purpose of settlement, including all Settlement Class  
14 Members.

15 3. The Court finds that the persons excluded from the Settlement Class  
16 because they filed valid requests for exclusion (“Opt-Outs”) are identified in Exhibit  
17 A to this Order. These Class Members who filed timely, completed Opt-Outs are not  
18 bound by this Order and the accompanying Final Judgment or the terms of the  
19 Settlement Agreement and may pursue their own individual remedies against  
20 Defendant. However, such persons are not entitled to any rights or benefits provided  
21 to Class Members by the terms of the Settlement Agreement.

22 4. The Court directed that Class Notice be given to the Class Members  
23 pursuant to the notice program proposed by the Parties and approved by the Court. In  
24 accordance with the Court’s Preliminary Approval Order and the Court-approved  
25 Class Notice Program, the Settlement Administrator caused the forms of Class Notice  
26 to be disseminated as ordered. The Long-form Class Notice advised Class Members  
27 of the terms of the Settlement Agreement; the Final Approval Hearing, and their right

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1 to appear at such hearing; their rights to remain in, or opt out of, the Settlement Class  
2 and to object to the Settlement Agreement; procedures for exercising such rights; and  
3 the binding effect of this Order and accompanying Final Judgment, whether favorable  
4 or unfavorable, to the Settlement Class.

5 5. The distribution of the Class Notice pursuant to the Class Notice  
6 Program constituted the best notice practicable under the circumstances, and fully  
7 satisfies the requirements of Federal Rule of Civil Procedure 23, the requirements of  
8 due process, 28 U.S.C. § 1715, and any other applicable law.

9 6. Pursuant to Federal Rule of Civil Procedure 23(e)(2), the Court finds  
10 after a hearing and based upon all submissions of the Parties and interested persons,  
11 the Settlement Agreement proposed by the Parties is fair, reasonable, and adequate.  
12 In reaching this conclusion, the Court considered the record in its entirety and heard  
13 the arguments of counsel for the Parties and all other persons seeking to comment on  
14 the proposed Settlement Agreement. In addition, the Court has considered a number  
15 of factors, including: (1) the complexity, expense, and likely duration of the litigation;  
16 (2) the reaction of the Class Members to the Settlement Agreement; (3) the stage of  
17 the proceedings and the amount of discovery completed; (4) the risks of establishing  
18 liability; (5) the risks of establishing damages; (6) the risks of maintaining the class  
19 action through the trial; (7) the ability of Defendant to withstand a greater judgment;  
20 and (8) the reasonableness of the relief provided by the Settlement Agreement in light  
21 of the best possible recovery.

22 7. The terms and provisions of the Settlement Agreement are the product  
23 of lengthy, arms-length negotiations conducted in good faith and with the assistance  
24 of Magistrate Judge David D. Leshner. Approval of the Settlement Agreement will  
25 result in substantial savings of time, money and effort to the Court and the Parties,  
26 and will further the interests of justice.

27 8. All Class Members who have not timely and validly opted out are Class

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1 Members who are bound by this Order and accompanying Final Judgment and by the  
2 terms of the Settlement Agreement.

3 9. Nothing in the Settlement Agreement, this Order, the accompanying  
4 Final Judgment, or the fact of the settlement constitutes any admission by any of the  
5 Parties of any liability, wrongdoing or violation of law, damages or lack thereof, or  
6 of the validity or invalidity of any claim or defense asserted in the action.

7 10. The Court has considered the submissions by the Parties and all other  
8 relevant factors, including the result achieved and the efforts of Class Counsel in  
9 prosecuting the claims on behalf of the Settlement Class. The efforts of Class Counsel  
10 have produced the Settlement Agreement entered into in good faith, and which  
11 provides a fair, reasonable, adequate, and certain result for the Settlement Class. Class  
12 Counsel have made application for an award of attorneys' fees and reimbursement of  
13 expenses in connection with the prosecution of the action on behalf of themselves.  
14 This amount is fair, reasonable, and adequate under the common fund doctrine, the  
15 range of awards ordered in this District and Circuit, the results obtained, the  
16 substantial risk borne by Class Counsel in litigating this matter, the degree of skill and  
17 quality of work performed, the financial burden imposed by the contingency basis of  
18 Class Counsel's representation of Plaintiffs and the Class, and the additional work  
19 required of Class Counsel to bring this Settlement to conclusion. The Court finds the  
20 fee award is further supported by a lodestar crosscheck, whereby it finds that the  
21 hourly rates of Class Counsel are reasonable, and that the estimated hours expended  
22 are reasonable. Accordingly, the Court hereby awards \$ [REDACTED] as attorneys' fees  
23 to be paid out of the Common Fund in accordance with the terms of the Settlement  
24 Agreement.

25 11. Class Counsel have also made application for an award of litigation  
26 expenses in connection with the prosecution of the action. Finding that such expenses  
27 were reasonably and necessarily incurred in prosecuting the action on behalf of the

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1 Settlement Class, the Court finally approves Class Counsel’s request for litigation  
2 expenses in the amount of \$ [REDACTED], which is to be paid by out of the Common  
3 Fund in accordance with the terms of the Settlement Agreement.

4 12. Further, the Court approves service awards of \$ [REDACTED] for Plaintiff  
5 LeAnne Tan. The Class Representative participated in the Action, acted to protect the  
6 Settlement Class, and assisted her counsel. The service award, which is fair,  
7 reasonable, and justified, are to be paid out of the Common Fund in accordance with  
8 the terms of the Settlement Agreement.

9 13. The Court hereby dismisses with prejudice this action, and all Released  
10 Claims against each and all Released Parties, and without costs to any of the Parties  
11 as against the others.

12 14. All Class Members and their legally authorized representatives are  
13 hereby enjoined: (i) from filing, commencing, prosecuting, intervening in, or  
14 participating as a plaintiff, claimant, or class member in any other lawsuit or  
15 administrative, regulatory, arbitration, or other proceeding in any jurisdiction based  
16 on the Released Claims; (ii) from filing, commencing, or prosecuting a lawsuit or  
17 administrative, regulatory, arbitration, or other proceeding as a class action on behalf  
18 of any Class Members (including by seeking to amend a pending complaint to include  
19 class allegations or seeking class certification in a pending action), based on the  
20 Released Claims; and (iii) from attempting to effect an opt-out of a group, class, or  
21 subclass of individuals in any lawsuit or administrative, regulatory, arbitration, or  
22 other proceeding based on the Released Claims.

23 15. Without affecting the finality of this Order and the Final Judgment, the  
24 Court reserves jurisdiction over the implementation, administration, and enforcement  
25 of this Order, the Final Judgment and the Settlement Agreement, and all matters  
26 ancillary thereto.

27 16. The Court finding that no reason exists for delay in entering this Order

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1 and the Final Judgment pursuant to Federal Rules of Civil Procedure, Rule 54(b), the  
2 Clerk is hereby directed to enter the Final Judgment forthwith.

3 17. The Parties and the Settlement Administrator are hereby directed and  
4 authorized to implement and consummate the Settlement according to the terms and  
5 provisions of the Settlement Agreement. In addition, the Parties, without further  
6 approval of the Court, are authorized to agree to and adopt such amendments and  
7 modifications to the Settlement Agreement so long as they are: (i) consistent in all  
8 material respects with this Final Order and the Final Judgment; and (ii) do not limit  
9 the rights of the Settlement Class.

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11 **IT IS SO ORDERED.**

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HONORABLE LINDA LOPEZ  
UNITED STATES DISTRICT JUDGE

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# EXHIBIT 3

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JANET SIHLER, an individual, on behalf of herself and all persons similarly situated; CHARLENE BAVENCOFF, an individual, on behalf of herself and all persons similarly situated,

Plaintiff,

v.

THE FULFILLMENT LAB, INC., et al.,

Defendants

NO. 3:20-cv-01528-LL-DDL

**[PROPOSED] FINAL JUDGMENT**

Judge: Hon. Linda Lopez  
Magistrate Judge: Hon. David Leshner

Complaint filed: June 12, 2020

No. 3:20-cv-01528-LL-DDL  
SIHLER ET AL V. THE  
FULFILLMENT LAB, INC ET AL

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IT IS HEREBY ADJUDGED AND DECREED PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 58 AS FOLLOWS:

- (1) On this date, the Court entered an Order Granting Final Approval of Class Action Settlement in the above-captioned action; and
- (2) Final judgment is entered in accordance with the Order Granting Final Approval of Class Action Settlement, for the reasons stated therein, and the above-captioned action is dismissed with prejudice as to the Defendants.

**SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2024.

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HONORABLE LINDA LOPEZ  
UNITED STATES DISTRICT JUDGE

# EXHIBIT 4

**REQUEST FOR EXCLUSION FORM**

*Sihler et al v. The Fulfillment Lab, Inc. et al*  
U. S. District Court for the Southern District of California  
Case No. 3:20-cv-01528-LL-DDL

1. Full Name: \_\_\_\_\_

2. Home Address: \_\_\_\_\_

3. Telephone Number: \_\_\_\_\_

4. E-mail Address (optional): \_\_\_\_\_

I purchased Keto Products, between August 6, 2016 and [DATE], inclusive.

I want to be excluded from the Class in *Sihler et al v. The Fulfillment Lab, Inc. et al*, Case No. 3:20-cv-01528-LL-DDL (S.D. Cal.). I understand that by excluding myself from this case I waive any and all rights that I may have to receive any settlement benefits, including, but not limited to, money from this class action.

Date (mm/dd/yyyy): \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(Please Print Your Name)

\_\_\_\_\_  
(Please Sign Your Name)

To be excluded from the Settlement Class, complete and mail this form received no later than [Response Deadline] to: Settlement Administrator, P.O. Box 5439, Portland, OR 97228-5439. You may also submit this completed form at [URL].

If you do not want to complete this form, you may send a handwritten or typed and signed letter to the Settlement Administrator requesting exclusion (opting out), containing the information identified above and mailing it to the address as set forth in the prior paragraph.

# EXHIBIT 5

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

# **If you purchased Ultra Fast Keto Boost, Instant Keto, or InstaKeto Products, you may be part of a class action settlement.**

*A federal court has authorized this Notice. This is not a solicitation from a lawyer.*

- A Settlement has been reached in a class action lawsuit to resolve allegations against Richard Nelson, The Fulfillment Lab, Inc., David Flynn, Rick James, Bmor Global LLC, Brightree Holdings, and Beyond Global, Inc. (the “Settling Defendants”), relating to UltraFast Keto Boost, Instant Keto, and InstaKeto diet products (the “Keto Products”). The suit alleges that the marketing of the Keto Products was false or misleading to consumers, and the Settling Defendants were involved in selling these products or assisting in the sale of those products. The Settling Defendants deny these allegations but have settled this case to avoid further litigation and distraction of resources from their business.
- The Settlement provides for a payment by the Settling Defendants \$200,000, in addition to providing cooperation in an ongoing lawsuit in Florida against other defendants. The Florida lawsuit is titled *Sihler et al v. Global E-Trading, LLC et al*, No. 8:23-cv-1450 (M.D. Fla.). The class representatives and class counsel are continuing to pursue a monetary recovery against those Defendants, and you may receive a separate notice in that lawsuit. The settlement in this case provides for injunctive relief against two of the Defendants. The Settlement streamlines what would otherwise be a longer trial with a likelihood that the Settling Defendants would have no remaining assets available to compensate the Class after that trial.
- The Settlement’s Monetary Payment will be applied to the costs of notice, expenses, incentive awards to the class representatives, and attorney’s fees.
- Your legal rights are affected whether or not you act. ***Please read this notice carefully.***

<b>YOUR RIGHTS AND CHOICES</b>		<b>DEADLINE</b>
<b>Exclude Yourself</b>	Keep any right to file your own lawsuit against Defendant about the legal claims in this case.	Submit an Exclusion: <b>[Opt-Out Deadline]</b>
<b>Object</b>	Tell the Court why you don’t like the Settlement. You will still be bound by the Settlement if the Court approves.	Deadline to file an Objection: <b>[Objection Deadline]</b>
<b>Attend A Hearing</b>	Ask to speak to the Court about the fairness of the Settlement.	Deadline to file a Notice of Appearance: <b>[7 days before the Final Approval Hearing]</b>
<b>Do Nothing</b>	Give up legal rights.	

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement.

**Questions? Call 1-855-435-0524, or Visit [\[URL\]](#)**

**Questions? Call 1-855-435-0524, or Visit [\[URL\]](#)**

**WHAT THIS NOTICE CONTAINS**

**BASIC INFORMATION ..... PAGE 3**

- 1. Why should I read this Notice?
- 2. What is this lawsuit about?
- 3. Why is the lawsuit a class action?
- 4. Why is there a Settlement?

**WHO IS IN THE SETTLEMENT ..... PAGE 3**

- 5. Am I part of the Settlement?

**THE SETTLEMENT BENEFITS—WHAT YOU GET ..... PAGE 4**

- 6. What does the Settlement provide?
- 7. What can I get from the Settlement?

**THE LAWYERS REPRESENTING YOU ..... PAGE 5**

- 8. Do I have lawyers in this case?
- 9. How will the lawyers be paid?

**YOUR RIGHTS - EXCLUDING YOURSELF FROM THE SETTLEMENT ..... PAGE 6**

- 10. How do I get out of the Settlement?
- 11. If I exclude myself, can I get anything from this Settlement?

**YOUR RIGHTS - OBJECTING TO THE SETTLEMENT..... PAGE 6**

- 12. How do I tell the Court that I don't like the Settlement?
- 13. What's the difference between objecting and asking to be excluded?

**YOUR RIGHTS - APPEARING AT THE FINAL APPROVAL HEARING..... PAGE 7**

- 14. When and where will the Court decide whether to approve the Settlement?
- 15. Do I have to attend the Final Approval Hearing?
- 16. May I speak at the Final Approval Hearing?

**YOUR RIGHTS - DO NOTHING..... PAGE 8**

- 17. What happens if I do nothing at all?

**GETTING MORE INFORMATION..... PAGE 8**

- 18. Are there more details about the Settlement?
- 19. How do I get more information?

Questions? Call 1-855-435-0524, or Visit [\[URL\]](#)

## BASIC INFORMATION

### 1. Why should I read this Notice?

If you were billed for shipments of either three bottles or five bottles of Ultrafast Keto Boost, Insta Keto, or InstantKeto between the applicable statute of limitations period and [Date of Preliminary Approval], you are a member of a Settlement Class.

This Notice explains the class action lawsuit, the proposed Settlement, your legal rights, what benefits are available, who is eligible for the benefits, and how to get the benefits.

The Court in charge of this case is the United States District Court for the Southern District of California. The lawsuit is known as *Sihler et al v. The Fulfillment Lab, Inc., et al*, Case No. 3:20-cv-1528-LL-DDL. You may obtain additional updates on the status of the case by contacting Class Counsel (listed in Question 11 below), going to [URL] or viewing case information through the Court's system at [www.Pacer.gov](http://www.Pacer.gov).

### 2. What is this lawsuit about?

This lawsuit is about whether Keto Products were marketed in a false or misleading way. "Keto Products" is a defined term under the Settlement Agreement, meaning "any product manufactured, marketed, sold, or otherwise promoted under the Ultra Fast Keto Boost, Instant Keto, or InstaKeto brand names." The suit alleges that Settling Defendants were involved in selling these products or assisting in the sale of those products. Defendants deny that they did anything wrong. This Settlement is not an admission of any liability. The Court has not decided who is right.

### 3. Why is the lawsuit a class action?

In a class action lawsuit, one or more people called "Class Representatives" sue on behalf of other people who have similar claims. The people together are a "Class" or "Class Members." The people who sue – and all the Class Members like them – are called the "Plaintiffs." The individuals and companies the Plaintiffs sued are called the "Defendants." The court resolves the issues for everyone in the Class – except for those people who choose to exclude themselves from the Class. U.S. District Judge Linda Lopez is in charge of this class action.

### 4. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Defendant. Instead, both sides agreed to a settlement. By agreeing to settle, both sides avoid the cost and risk of a full trial and the Plaintiffs obtain cooperation in the form of evidence that may be used against other Defendants in another pending class action lawsuit in Florida. The goal is to obtain compensation for the Class in that separate class action lawsuit. The Class Representative and their attorneys believe the Settlement is best for the Settlement Class and its members.

## WHO IS IN THE SETTLEMENT?

To see if you are eligible for benefits, you first have to determine if you are a Class Member.

### 5. Am I part of the Settlement?

Questions? Call 1-855-435-0524, or Visit [URL]

You are a Class Member if you were billed for Keto Products between the applicable statute of limitations period and [Date of Preliminary Approval].

Excluded from the Settlement are: (i) jurists and mediators who are or have presided over the Action, Plaintiff's Counsel and Defendants' Counsel, their employees, legal representatives, heirs, successors, assigns, or any members of their immediate family; (ii) any government entity; (iii) The Settling Defendants and any entity in which the Settling Defendants have a controlling interest, any of their subsidiaries, parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns, or any members of their immediate family; and (iv) any persons who timely opt out of the Settlement Class.

## THE SETTLEMENT BENEFITS – WHAT YOU GET

### 6. What does the Settlement provide?

The Settlement does not provide monetary payment to Class Members. Class notice and claim administration expenses, Plaintiffs' Counsel's attorneys' fees and expenses and any service award to the Class Representative (discussed below) will be paid out of the Settlement Fund, if approved by the Court. The Settlement provides injunctive relief against two of the Defendants, and requires evidentiary cooperation from the remaining Defendants on behalf of the class in litigation pending in Florida.

### 7. What am I giving up to receive these Settlement benefits?

Unless you exclude yourself ("opt out") from the Settlement Class by timely submitting an Exclusion Request (see Questions 13-14 below), you will remain in the Settlement Class. By remaining in the Settlement Class you "release" and can't sue, continue to sue, or be part of any other lawsuit against the Settling Defendants about the "Released Claims" in this case. These Released Claims are only those claims that you could have brought based on the identical factual predicate of those claims brought in this case about the alleged misleading marketing and labeling of Keto Products between the applicable statute of limitations period and [DATE].

The Settlement Agreement at Section VIII (titled "Releases") describes these "Released Claims" and the "Released Parties" in necessary legal terminology, so read these sections carefully. For ease of reference, the full release section of the Settlement Agreement is attached to this Notice as Appendix A. The Settlement Agreement is available at [URL] or in the public court records on file in this lawsuit. For questions regarding the Releases or what they mean, you can also talk to one of the lawyers listed in Question 11 below for free, or you can, talk to your own lawyer at your own expense.

## THE LAWYERS REPRESENTING YOU

### 8. Do I have lawyers in this case?

The Court has appointed attorneys from the law firm Kneupper & Covey, PC of Huntington Beach, CA, to represent you and the other Class Members. The lawyers are called Class Counsel. They are

Questions? Call 1-855-435-0524, or Visit [URL]

experienced in handling similar class action cases. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

You may contact Class Counsel if you have any questions about this Notice or the Settlement. ***Please do not contact the Court.***

**Class Counsel:**  
Kevin Kneupper  
Cyclone Covey  
KNEUPPER & COVEY, PC  
17011 Beach Blvd., Ste. 900  
Huntington Beach, CA 92647-5998  
Tel: 657-845-3100  
Email: [cyclone@kneuppercovey.com](mailto:cyclone@kneuppercovey.com)  
Website: [www.kneuppercovey.com](http://www.kneuppercovey.com)

## 9. How will the lawyers be paid?

Class Counsel will ask the Court for an award of the costs of notice, expenses, incentive awards to the class representatives, and attorney's fees. Plaintiffs expect that this will exceed the \$200,000 settlement amount. Any award of attorneys' fees and costs will be paid from the Settlement Fund. Class Counsel will also ask the Court for a service award for the Class Representative. The purpose of the service awards is to compensate the Plaintiff for her time, efforts and risks taken on behalf of the Settlement Class. Any award of payment to the Class Representative will be paid from the Settlement Fund.

## YOUR RIGHTS – EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a Monetary Payment, but want to keep the right to sue or continue to sue the Settling Defendants on your own, on the basis of the legal issues in this case, then you must take steps to exclude yourself from the Settlement (get out of the Settlement). This is called "excluding yourself"—or is sometimes referred to as "opting out" of the settlement class.

## 10. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a "Request for Exclusion" in the form of a letter or Request for Exclusion form stating that you want to be excluded from *Sihler et al v. The Fulfillment Lab, Inc., et al*, Case No. 3:20-cv-1528-LL-DDL. Be sure to include your name, address, telephone number, and basis upon which you are a Class Member. You must mail your Request for Exclusion received by **[Opt-Out Deadline]** to: Settlement Administrator, P.O. Box 5439, Portland, OR 97228-5439. Request for Exclusion forms can be obtained online at [URL].

**Questions? Call 1-855-435-0524, or Visit [URL]**

If you do not follow these procedures and deadlines, you will remain a Class Member and lose any opportunity to exclude yourself from the Settlement. This means that your rights will be determined in this lawsuit by the Settlement Agreement if it receives final approval from the Court.

**11. If I exclude myself, can I get anything from this Settlement?**

No. If you exclude yourself, you cannot receive Monetary Payments. But, you may sue, continue to sue, or be part of a different lawsuit against the Settling Defendants about the legal issues in this case.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

You can tell the Court that you don’t agree with the Settlement or some part of it.

**12. How do I tell the Court that I don’t like the Settlement?**

If you’re a Class Member, you can object to the Settlement if you don’t like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. Note: 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 awards will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

To object, you must send a letter. Be sure to include the following information:

- a. The case name and number (*Sihler et al v. The Fulfillment Lab, Inc., et al*, Case No. 3:20-cv-1528-LL-DDL);
- b. Your name, address, telephone number and, if represented by counsel, the name, address, and telephone number of your counsel;
- c. A statement under oath that you are a Class Member;
- d. A statement whether you intend to appear at the Final Approval Hearing, either in person or through counsel;
- e. A statement of all your objections and the specific grounds supporting your objections;
- f. A statement whether the objection applies only to you, to a specific subset of the Settlement Class, or to the entire Settlement Class;
- g. Copies of any papers, briefs, or other documents upon which your objection is based; and
- h. Your handwritten, dated signature (the signature of your counsel, an electronic signature, and the annotation “/s” or similar annotation will not suffice).

Your objection must be submitted to the Court either by mailing (or by filing it at any location of the United States District Court for the Southern District of California) and served on Class Counsel and Defendant’s Counsel received no later than **[Objection Deadline]**, to the following addresses:

<b><u>Court:</u></b> Clerk United States District Court, Southern District of California 221 West Broadway San Diego, CA 92101	<b><u>Class Counsel:</u></b> Kevin Kneupper Cyclone Covey Kneupper & Covey PC 17011 Beach Blvd., Ste. 900 Huntington Beach, CA 92647	<b><u>Defense Counsel:</u></b> Robert Knaier 402 W Broadway, Suite 1400 San Diego, CA 92101
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**Questions? Call 1-855-435-0524, or Visit **[URL]****

If you timely file an objection it will be considered by the Court at the Final Approval Hearing. You do not need to attend the Final Approval Hearing for the Court to consider your objection.

The Court will require substantial compliance with these requirements above. If you do not submit a written objection in accordance with the deadline and procedure set forth above, you will waive your right to be heard at the Final Approval Hearing. However, the Court may excuse your failure to file a written objection upon a showing of good cause, which, if granted, would permit you to still appear at the Final Approval Hearing and object to the Settlement.

### **13. What's the difference between objecting and asking to be excluded?**

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because you are no longer part of the case.

## **YOUR RIGHTS – APPEARING AT THE FINAL APPROVAL HEARING**

The Court will hold a "Final Approval Hearing" to decide whether to approve the Settlement. You may attend and you may ask to speak, but you don't have to.

### **14. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing at [DATE], at the United States District Court for the Southern District of California, 221 West Broadway San Diego, CA 92101.

At the hearing, the Court will hear any comments, objections, and arguments concerning the fairness of the proposed Settlement, including the amount requested by Class Counsel for attorneys' fees and expenses. If there are objections, the Court will consider them. You do not need to attend this hearing. You also do not need to attend to have a comment or objection considered by the Court. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

Note: The date and time of the Final Approval Hearing are subject to change by Court Order. Any change will be posted at [URL]. You should check this website or the Court's PACER website to confirm that the date and/or time have not changed.

### **15. Do I have to attend the Final Approval Hearing?**

No. Class Counsel will answer all questions Judge Lopez may have. But, you are welcome to attend the hearing at your own expense. If you submit an objection, you do not have to attend the hearing to talk about your objection. As long as you filed your written objection by the deadline, the Judge will consider it. You may also pay your own lawyer to attend, but it is not necessary.

### **16. May I speak at the Final Approval Hearing?**

As long as you do not exclude yourself, you can (but do not have to) participate and speak for yourself in this lawsuit and Settlement. This is called making an appearance. You also can have your own lawyer speak for you, but you will have to pay for the lawyer yourself.

**Questions? Call 1-855-435-0524, or Visit [URL]**

If you want to appear, or if you want your own lawyer instead of Class Counsel to speak for you in this lawsuit, you must send a letter saying that it is your “Notice of Intention to Appear in *Sihler et al v. The Fulfillment Lab, Inc.*” Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be received by [DATE], and be sent to the Clerk of Court at the address listed in Question 15.

If you want to speak at the Final Approval Hearing without having followed these procedures, you may do so if you demonstrate good cause to the Court.

## YOUR RIGHTS – DO NOTHING

### 17. What happens if I do nothing at all?

If you do nothing, you’ll be part of the Settlement Class. Unless you exclude yourself, you will not be permitted to continue to assert Released Claims in any other lawsuit against the Settling Defendants about the legal issues in this case, ever again.

## GETTING MORE INFORMATION

### 18. Are there more details about the Settlement?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at [URL], or by contacting Class Counsel by email or telephone at the address or number listed in response to Question 11 above.

### 19. How do I get more information?

You can call toll-free 1-855-435-0524, write to Settlement Administrator, P.O. Box 5439, Portland, OR 97228-5439; or go to [URL], where you will find answers to common questions about the Settlement, a Claim Form, motions for approval of the Settlement and Class Counsel’s request for attorneys’ fees and expenses, and other important documents in the case.

You can also access information about this case through the Court’s Public Access to Court Electronic Records (PACER) system. To learn about PACER and register for a PACER account, go to <https://www.Pacer.gov/>. Once you have a PACER account, you can access and retrieve documents from the Court’s docket for the Action at <https://ecf.casd.uscourts.gov/>. You can also access and retrieve documents from the Court’s docket by visiting the Clerk’s Office located at United States District Court for the Southern District of California, Southern District of California, 221 West Broadway, San Diego, CA 92102, during business hours.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT’S CLERK TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS**

**Questions? Call 1-855-435-0524, or Visit [URL]**

# EXHIBIT 6

United States District Court for the Southern District of California

**If you purchased Ultra Fast Keto Boost, InstaKeto, or Instant Keto diet pills, please read this notice: a class action may affect your rights.**

Records indicate that you may be affected by a class action settlement in a lawsuit alleging that the marketers and distributors of Ultra Fast Keto Boost, InstaKeto, and Instant Keto diet pills broke the law by making misrepresentations about, and overcharging consumers for, the diet pills they sold and distributed. The lawsuit is called *Sihler et al. v. The Fulfillment Lab Inc., et al.*, No. 3:20-cv-01528-LL-DDL (S. D. Cal.). This notice summarizes your rights and options.

**Who is a Class Member?** Class Members are consumers in the United States who were billed for shipments of either three bottles or five bottles of Ultrafast Keto Boost, Insta Keto, or InstantKeto. The court ordered that the Class consists of “all consumers in the United States who, within the applicable statute of limitations period until the date notice is disseminated, were billed for shipments of either three bottles or five bottles of Ultrafast Keto Boost, Insta Keto, or InstantKeto.” The court also certified a Subclass of Class Members who live in California. You can get more information about the class at [www.website.com](http://www.website.com).

**Who are the Defendants?** The Defendants are the people and companies who sold and distributed the Ultra Fast Keto Boost, InstaKeto, and Instant Keto diet pills: the Fulfillment Lab, Inc., Richard Nelson, Beyond Global Inc., Brightree Holdings Corporation, BMOR Global LLC, David Flynn, and Rickie Joe James, as well as unknown “Doe Defendants.” The Defendants deny the claims in the lawsuit.

**What is this case about?** This lawsuit alleges that Defendants engaged in a fraudulent scheme involving misrepresentations about the price, sponsorship and availability of diet pills in order to overcharge Class Members for those pills. The lawsuit alleges that Class Members ordered three or five-bottle bundles of Defendants’ diet pills based on false advertising stating purchasers would get free bottle(s) of pills and that the pills were limited in availability and endorsed by celebrities. The lawsuit seeks damages and restitution, a civil penalty of three times those damages, attorney fees and costs, as well as an order telling the Defendants to stop the conduct Plaintiffs allege violates the law. Defendants deny that they did anything wrong.

**What are the terms of the settlement?** The settlements require cooperation by the settling defendants against other Defendants who are still being sued in a separate lawsuit on behalf of the class, *Sihler et al v. Global E-Trading, LLC et al*, No. 8:23-cv-1450 (M.D. Fla.). The class representatives and class counsel are continuing to pursue a monetary recovery against those Defendants, and you may receive a separate notice in that lawsuit. The settlement provides for injunctive relief against two of the Defendants. The settlement also provides a payment of \$200,000, which will be applied to the costs of notice, expenses, incentive awards to the class representatives, and attorney’s fees.

**YOUR LEGAL RIGHTS AND OPTIONS**

You have two options:

- **Do Nothing. Stay in this lawsuit. Await the outcome. Give up certain rights.**
- **Opt Out. Get out of this lawsuit. Get no benefits from it. Keep rights.**

If you do nothing, you will stay in the Class. You will be bound by all orders of the court and you won't be able to separately sue, or continue to separately sue, the Defendants in this case for the conduct at issue in this lawsuit.

The court has appointed Kneupper & Covey, PC as "Class Counsel" to represent the Class. You do not have to pay Class Counsel. If Class Counsel gets money or benefits for the Class, they may ask the court for attorneys' fees and costs from any money obtained for the Class or paid by the Defendants. If you want your own lawyer in this case, you may hire one at your own expense. Plaintiffs Janet Sihler and Charlene Bavencoff are Class Members that the court has appointed as "Class Representatives."

If you ask to be excluded, you keep any rights to sue the Defendants in this lawsuit separately about the same legal claims as the ones in this lawsuit. You may exclude yourself from the Class by sending a letter or email to the address below no later than 45 days after Notice saying you want to be excluded from the Class. Information about how to request to be excluded is available at [www.website.com](http://www.website.com).

Under either option, you may later receive a notice of a class action lawsuit in *Sihler et al v. Global E-Trading, LLC et al*, No. 8:23-cv-1450 (M.D. Fla.), a related matter involving the same products but against different Defendants. Your decision about whether to opt out of this lawsuit will not affect your rights in that action should be a settlement there.

**How can you get more information?** For more information, visit [www.website.com](http://www.website.com), contact the administrator at ###-###-####, or write to Keto Products Class Action Administrator, [ADDRESS] or [EMAIL] You can also call at [###-###-####]. Please do not contact the court.

# EXHIBIT 7

Settlement Administrator  
P.O. Box 5439  
Portland, OR 97228-5439

**Court-Ordered Legal Notice**

**If you purchased Keto Products, you may be bound by a class action settlement.**

*A federal court has authorized this Notice. This is not a solicitation from a lawyer.*

**To opt out of this settlement you must return a form by Opt-Out Deadline.**

UniqueID: <<UniqueID>>  
PIN: <<PIN>>>>

Forwarding Service Requested



Postal Service: Please do not mark barcode  
Claim No.:

[CLASS MEMBER INFO]

You are receiving this because purchase records indicate you purchased one or more **Keto Products** from August 6, 2016 to [DATE]. If so, you may be a "Class Member" and may be bound by a class action settlement. In *Sihler et al v. The Fulfillment Lab, Inc. et al*, No. 3:20-cv-01528-LL-DDL (S.D. Cal.), the court preliminarily approved the Settlement of a class action lawsuit involving claims that Keto Products were falsely marketed. The settling defendants in the lawsuit deny these claims.

This postcard is being sent to you as required by the Court. To determine if you are a Class Member, view the Detailed Notice and the Settlement Agreement at [URL] or call toll-free 1-855-435-0524.

**What are the terms of the settlement?** The settlements require cooperation by the settling defendants against other Defendants who are still being sued in a separate lawsuit on behalf of the class, *Sihler et al v. Global E-Trading, LLC et al*, No. 8:23-cv-1450 (M.D. Fla.). The class representatives and class counsel are continuing to pursue a monetary recovery against those Defendants, and you may receive a separate notice in that lawsuit. The settlement provides for injunctive relief against two of the Defendants. The settlement also provides a payment of \$200,000, which will be applied to the costs of notice, expenses, incentive awards to the class representatives, and attorney's fees.

**What are my other options?** If you don't want to be legally bound by the Settlement, you must submit an Request for Exclusion received by the Administrator on or before [Opt-Out Deadline]. You may also write to the Court if you wish to object to the Settlement by [Objection Deadline]. If you exclude yourself, then you cannot receive any benefits, but you do not release any potential rights to sue the settling defendants relating to the legal claims in the lawsuit.

The Court will hold a hearing on [DATE at TIME]. At that hearing, the Court will consider whether to approve this Settlement and whether to approve requested attorneys' fees plus reimbursement of costs and requested Class Representative's service awards. You may appear at the hearing, but you don't have to. The Court has appointed attorneys from the law firm Kneupper & Covey PC to represent the Class ("Class Counsel"). You will not be charged for these lawyers. If you want your own lawyer, you may hire one at your expense.

If you have any questions, please visit [URL] or call 1-855-435-0524.

# EXHIBIT 4

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL  
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2022-011293-CA-01

SECTION: CA21

JUDGE: David C. Miller

**Affiliati Network, LLC (The)**

Plaintiff(s)

vs.

**David Flynn et al**

Defendant(s)

\_\_\_\_\_ /

**FINAL JUDGMENT**

**THIS CAUSE** came before the Court on October 20, 2022, at 9:00 am on Plaintiff’s Petition to Confirm Arbitration Award and for Entry of Final Judgment. The Court having heard arguments of the parties, having reviewed the Petition, supporting affidavits, and the evidence presented, and being otherwise duly advised in the premises:

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that:

1. Plaintiff’s Petition to Confirm Arbitration Award and for Entry of Final Judgment against Defendants, David Flynn and Brightree Holdings Corp. is **GRANTED**.
2. Plaintiff, The Affiliati Network, LLC, located at 1521 Alton Road #160, Miami Beach, FL 33139, shall recover the following, jointly and severally from Defendants, David Flynn, whose last known address is 7729 Spanish Bay Drive, Las Vegas NV 89113 and Defendant, Brightree Holdings Corp., a Wyoming corporation with a principal address of 2232 Dell Range Blvd., Suite 245, Cheyenne, WY 82009, the following: principal amount of \$292,480.00; pre-judgment interest in the amount of \$70,454.76; attorneys’ fees of \$5,187.50; and costs in the amount of \$8,450.00; making a total of **\$376,572.26**, that shall bear interest at the applicable statutory rate per year, for which let execution issue.

3. Judgment Debtors, David Flynn and Brightree Holdings Corp., shall complete under oath the Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), copies of which are attached hereto, and serve it on counsel for the Judgment Creditor, Ruben E. Socarras, Esq., Chane Socarras, PLLC, 327 Plaza Real, Suite 217, Boca Raton, FL 33432 rsocarras@cslawfl.com, service@cslawfl.com, within forty-five (45) days from the date of this Final Judgment, unless the Final Judgment is satisfied or post-judgment discovery is stayed by Court Order.
4. The Court further retains jurisdiction of this matter for the purpose of the determination of additional attorney's fees and costs owed if any, that are recoverable by Plaintiff, to enter further orders that are proper, including without limitation, writs of garnishment, and orders to compel Judgment Debtors to complete form 1.977 and all attachments.

**DONE and ORDERED** in Chambers at Miami-Dade County, Florida on this 2nd day of November, 2022.

  
2022-011293-CA-01 11-02-2022 8:16 PM

2022-011293-CA-01 11-02-2022 8:16 PM

Hon. David C. Miller

**CIRCUIT COURT JUDGE**

Electronically Signed

Final Order as to All Parties SRS #: 12 (Other)

**THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.**

**Electronically Served:**

Ruben E Socarras, rsocarras@cslawfl.com

Ruben E Socarras, ecaruso@cslawfl.com

Ruben E Socarras, service@cslawfl.com

**Physically Served:**

# EXHIBIT 5

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PASCO COUNTY, FLORIDA  
CIVIL DIVISION

COGENT LLC,

Plaintiff,

CASE NO.: 2020CA001334CAAXWS

vs.

BRIGHTREE HOLDINGS CORP and  
DAVID FLYNN,

Defendants.

WRIT OF EXECUTION

THE STATE OF FLORIDA:

To Each Sheriff of the State:

YOU ARE COMMANDED to levy on the property subject to execution of Brightree Holdings Corp and David Flynn in the sum of **\$429,557.44** with interest at 18% a year from January 25, 2022, until paid and to have this writ before the Court when satisfied.

WITNESS my hand and seal of the Court on \_\_\_\_\_, 2022.

NIKKI ALVAREZ-SOWLES  
Clerk of Court

By: \_\_\_\_\_  
Deputy Clerk

**Plaintiff's Attorney:**  
Nathan A. Carney, Esq.  
Carney Law Firm, P.A.  
400 N. Ashley Dr., Suite 2600  
Tampa, Florida 33602  
(813) 712-8776  
ncarney@carneylawfirm.com

# EXHIBIT 6

\$(4,500.00) Kol  
\$(5,000.00) Mike  
\$(2,250.00) Clicktech  
\$(6,500.00) Partner Processing bank accounts  
\$(170,000.00) Deluxe

\$(182,110.00)

xcellent.choice 6/9/2020, 3:38:28 PM

Here's what I'm looking at right now. The last 30 days of sales with refunds CB's and commissions put us upside down by about \$300k so I'm looking for other sources to cover this or more likely cutting a deal with nuvei

xcellent.choice 6/9/2020, 3:37:26 PM

I'd probably be more pissed than they are if it was the other way around.

threecommaclub 6/9/2020, 3:29:52 PM

and had I not told them you were near cap that bill would've been twice as high

threecommaclub 6/9/2020, 3:28:36 PM

but look at it from their perspective of they finally get caught up from the 80ish that was owed and now not only do they send the traffic again willingly with no pre qualifiers but now they're on the hook for twice as much as last time

threecommaclub 6/9/2020, 3:26:47 PM

then they tell the other networks that they're not paid and the traffic halts from everyone because they're all scared

threecommaclub 6/9/2020, 3:26:25 PM

Yea it's just killing everything, they all talk.. deluxe knows blitz got money because blitz told them

xcellent.choice 6/9/2020, 3:23:34 PM

The intent was not to pay you instead of them. Thought we could pay everyone but had some u expected issues pop up. Outbound campaign would help but nuvei is best option to cover everyone quickly even though it will cost us plenty to settle.

xcellent.choice 6/9/2020, 3:21:45 PM

I'm sorry about that mike. I'm working really hard to get everyone taken care of. We did get communication open with Nuvei last week and their attorneys confirmed Friday they'd respond this week. We're probably close there.

threecommaclub 6/9/2020, 3:12:09 PM

can't keep putting myself out there and getting fucked

threecommaclub 6/9/2020, 3:11:59 PM

kinda the same from my end also, wouldn't have had you send me money if I knew they were going to be boned again because of it

threecommaclub 6/9/2020, 3:09:18 PM

Yea, they're not real thrilled to say the least

xcellent.choice 6/9/2020, 3:06:26 PM

Not yet. Just got c2m paid. We're expecting a counter from nuvei in the next few days which will hopefully clear everything up.

threecommaclub 6/9/2020, 3:05:38 PM

Did deluxe get sorted?

xcellent.choice 6/9/2020, 3:05:28 PM

Need anything from this end?

threecommaclub 6/9/2020, 3:05:02 PM

Not ready yet

xcellent.choice 6/9/2020, 3:04:33 PM

Guys any updates on getting the campaign rolling?

xcellent.choice 6/9/2020, 11:49:15 AM

Just got that hold straightened out with chase. I can get c2m payment scheduled.

xcellent.choice 6/5/2020, 3:14:22 PM

Do you think Simple is close to starting?

xcellent.choice 6/5/2020, 3:14:02 PM

OK I'll try to fix it.

threecommaclub 6/5/2020, 3:13:50 PM

that's as much as I know but yea, they're not mad often so I'm pretty sure they're going to just pull the plug if they're not getting something soon

# EXHIBIT 7

apsmartadv 4/9/2020, 12:27:35 PM

Hey there - we've been putting off litigation because of everything happening in the world. But we are still Very Aware of your Past Due balance. It would be great if you would make that Good Faith payment you said you would.

apsmartadv 3/20/2020, 1:58:51 PM

Eddie - we'll move forward first thing Monday morning

eddie.smartadv 3/19/2020, 7:25:27 PM

Ok guys this is no time for this crap. Seriously, If a \$2k good faith payment (let alone the ACTUAL \$12k bill) is too much for you we'll just let all our colleagues know about it. Everyone has enough to deal with right now without having to worry about racking up a bill you can't pay. I mean seriously, that's largely off ONE PUB TESTING. I'll let the boss know to move forward with litigation.

apsmartadv 3/19/2020, 4:32:59 PM

Rick? Can you send over the CC form?

apsmartadv 3/18/2020, 9:15:21 AM

<at id="8:instantlyfamous">Rick</at>??

eddie.smartadv 3/16/2020, 2:27:50 PM

I have not. Waiting on Rick

apsmartadv 3/16/2020, 2:27:37 PM

I haven't received anything. <at id="8:eddie.smartadv">Eddie</at> did you?

xcellent.choice 3/16/2020, 2:00:27 PM

I sent it over to rick. He should have sent it back to you.

xcellent.choice 3/13/2020, 4:59:48 PM

Yes, we have a cc auth form going over today. Starting to ramp up so this will be pad off quickly

apsmartadv 3/16/2020, 1:30:03 PM

Did you send the cc auth form?

apsmartadv 3/12/2020, 12:10:48 PM

Hey guys - can you please show some kind of good faith payment? We Really don't want to start the process with the attorneys. There's just too much negative crap going on in the world right now. Really looking forward to hearing back from SOMEONE. Thanks

eddie.smartadv 3/10/2020, 4:50:21 PM

Hey <at id="8:xcellent.choice">David</at> you'd mentioned getting a CC out to us to clear up the bill yesterday but had said you thought <at id="8:instantlyfamous">Rick</at> was sending it over. Just wanted to follow up and see what the current situation is. Thanks guys!