IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DARRYL WILLIAMS and HOWARD BROOKS, on behalf of themselves and all others similarly situated, **Plaintiffs,** **v.** **JANI-KING OF PHILADELPHIA, INC., JANI-KING, INC., and JANI-KING INTERNATIONAL, INC.,** **Defendants.**	**Case No. 2:09-cv-01738-RBS** **Hon. R. Barclay Surrick**

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL CLASS ACTION SETTLEMENT APPROVAL

I. INTRODUCTION

Darryl Williams and Howard Brooks ("Plaintiffs") brought this case against Jani-King of Philadelphia, Inc., Jani-King, Inc., and Jani-King International, Inc. ("Defendants" or "Jani-King") as a class action for all individuals who signed franchise agreements with Jani-King of Philadelphia, Inc. and who performed cleaning services in Pennsylvania under Jani-King's janitorial franchise system since March 2006, three years before the Complaint was filed. See Dkt. 1-2, Complaint. Plaintiffs alleged that Defendants misclassified franchisees as independent contractors and took improper deductions from their wages in violation of the Pennsylvania Minimum Wage Act of 1968, 43 P.S. §§ 333.101, et seq. ("PMWA"') and the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.1 et seq. ("WPCL"). Id. This Court certified a class on Plaintiffs' WPCL claim, and the Third Circuit affirmed this ruling. Myers v. Jani-

King of Philadelphia, Inc., No. CIV.A. 09-1738, 2015 WL 1055700, *12 (E.D. Pa. Mar. 11, 2015), aff'd sub nom. Williams v. Jani-King of Philadelphia Inc., 837 F.3d 314 (3d Cir. 2016).[1]

Plaintiffs now submit this brief in support of their Motion for final judicial approval of the Class Action Settlement Agreement and Release ("Settlement Agreement") entered into between the parties in this action.[2] The settlement creates a *non-reversionary* $3,700,000 settlement fund, meaning that all of the money will be paid out and none will revert to Jani-King. After reductions for attorney's fees, expenses, and service awards, a net fund of $2,419,909.30[3] will be distributed to the 104 Settlement Class Members who have returned settlement claim forms, representing 46% of the overall settlement fund claimed to date.[4] The average individual

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[1] Plaintiffs' counsel have litigated several similar cases on behalf of janitorial franchisees claiming misclassification, including four other cases against Jani-King. See, e.g., DeGiovanni v. Jani-King International, C.A. No. 07-10066-MLW, Docket No. 278 (D. Mass. Aug. 8, 2014) (granting final approval of a class action settlement on behalf of janitorial franchisees for Massachusetts wage law claims); Fuller v. Jani-King International et al., C.A. No. 2015-438-M-LDA, Docket No. 24 (D. R.I. Aug. 17, 2017) (same); Mujo. v. Jani-King International Inc., Civ. A. No. 3:16-cv-01990 (D. Conn.); Juarez v. Jani-King International Inc., et al., Civ. A. No. 3:09-cv-03495 (N.D. Cal.); see also Sola v. CleanNet USA et al., C.A. No. 12-10580-JLT (D. Mass. Nov. 25, 2013) (same); Depianti et al. v. Jan-Pro Franchising International, Inc., 465 Mass. 607, 990 N.E.2d 1054 (2013); Awuah v. Coverall North America, 460 Mass. 484 (2011) (requiring janitorial franchisees who were misclassified as independent contractors to pay franchise fees and liability insurance deductions violates the Massachusetts Wage Act), 707 F. Supp. 2d 80 (D. Mass. 2010) (janitorial franchisees were misclassified as independent contractors).

[2] The Settlement Agreement was filed with Plaintiffs' Motion for Preliminary Approval and can be found at Docket No. 155-2. Plaintiffs are reattaching it here as Exhibit A to the Liss-Riordan Declaration.

[3] Plaintiffs already submitted their fee petition, in which they have requested $1,233,333.33 in attorneys' fees, $30,000.00 in service awards to named plaintiffs, and a $16,757.37 cost reimbursement. See Dkt. No. 158.

[4] As set forth further below, Plaintiffs counsel has undertaken extensive efforts to locate class members and encourage them to submit claims. Pursuant to the terms of the Settlement Agreement, the Parties will continue to accept late claims until 90 days before the final distribution to facilitate payments to as many Class members as possible. *See* Ex. A to the Liss-Riordan Decl. (Settlement Agreement) ¶ 37.

payout is anticipated to be approximately $10,872.00 and the median payout is anticipated to be approximately $7,858.00.

In addition, Defendants have agreed to make certain programmatic changes to their business model that include revising their franchise agreement to provide franchisees with additional rights, including allowing them to contract directly with customers, secure new business on their own without having to pay fees to Jani-King, and eliminating post-termination non-competition restrictions. Additionally, Jani-King has offered to buy out small franchisees and help them find opportunities to transition into employment with larger franchisees.

The substantial monetary and non-monetary relief presented by this settlement represents an excellent outcome for the settlement class, as reflected by the complete lack of objections from any Class member. Thus, as detailed further herein, the settlement is fair, reasonable and adequate as required by Fed. R. Civ. P. 23(e)(2), and it warrants this Court's approval.

II. BACKGROUND FACTS

The Parties have negotiated a settlement under which Defendants will pay a total of $3,700,000.00 in two installments of $1,850,000.00 to settle the claims alleged in this case. See Ex. A to the Liss-Riordan Decl. (Settlement Agreement) at ¶ 18. Defendants will make the first payment thirty days after the Court grants final approval of the settlement and the second payment no later than September 1, 2020, assuming the Effective Date of settlement has then passed. Id. Class members who have submitted claim forms and have executed updated franchise agreements by the time of the first payment (or who have instead opted to accept Jani-King's buy-out offer) will receive their first installment payment from the settlement shortly after the first installment payment is made by Defendants, most likely in fall 2019. A second payment will be made as soon as practicable after Defendants make their second and final

payment in 2020 to all class members who have submitted claims by that date. Thus, class members who submit late claims may still receive their full share of the settlement, provided they return a claim form and sign their updated franchise agreements (or accept a buy-out offer) before 90 days prior to the final distribution in fall 2020. See Ex. A to the Liss-Riordan Decl. (Settlement Agreement) at ⁋ 37.

Payments will be calculated by taking the Qualifying Fees[5] paid by a Claimant during the class period and dividing by the total Qualifying Fees paid by all Claimants during the Class Period. See Ex. A to the Liss-Riordan Decl. (Settlement Agreement) at ⁋ 33, 11. The settlement is non-reversionary, meaning that the total proceeds of the settlement (minus incentive payments to the lead plaintiffs and attorneys' fees and costs) will be paid out to class members who submit claims, and none of the funds will revert back to the Defendants.

The Settlement Agreement provides for $30,000.00 in incentive payments to be paid in equal shares ($10,000.00 each) to Named Plaintiffs Darryl Williams, Howard Brooks and Pamela Myers for their extensive efforts to initiate and pursue this litigation on behalf of the Class over many years.[6] As set forth separately in Plaintiffs' Unopposed Motion for Incentive, Fee and Expense Awards (Dkt. 158), all three Named Plaintiffs initiated and pursued this lawsuit on behalf of similarly-situated franchisees, and it was because of their initiative and risk that this

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[5] The Agreement defines "Qualifying Fees" as of the total amount of initial franchise fees, fees for additional business, and insurance fees paid by a Claimant during the Class Period. See Ex. A to the Liss-Riordan Decl. (Settlement Agreement) at ⁋ 11. For large franchisees whose operations gross more than $3,500.00 per month, the Parties have agreed to cap the amount of fees at the amount these Class members would have paid on gross revenue of $3,500.00 per month. Id. The Parties agree that $3,500.00 per month is a reasonable estimate of the maximum amount of revenue a Class member would generate based on his or her own labor, rather than the labor of the class member's employees.

[6] Ms. Myers passed away in the midst of the litigation but was instrumental in bringing the case and in pursuing it for years prior to her death. Her son, Mark Myers, has remained actively involved and supportive of the litigation since her death.

settlement was obtained. Named Plaintiffs' involvement, spanning almost ten years, has included: producing documents to describe and confirm their claims, responding to written discovery requests, appearing for deposition, assisting with the review of case documents, speaking with putative class members and encouraging their cooperation and assistance in the prosecution of this case, reviewing pleadings for accuracy, providing declarations in support of motions, assisting in preparations for trial and for settlement negotiations, and providing substantial assistance with Class Counsel's analysis of materials provided in discovery. In these various ways, all three Named Plaintiffs served an important role and were necessary to the result achieved for the Class. The Settlement Agreement also provides for a one-third share for attorneys' fees, which has been regularly approved in cases of this nature, is fair and reasonable for the reasons identified in Plaintiffs' prior filing, and should be approved as part of this settlement. See infra, Part III(A)(5); see also Dkt. 158 (Plaintiffs' Unopposed Motion for Incentive, Fee and Expense Awards).

As additional consideration for this Settlement, Jani-King will make certain changes to its business practices aimed at reducing its overall control of franchisees. To this end, franchisees who participate in the settlement and wish to continue in the Jani-King franchise system will sign updated franchise agreements that, for instance, eliminate the post-termination non-compete provision and shorten the non-solicitation provision with respect to Jani-King accounts to twelve months. Additionally, Jani-King will allow franchisees to sign new business that they generate (subject to Jani-King's review of the price to make sure it is not too low) without paying finder's fees, and permit franchisees to own the contracts for any accounts they generate themselves (subject to Jani-King's right of first refusal to purchase the account if they intend to transfer it). Franchisees with monthly revenues of $5,000.00 per month or less will have the option to have

Jani-King purchase their existing servicing contracts and terminate their franchise at a rate of two times the gross monthly revenue of their existing accounts. This buy-out payment, if accepted, will be provided in addition to the franchisees' damage payments under the settlement and could be worth as much as $10,000.00 in additional consideration. To facilitate these changes, Jani-King will ask all of its active franchisees in connection with the settlement if they are interested in hiring franchisees who accept the buyout and will also specifically inform the franchisees who pick up the bought-out contracts of the identity of the prior franchisees who serviced the contracts, and *vice versa*, to give them an opportunity to hire the prior franchisees to service those contracts if they wish. See Ex. A to the Liss-Riordan Decl. (Settlement Agreement) at ¶¶ 20-21.

III. ARGUMENT

A. The Factors Set Forth in Rule 23(e)(2) Overwhelmingly Favor Granting Final Approval of the Proposed Settlement.

1. Class Counsel and the Class Representatives have adequately represented the Class under Rule 23(e)(2)(A).

The first factor considered under Rule 23(e)(2) -- whether Class Counsel and the Class Representatives have adequately represented the class -- has clearly been established here. Plaintiffs have now litigated this case for *ten years* and have successfully obtained an order certifying the class (which they successfully defended on appeal in the Third Circuit). Plaintiffs doggedly pursued class discovery and vigorously opposed Jani-King's Motion for Summary Judgment, which helped bring Jani-King to the table to negotiate this settlement after many years of hard-fought litigation. The tenacity of the named plaintiffs and Class Counsel in pursuing these claims for so long is unquestionable.

Moreover, Class Counsel have a particular specialty in litigating misclassification and resulting wage claims against cleaning franchisors like Jani-King. Shannon Liss-Riordan of Lichten & Liss-Riordan P.C. has achieved a number of important precedents in cases against other cleaning franchise companies. For example, she obtained a landmark decision from the Massachusetts Supreme Judicial Court declaring that paying for a job is illegal under Massachusetts law, thus allowing franchisees to recover franchise fees and insurance they paid to a cleaning franchisor. See Awuah v. Coverall North America, Inc., 460 Mass. 484 (2011). In another case, the Massachusetts Supreme Judicial Court held that the use of a multi-tier system (and thus a lack of a direct contract between a cleaning franchisee and the defendant franchisor) does not immunize the defendant franchisor for liability for misclassification. See Depianti v. Jan-Pro Franchising International, Inc., 465 Mass. 607 (2013).

In addition, Liss-Riordan has litigated against Jani-King in several other jurisdictions, putting her in an ideal position to assess the risks of the claims in this case and the relative benefits of settlement. In the case against Jani-King in Massachusetts, Lichten & Liss-Riordan obtained class certification and summary judgment. See DeGiovanni v. Jani-King Int'l, Inc., 262 F.R.D. 71, 84 (D. Mass. 2009); DeGiovanni, C.A. No. 07-10066 (D. Mass. Aug. 8, 2014) (summary judgment awarded to plaintiff class). In the case against Jani-King in Connecticut, Lichten & Liss-Riordan obtained class certification. See Mujo v. Jani-King International, Inc., 2019 WL 145524, at *1 (D. Conn. Jan. 9, 2019). And in the case against Jani-King in California, Liss-Riordan recently obtained a remand from the Ninth Circuit regarding summary judgment entered on behalf of Jani-King. See Juarez v. Jani-King of California, Inc., 728 F. App'x 755 (9th Cir. 2018). Liss-Riordan has successfully resolved cases against Jani-King in Massachusetts

and Rhode Island. Thus, the class has received the benefit of having the preeminent expert in litigating the issue of misclassification of cleaning franchisees as their attorney in this case.

2. The proposed settlement was clearly negotiated at arm's length under Rule 23(e)(2)(B) with the assistance of an experienced wage-and-hour mediator.

Where a class settlement has been reached after meaningful discovery, during arm's-length negotiation conducted by experienced counsel, the resulting settlement is entitled to a presumption of fairness. Turner v. NFL, 307 F.R.D. 351, 387 (E.D. Pa. 2015); In re Warfarin Sodium Antitrust Litig., 391 F.3d 516, 535 (3d Cir. 2004); see also Galt v. Eagleville Hosp., 310 F. Supp. 3d 483, 493 (E.D. Pa. 2018) ("In this Circuit, a settlement is entitled to an initial presumption of fairness where it resulted from arm's-length negotiations between experienced counsel, there was sufficient discovery, and there were no objectors and only a small percentage of opt-outs.").

Here, the Settlement proposed in this case is the result of arm's-length negotiations by experienced counsel that included substantial pre-filing research and analysis of Plaintiffs' claims and data regarding their potential damages, which included a review of Microsoft Excel spreadsheets that contained the total payments made by Settlement Class Members for franchise fees, insurance, and other fees as well at their total gross pay. Indeed, the Parties were on the cusp of trial and had just briefed summary judgment before attending the mediation, allowing them to engage in a detailed analysis of the relevant facts and applicable law during their negotiations. Moreover, Class Counsel Lichten & Liss-Riordan P.C. has successfully litigated against Jani-King (in Massachusetts and Rhode Island) and against various other cleaning franchise companies such as Coverall, Jan-Pro, and Vanguard Cleaning Systems, such that counsel had extensive knowledge of both the facts and legal theories at issue in the case.

Such due diligence in the negotiation process is necessarily indicative of a fair result, particularly where – as here – the Parties reached their agreement after extensive arm's-length bargaining aided by experienced mediator, D. Charles "Chuck" Stohler, Esq. The Parties negotiated late into the night on February 7, 2019, with the assistance of Mr. Stohler, and they continued to work diligently to finalize the terms of the agreement, including the terms of the new franchise agreement, until they filed for preliminary approval on April 9, 2019. See Dkt. No. 155 (Motion for Preliminary Approval). See In re Linerboard Antitrust Litig., 292 F. Supp. 2d 631, 640 (E.D. Pa. 2003) ("A presumption of correctness is said to attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery"); Lake, 156 F.R.D. at 628 (emphasizing the need to give "due regard to the recommendations of the experienced counsel in this case, who have negotiated this settlement at arms' length and in good faith").

3. The relief provided by the settlement is fair and adequate under Rule 23(e)(2)(C)(i) in light of the risks of proceeding to trial.

Courts routinely recognize that "the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each gave up something they might have won had they proceeded with litigation." See, e.g., Brody v. Spang, 1991 U.S. Dist. LEXIS 2250, at *7 (E.D. Pa. Feb. 22, 1991). Here, the proposed Settlement is fair and adequate because it will provide many Class members with payments worth thousands of dollars plus additional monetary and non-monetary compensation.

The monetary relief, standing on its own, is substantial. Based on a thorough review of Defendants' business records, Plaintiffs calculated an entitlement to maximum damages of approximately $12,200,000.00 for purposes of mediation. Defendants, using the same data, reached a maximum damages calculation of $6,200,000.00. Thus, the Parties' negotiated

settlement provides a recovery between 30% and 60% of Plaintiffs' maximum damage calculation, which is plainly reasonable in light of the risks of further litigation and trial. See Rougvie v. Ascena Retail Grp., Inc., 2016 U.S. Dist. LEXIS 99235, at *62 (E.D. Pa. July 29, 2016) ($27.8 million settlement adequate despite maximum estimated potential damages of $775 million in light of risks of litigation); Chemi v. Champion Mortg., 2009 U.S. Dist. LEXIS 44860, at *15 (D.N.J. May 26, 2009); In re Cendant Corp. Sec. Litig., 109 F. Supp. 2d 225, 263 (D. N.J. 2000) (citing cases describing a range of recoveries from 1.6% to 14% for securities class action settlements). This sizable recovery does not even take into account the added value of Jani-King's revised franchise agreement, which will now allow Plaintiffs to contract directly with customers (whereas Jani-King previously required that all contracts with customers be between the customer and Jani-King[7]) and eliminate Jani-King's post-termination non-competition provision. See Dkt. 155-2, Ex. D (Revised Franchise Agreement) at ¶ 5.2.3 (this provision now applies "during the term of this Agreement" as opposed to extending for two years afterwards). Additionally, smaller franchisees will receive the option of selling their franchise back to Jani-King for twice their monthly gross revenue, which could total just under $10,000.00 in additional consideration for some franchisees who wish to end their relationship with Jani-King. See Ex. A to the Liss-Riordan Decl. (Settlement Agreement) at ¶ 21.

This substantial recovery is particularly impressive given the serious risks that Plaintiffs faced in going forward. Plaintiffs' primary contention is that Defendants' alleged class-wide policies and procedures led to their misclassification as independent contractors, which allowed Defendants to assess improper fees and charges such as franchise fees and insurance payments.

[7] See Dkt. 155-2, Ex. D (Revised Franchise Agreement) at ¶ 4.3.1 ("Franchisor will assign to Franchisee the cleaning and maintenance contracts that Franchisee accepts, subject to the terms of this Agreement and a separate assignment agreement").

Defendants filed a Summary Judgment Motion, claiming entitlement to judgment as a matter of law because: (1) Plaintiffs were properly classified as contractors under Pennsylvania law; and (2) even if they were misclassified, Plaintiffs could not recover under the WPCL as a matter of law because there was allegedly no agreement to pay Plaintiffs wages and the contracts between the parties authorized all deductions taken by Jani-King. See Dkt. 137. Plaintiffs vigorously opposed Defendants' Summary Judgment Motion, but nevertheless faced the threat that Jani-King might prevail as a matter of law on the misclassification issue or, even if Jani-King could not prove Plaintiffs were properly classified, that Plaintiffs would be found to have no damages under the WPCL. Moreover, even if Plaintiffs defeated Jani-King's Motion for Summary Judgment on both points, they faced the prospect of a risky jury trial under a fact-intensive misclassification inquiry. Class counsel won a ruling that Jani-King franchisees were Jani-King's employees in Massachusetts under a so-called "ABC" test for employee status. See DeGiovanni v. Jani-King Int'l, Inc., Civ. A. No. 07-10066-MLW (D. Mass. June 6, 2012). However, under Pennsylvania's multi-factor test, which focuses on the right of control, Plaintiffs faced a more difficult test and a less certain path to victory. Finally, if Plaintiffs prevailed at trial, they fully expected a lengthy and time-consuming appeal since Jani-King had already appealed this Court's class certification ruling to the Third Circuit. Williams, 837 F.3d 314. Plaintiffs expected that, if a verdict was entered in their favor, Jani-King would vigorously appeal that ruling, resulting in greater delay and uncertainty. In light of these substantial risks (and without conceding that Jani-King was likely to prevail on any of its arguments), Plaintiffs recognized the risk of continuing to pursue this case to trial and negotiated a settlement that provides an excellent result in light of these risks.

4. The notice process and the method for distributing relief to the Class members are both effective under Rule 23(e)(2)(C)(ii).

The notice process, which this Court previously approved, has proven to be highly effective and successful. Upon receiving preliminary approval of the settlement from the Court on May 10, 2019, see Dkt. 157, Class Counsel promptly turned to administering the notice and claim process contemplated in the Settlement Agreement. On May 20, 2019, each individual covered by the settlement was mailed a court-approved notice and claim form, with an explanation of the settlement terms, in the form approved by the Court. See Liss-Riordan Decl. at ⁋ 4; Dkt. 155-2 at Ex. A (Notice & Claim Form). The notice forms also described the lawsuit, described the total settlement value and the anticipated payments for attorney's fees and service awards, explained the steps the Settlement Class Members should take to exclude themselves from or object to the settlement, explained that Settlement Class Members must return a claim form in order to recover a settlement payment, and explained that all Settlement Class Members other than those who exclude themselves are bound by the applicable release of claims. See Dkt. 155-2 at Ex. A (Notice and Claim Form). Likewise, the notice provided a concise explanation of the buy-back option for current franchisees whose gross monthly billing was less than $5,000.00 per month and an explanation of the new franchise agreement, which class members were given time to review, as required by federal law. See id. The deadline to claim or submit a request for exclusion/objection was July 19, 2019. See id.

The notice and response forms were mailed to the settlement Class members ten days after the preliminary approval order was entered, on May 20, 2019. See Liss-Riordan Decl. at ⁋ 4. When a notice was returned as undeliverable, Class Counsel undertook diligent efforts to locate an updated mailing address for the settlement class member. Id. at ⁋ 5. Because of the lengthy timeframe covered by this settlement (dating back to March 2006, three years before the

filing of the original Complaint), some of the contact information provided by Jani-King was outdated. However, Class Counsel followed all protocols to locate updated information. Ultimately, Plaintiffs were able to locate current addresses for all but 23 Settlement Class Members. Id. at ¶ 5. Thus, the settlement notice reached 92% of the class, which was a highly successful "reach rate" in light of the age of some of the contact information for individuals who last serviced Jani-King accounts as many as thirteen years ago. Id.

Class Counsel mailed a reminder notice to all Class members who had not yet responded by June 27, 2019. Liss-Riordan Decl. at ¶ 6. During the notice period, Class Counsel also e-mailed several reminder messages to all Class members for whom Jani-King had e-mail addresses. The reminder notices re-enclosed the claim form and directed class members to the settlement website, https://www.janikinglawsuitpa.com/, which includes copies of the full settlement notice, various court documents (including the Complaint, the Motion for Preliminary Approval, and the Unopposed Motion for Incentive, Fee and Expense Awards), and a summary of Class members' options.

The results of the notice process were extremely successful, particularly in light of the fact that some Class members have had no contact with Jani-King in over a decade. Specifically, as of the date of this filing: no settlement Class members have objected to the proposed settlement; only five (1.7%) settlement Class members have excluded themselves from the settlement; and 104 (36%) have submitted claims that represent 46.6% of the settlement fund. Liss-Riordan Decl. at ¶ 8.

Importantly, the settlement is structured so that Jani-King will make the settlement payment in two installments, resulting in two separate distributions to Class members: one later this year (barring unforeseen delays) and one in September 2020. This means that even after

initial settlement checks are issued to the current claimants, those who have not yet responded will still have the opportunity to file a late claim, which the Parties will endeavor to honor and pay out of the second installment of settlement funds. In Class Counsel's experience, the distribution of settlement checks often creates "chatter" among Settlement Class Members and causes some class members who did not initially respond to submit claims. Some individuals may have ignored or thrown away the notice. Others might have decided not to join based on the mistaken impression that the class action payout would only amount to a marginal sum of a few dollars per class member, based on experiences with large consumer or securities class actions. Where, as here, each settlement class member stands to recover hundreds or *thousands* of dollars, the Parties anticipate that other franchisees may come forward to submit claims following the initial distribution and will endeavor to honor all late claims consistent with the terms of the Settlement Agreement.

5. The requested attorney's fees are reasonable under Rule 23(e)(2)(C)(iii).

As set forth at great length in Plaintiffs' Unopposed Motion for Incentive, Fee and Expense Awards, the attorney's fees requested in this case are extremely reasonable. Plaintiffs have litigated this case for *ten years* on a completely contingent basis, receiving no compensation or reimbursement for their fees and time spent on the litigation. In light of the excellent results obtained (including winning class certification, defending it on appeal to the Third Circuit, and garnering this settlement), the requested fee of $1,233,333.33 is eminently reasonable. The fee award represents 33% of the common fund, which is in line with fee awards approved in many other class action settlements in the Third Circuit.[8] Furthermore, a lodestar

[8] See, e.g., In re Rite Aid Corp. Sec. Litig, 396 F.3d at 306-307 (a review of 289 settlements demonstrates a median value that "turns out to be one-third"); Rouse v. Comcast Corp., 2015 U.S. Dist. LEXIS 49347, at *29 (E.D. Pa. Apr. 14, 2015) ("In the Third Circuit,

cross-check further supports the requested fee award. As of the date of the filing of the Application for fees, billed at their typical and customary rates, Plaintiffs' attorneys have accumulated a total lodestar of $1,131,004.50. Thus, the requested $1,233,333.33 fee, if approved, would result in a multiplier of approximately 1.09, which is exceedingly modest. See Dkt. 158 at pp. 5-6. Furthermore, no class member has objected to the amount of the proposed attorney's fees since the Motion was filed and posted publicly on the settlement website.

6. The settlement treats Class members equitably under Rule 23(e)(2)(D).

The settlement provides for a substantial cash recovery to all members of the settlement class, and does so through a claims process that is fair and reasonable and treats all class members equitably. Each claimant will receive a cash payment calculated based on the total payments made by each settlement Class member for franchise fees, finders' fees (i.e. fees paid for additional new cleaning accounts), and insurance payments during the class period.[9] These are the same payments Plaintiffs used to calculate their damages for purposes of the Parties' mediation, the same payments that the Massachusetts SJC expressly held to be recoverable in Awuah, 460 Mass. 484, and the same payments that formed the basis of the settlements in the

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courts have approved as reasonable attorney's fee awards ranging from approximately 19% to 45% of the common fund"); Carroll, 2011 U.S. Dist. LEXIS 121185 at *25 ("district courts in this circuit have typically awarded attorney's fees of 30% to 35% of the recovery"); Moore, 2011 U.S. Dist. LEXIS 6929 at *14 ("our Court of Appeals has approved awards of counsel fees that range from 19% to 45%"); In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 822 (3d Cir. 1995) (class action fee awards have ranged from nineteen percent to forty-five percent of the settlement fund); Mehling v. New York Life Ins. Co., 248 F.R.D. 455, 464 (E.D. Pa. 2008) (citing cases approving percentage recoveries ranging from 25% to 35%).

[9] For franchisees with large franchises that gross more than $3,500.00 per month, the Parties agreed to cap the amount of fees at the amount these class members would have paid on franchise gross revenue of $3,500.00 per month. See Ex. A to the Liss-Riordan Decl. (Settlement Agreement) at ⁋ 11. The Parties agree that $3,500 per month is a reasonable estimate of the maximum amount of revenue that a Class member would generate based on his or her own labor, rather than the labor of the Class member's employees.

Massachusetts and Rhode Island Jani-King cases. See DeGiovanni, C.A. No. 07-10066 (D. Mass.); Fuller v. Jani-King, C.A. No. 1:15-cv-00438 (D. R.I.). Likewise, the court-approved settlements in DeGiovanni and Fuller used the same distribution formula to allocate settlement funds among class members.[10]

The settlement treats all similarly-situated settlement Class members fairly and equally, as it ensures that individuals who have had a longer relationship with Jani-King -- and paid more in franchise fees, finders' fees and insurance -- receive greater compensation than those who had a short relationship. Furthermore, by capping the amount of fees paid at what would be paid on franchise gross revenue of $3,500.00 per month, the Parties avoided providing an unjust windfall to franchisees who had numerous employees working under them and focused only on the fees reasonably attributable to the individual franchisee's labor. See supra, n. 5.

B. Continuing Certification of the Settlement Class Is Appropriate Under Rule 23.

In granting preliminary approval of the settlement, this Court found that Rule 23(a)'s requirements of numerosity, commonality, typicality, and adequate protection by the named representatives were satisfied. Plaintiffs now move for final certification of the Settlement Class pursuant to the requirements of Fed. R. Civ. P. 23(a) and (b). The Settlement Agreement defines the Settlement Class as:

> any and all persons who, from March 20, 2006, through the date the Court grants preliminary approval of the Settlement, signed franchise agreements with Jani-King of Philadelphia, Inc., Jani-King Inc., or Jani-King International, Inc., and performed cleaning

[10] Plaintiffs' plan to allocate the Settlement Fund among the Class members based upon the fees they actually paid to Defendants is a standard allocation methodology in wage-and-hour cases. See, e.g., Leap v. Yoshida, 2015 U.S. Dist. LEXIS 17146, *32-33 (E.D. Pa. Feb. 12, 2015); Haught v. Summit Res., LLC, 2016 U.S. Dist. LEXIS 45054, *9 (n.1) (M.D. Pa. Apr. 4, 2016); Lenahan v. Sears, Roebuck & Co., 2006 U.S. Dist. LEXIS 60307, *26 (D.N.J. July 10, 2006).

> services in Pennsylvania pursuant to such agreement, excluding all persons who timely opt out of the Settlement Class.

See Ex. A to the Liss-Riordan Decl. (Settlement Agreement) at ¶ 15.

To certify a class, courts follow a two-step process. In re Herley Indus. Inc. Sec. Litig., 2009 WL 3169888, *11 (E.D. Pa. 2009). First, the Court must find that the proposed class satisfies the four requirements of Rule 23(a), namely: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Id. Second, the Court must determine whether the case falls within one of the three alternative categories identified in Rule 23(b), namely: "that the questions of law or fact common to the class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b); In re Herley, 2009 WL 3169888 at *11. These dual requirements are referred to as "predominance" and "superiority," respectively. See, e.g., In re Constar Int'l Inc. Sec. Litig., 585 F.3d 774, 780 (3d Cir. 2009).

Here, this Court has already certified the Class, and the Third Circuit has affirmed that decision on appeal. See Myers, 2015 WL 1055700, at *1, aff'd sub nom. Williams, 837 F.3d 314. Because the proposed settlement class is coextensive with the class this Court has already certified, it is particularly clear that continued class certification for settlement purposes is appropriate. Nevertheless, Plaintiffs will briefly address the prerequisites for class certification under Rule 23.

1. **The Settlement Class is sufficiently numerous.**

The numerosity requirement demands that the proposed class be so large that joining all

of its members would be "impracticable." Fed. R. Civ. P. 23(a). It is well settled that joinder of 40 or more members is impracticable. See Stewart v. Abraham, 275 F.3d 220, 226-227 (3d Cir. 2001) ("No minimum number of plaintiffs is required to maintain a suit as a class action, but generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met"); In re Ravisent Techs., Inc. Sec. Litig., No. CIV.A.00-CV-1014, 2005 WL 906361, at *3 (E.D. Pa. Apr. 18, 2005) (Surrick, J.) ("[n]o minimum number of plaintiffs is required to maintain a suit as a class action, but generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met."); see also Altnor v. Preferred Freezer Services, Inc., 197 F. Supp. 3d 746, 756 (E.D. Pa. July 18, 2016) ("Because it would be impracticable to join eighty-one individual plaintiffs in a single suit, the numerosity requirement is satisfied"). Here, the settlement class is comprised of 288 franchisees. Thus, the numerosity requirement is clearly met.

2. The commonality requirement is satisfied.

Second, there must be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Rule 23(a)(2) is satisfied where "'the named plaintiffs share at least one question of fact or law with the grievances of the prospective class.'" Orloff v. Syndicated Office Sys., Inc., No. CIV.A.00-CV-5355, 2004 WL 870691, at *3 (E.D. Pa. Apr. 22, 2004) (Surrick, J.) (quoting Stewart, 275 F.3d at 227). Here, the commonality requirement is satisfied because there are questions of fact and law that are common to the class, including questions of whether and to what extent Jani-King maintained the right to control or direct franchisees. This question is common and in fact predominates with respect to all Settlement Class Members. Accordingly, commonality is clearly established.

3. The typicality requirement is satisfied.

Typicality requires that the named plaintiffs' legal theory coincide with any legal theory advanced on behalf of the class. Cohen v. Chicago Title Ins. Co., 242 F.R.D. 295, 299 (E.D. Pa. 2007). "The central inquiry in a typicality evaluation is whether 'the named plaintiff's individual circumstances are markedly different or... the legal theory upon which the claims are based differs from that upon which the claims of other class members will perforce be based.'" Orloff, 2004 WL 870691, at *4 (quoting Eisenberg v. Gagnon, 766 F.2d 770, 786 (3d Cir. 1985)). Here, the typicality requirement is satisfied because Plaintiffs' claims are coextensive with those of the Settlement Class as they arise out of the same policy of allegedly misclassifying Jani-King franchisees. Also, Plaintiffs possess the same interest and suffered the same injury as the Settlement Class. Thus, as this Court has already determined[11], the typicality requirement is met.

4. The adequacy requirement is satisfied.

Fourth, the Court must determine whether the Plaintiffs and Class Counsel "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The adequacy inquiry "serves to uncover conflicts of interest between named parties and the class they seek to represent." Beck v. Maximus, Inc., 457 F.3d 291, 296 (3d Cir. 2006). "[T]he linchpin of the adequacy requirement is the alignment of interests and incentives between the representative plaintiffs and the rest of the class." Rivet v. Office Depot, Inc., 207 F. Supp. 3d 417, 430 (D.N.J. 2016) (quoting In re Cmty. Bank of N. Virginia Mortg. Lending Practices Litig., 795 F.3d 380, 393 (3d Cir. 2015)). To meet the adequacy of representation requirement, a plaintiff must show: "[1] that the putative named plaintiff has the ability and the incentive to represent the claims of

[11] See Myers v. Jani-King of Philadelphia, Inc., No. CIV.A. 09-1738, 2015 WL 1055700, at *6 (E.D. Pa. Mar. 11, 2015) ("Plaintiffs' WPCL claims arise from the same conduct by Jani–King that gives rise to the claims of the proposed class members, and is based on the same legal theory.").

the class vigorously, [2] that he or she has obtained adequate counsel, and [3] that there is no conflict between the individual's claims and those asserted on behalf of the class." Fry v. Hayt, Hayt & Landau, 198 F.R.D. 461, 469 (E.D. Pa. 2000).

Plaintiffs, all former Jani-King franchisees with relatively small operations, negotiated a settlement that provides all former franchisees with the ability to recover sizeable economic damages based on the franchise fees, finders' fees and insurance payments they made as Jani-King franchisees. At the same time, Plaintiffs negotiated specific additional benefits for current franchisees that include improved franchise agreement terms and the ability for smaller franchisees to sell their business back to Jani-King and pursue employment opportunities with larger franchisees. Because the settlement they negotiated provides benefits for former and current franchisees, and for small and large franchisees, it is apparent that Plaintiffs have fairly and adequately protected the interests of the Class and that there is no conflict of interest between Plaintiffs and the Settlement Class Members. Plaintiffs and Class Counsel have and will continue to aggressively and competently assert the interests of the Settlement Class Members. Because Plaintiffs' interests are not antagonistic to those of any other Settlement Class Members and Class Counsel are qualified to conduct the litigation, see infra, Part III(A)(1), the adequacy requirement is satisfied.

5. The predominance and superiority requirements are satisfied.

Under Fed. R. Civ. P. 23(b)(3), class certification is appropriate if "the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). The predominance element under Rule 23(b)(3) does not require an absence of individual issues, but

merely that common issues of law and fact predominate over any individual issues. See La Fata v. Raytheon Co., 207 F.R.D. 35, 42 (E.D. Pa. 2002) ("predominance of common questions does not require unanimity of common questions") (citation omitted). Here, the Settlement Class satisfies the predominance and superiority requirements. Jani-King's level of control over Plaintiffs predominates over any subsidiary issues. Myers, 2015 WL 1055700, at *14, aff'd sub nom. Williams, 837 F.3d 314 ("We are satisfied that Plaintiffs have met the predominance requirement. Plaintiffs have pointed to specific provisions in the Franchise Agreement, the Policies Manual, and the Training Manual (collectively "Jani–King Documents") to show that Jani–King has the ability to control the manner in which franchisees perform their day-to-day tasks."). In addition, allowing Settlement Class Members the opportunity to participate in this Settlement that will provide them with an immediate and substantial monetary benefit that is highly superior to litigating many duplicative, individual proceedings. It is also superior to the alternative of leaving these important labor rights unaddressed due to the difficulty of finding legal representation and filing claims on an individual basis.

IV. CONCLUSION

For the reasons discussed above, Plaintiffs respectfully ask this Court to grant this unopposed Motion and enter their proposed Order certifying the Settlement Class for purposes of effectuating the settlement and granting final approval to the Parties' proposed settlement.

Respectfully submitted,

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/s/ Shannon Liss-Riordan
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