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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Vernon Mast, et al.,

10 Plaintiffs,

11 v.

12 Go 2 Transportation LLC, et al.,

13 Defendants.
14

No. CV-16-01022-PHX-ROS

ORDER

15 The parties seek preliminary approval of a proposed settlement agreement. (Doc.
16 180). The Court will require the parties file an explanation regarding one provision of their
17 agreement.

18 The proposed settlement agreement establishes a fund for distribution to class
19 members. If a class member cannot be located, or if a settlement check is not cashed, there
20 may be unclaimed funds. The agreement specifies any unclaimed funds “shall be sent to
21 the State of Arizona Department of Revenue, Unclaimed Property Unit.” (Doc. 180-1 at
22 11). The parties will be required to explain whether this provision is appropriate.

23 In their explanation, the parties should address which law would apply to the
24 distribution of unclaimed funds. *Compare* Ethan D. Millar & John L. Coalson, Jr., *The Pot*
25 *of Gold at the End of the Class Action Lawsuit: Can States Claim It As Unclaimed*
26 *Property?*, 70 U. Pitt. L. Rev. 511 (2009) (concluding “in a federal court class action,
27 federal law rather than state law should apply to the disposition of unclaimed settlement
28 proceeds under Federal Rule of Civil Procedure 23, the Erie doctrine, and other

1 authorities”) *with All Plaintiffs v. All Defendants*, 645 F.3d 329, 337 (5th Cir. 2011)
2 (holding Texas law applied to unclaimed funds in class action context). If the parties
3 believe Arizona law would apply, they must explain why that would be true for a class
4 member whose last known address is not in Arizona. Moreover, if the parties believe
5 Arizona law would apply, they should address whether sending unclaimed funds to Arizona
6 is the best, or at least the most reasonable, use of those funds. *Cf. Six Mexican Workers v.*
7 *Arizona Citrus Growers*, 904 F.2d 1301, 1307 (9th Cir. 1990) (discussing permissible uses
8 of unclaimed funds in class action context).

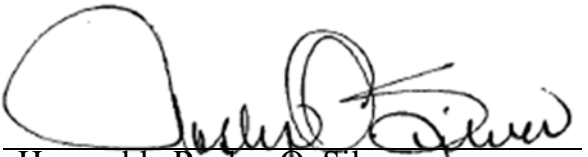
9 Finally, should the Court preliminarily approve the settlement, class counsel will be
10 required to file the motion for attorneys’ fees before the deadline for class members to
11 submit objections. *See In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 993 (9th
12 Cir. 2010) (requiring filing of motion for attorneys’ fees before deadline for objections).

13 Accordingly,

14 **IT IS ORDERED** no later than **February 1, 2019**, the parties shall file a
15 supplement addressing the proper disposition of unclaimed funds.

16 Dated this 25th day of January, 2019.

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Honorable Roslyn O. Silver
Senior United States District Judge