IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re: CHARMING CHARLIE HOLDINGS INC., et al.,[1] Debtors.	Chapter 11 Bankr. Case No. 19-11534-MFW
LAUREN WILRICH on behalf of herself and all others similarly situated, Plaintiff, v. CHARMING CHARLIE HOLDINGS, INC., CHARMING CHARLIE INTERNATIONAL LLC, CHARMING CHARLIE LLC, CHARMING CHARLIE MANHATTAN LLC, CHARMING CHARLIE USA, INC., POSEIDON PARTNERS CMS, INC., AND CHARMING CHARLIE CANADA LLC, Defendants.	Adv. Pro. No. 19-50276 (MFW)

MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION PURSUANT TO SECTION 105 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 9019 AND 7023 FOR ENTRY OF AN ORDER (I)(A) CERTIFYING A CLASS FOR SETTLEMENT PURPOSES ONLY, (B) APPOINTING PLAINTIFF AS CLASS REPRESENTATIVE AND PLAINTIFF'S COUNSEL AS CLASS COUNSEL, (C) APPROVING THE SETTLEMENT AGREEMENT ON A PRELIMINARY BASIS, (D) APPROVING CLASS NOTICE, (E) SCHEDULING THE FAIRNESS HEARING, AND (F) GRANTING RELATED RELIEF AND (II)(A) APPROVING THE SETTLEMENT AGREEMENT ON A FINAL BASIS, (B) APPROVING CLASS COUNSEL'S FEES AND EXPENSES, AND (C) GRANTING RELATED RELIEF

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Charming Charlie Canada LLC (0693); Charming Charlie Holdings Inc. (6139); Charming Charlie International LLC (5887); Charming Charlie LLC (0263); Charming Charlie Manhattan LLC (7408); Charming Charlie USA, Inc. (3973); and Poseidon Partners CMS, Inc. (3302). The location of the Debtors' headquarters is: Charming Charlie, c/o WeWork, 1725 Hughes Landing Blvd., The Woodlands, Texas 77380.

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Lauren Wilrich ("Plaintiff"), on behalf of herself and all others similarly situated (collectively, the "Class"), together with Debtor-Defendants Charming Charlie Holdings, Inc., Charming Charlie International LLC, Charming Charlie LLC, Charming Charlie Manhattan LLC, Charming Charlie USA, Inc., Poseidon Partners CMS, Inc., Charming Charlie Canada LLC, (collectively, "Defendants" or the "Debtors," and together with the Plaintiff, the "Parties"), by and through their counsel, hereby submit this memorandum of law in support of their joint motion (the "Joint Motion"), pursuant to section 105 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 23 of the Federal Rules of Civil Procedure (the "Civil Rules"), applicable hereto by Bankruptcy Rule 7023, for entry of (i) an order, substantially in the form attached hereto as **Exhibit A** (the "Preliminary Order"): (a) certifying a class for settlement purposes only; (b) appointing Plaintiff as the class representative ("Class Representative") and Plaintiff's counsel as class counsel ("Class Counsel"); (c) preliminarily approving that certain *Settlement and Release Agreement*, dated December 13, 2021, by and among Plaintiff and the Debtors (the "Settlement Agreement"),[2] attached to the Preliminary Order as Exhibit 1; (d) approving the form, substantially in the form attached to the Preliminary Order as Exhibit 2, and manner of notice to the members of the Class; (e) scheduling a fairness hearing to consider final approval of the Settlement Agreement (the "Fairness Hearing"); and (f) granting related relief; and (ii) an order, substantially in the form attached hereto as **Exhibit B** (the "Final Order"): (a) approving the Settlement Agreement on a final basis; (b) approving Class Counsel's fees and expenses; and (c) granting related relief. In support of the Joint Motion, the Parties respectfully represent as follows:

[2] Capitalized terms used but not otherwise defined shall have the meaning given to them in the Settlement Agreement.

JURISDICTION

1. This Court has jurisdiction over the Joint Motion under 28 U.S.C. § 1334.

2. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

3. Venue is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are section 105 of the Bankruptcy Code and Bankruptcy Rules 9019 and 7023.

BACKGROUND

4. On July 11, 2019 (the "Petition Date"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Court"). (D.I. No. 1, ¶¶ 6–8, 17, 19).

5. On or after the Petition Date, the Debtors terminated certain members of its workforce, including Plaintiff. At the time she was terminated, Plaintiff was employed by certain of the Debtors as a Copywriter and worked at the Debtors' facility located at 6001 Savoy Drive, Suite 600, Houston, Texas ("Headquarters Facility"). (D.I. No. 1, ¶ 6).

6. Plaintiff estimates that the Debtors terminated 218 employees. To Plaintiff's knowledge, none of the terminated employees received advance written notice of their terminations.

7. On July 23, 2019, Plaintiff filed that certain *Class Action Adversary Proceeding Complaint for Violation of WARN Act 29 U.S.C. § 2101, et seq.* against Debtors (the "Complaint") in this Court, alleging that on or about July 12, 2019, the Debtors terminated her employment and the employment of other similarly situated former employees without advance written notice in violation of the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 *et seq*. ("WARN Act"). (D.I. No. 1).

8. On August 26, 2019, the Debtors filed the *Defendants' Answer to Complaint and Affirmative Defenses* (D.I. No. 8), asserting several affirmative defenses, including that the Debtors were a "faltering company" and a "liquidating fiduciary."

9. On October 15, 2019, Plaintiff filed a motion for class certification. (D.I. No. 21).

10. On October 29, 2019, the Debtors filed a partial opposition to class certification motion. (D.I. No. 22).

11. The parties have exchanged written discovery requests and responses.

12. On February 12, 2020, the Parties participated in mediation with William P. Bowden, Esq., but were unable to reach a resolution at mediation.

13. Following the February 2020 mediation, the Parties continued negotiations regarding a consensual resolution of this case, including the informal exchange of relevant information.

THE SETTLEMENT AGREEMENT

14. To avoid extensive, costly, and uncertain litigation, on December 13, 2021, the Parties reached an agreement, subject to this Court's approval, the terms of which are set forth in the Settlement Agreement. The essential terms of the Settlement Agreement are as follows[3]:

a. Definition of the Settlement Class: The parties agree to certification of a class for settlement purposes only (the "Settlement Class") to be defined as: Plaintiff and all other similarly situated former employees of Debtors (i) who worked at, reported to, or received assignments from the Debtors' facilities located at 6001 Savoy Drive, Suite 600, Houston, Texas and 13323 South Gessner Road, Missouri City, Texas; (ii) who were terminated without cause on or about the Petition Date and within 30 days prior of the Petition Date, or as the reasonably foreseeable consequence of the mass layoffs and/or plant closings ordered by the Debtors on or about the Petition Date; (iii) who are "affected employees" within the meaning of 29 U.S.C. § 2101(a)(5); and (iv) who have not filed a timely request to opt-out of the class. The individuals

[3] The following summary is provided for illustrative purposes only and is qualified in its entirety by reference to the Settlement Agreement. In the event there is any ambiguity or inconsistency between the summary and the Settlement Agreement, the terms set forth in the Settlement Agreement shall govern.

who fall within the definition of the settlement class are listed on Exhibit A of the Settlement Agreement.

b. Settlement Amount: On the Effective Date, the Settlement Class, in full and final settlement of the WARN Action and the claims asserted therein, shall be entitled to a postpetition settlement payment in an amount equal to twenty-five percent (25%) of the gross cash recoveries (the "Settlement Amount") received by the Debtors on account of claims and causes of action brought by the Debtors on account of avoidance actions arising under chapter 5 of the Bankruptcy Code (collectively, the "Avoidance Actions"), which shall be paid by the Debtors in a single payment as soon as reasonably practicable, but no later than 21 days following the conclusion of all of the Avoidance Actions brought by the Debtors and receipt by the Debtors of the final recoveries on account of all of the Avoidance Actions brought by the Debtors.

c. Qualified Settlement Fund: The Debtors shall remit the Settlement Amount to a qualified settlement fund to be established by Class Counsel in conformity with Internal Revenue Code § 468B (the "Qualified Settlement Fund") pursuant to written instructions to be provided by Class Counsel. Class Counsel or its designee shall act as the trustee of the Qualified Settlement Fund. Class Counsel shall cause each Class Member's individual distribution to be paid from the Qualified Settlement Fund and shall transmit distributions via first class U.S. Mail to each Class Member (to their last known address, or to such other address as the Class Members may provide to Class Counsel or that Class Counsel may locate), in accordance with applicable law.

d. Pro Rata Shares of Class Members: Distributions to individual Class Members shall be made on a pro rata basis, based upon each individual Class Member's average monthly gross wages or salary, commissions, and any benefits under any employee benefit plan during the 60-day period preceding the Petition Date (the "Back Pay"). The term "pro rata" as shall mean the quotient of each individual Class Member's Back Pay amount over the aggregate Back Pay for all Class Members (such amount being each Class Member's "Pro Rata Share").

e. Individual Class Member Distributions: Each Class Member shall be entitled to receive such Class Member's Pro Rata Share from the Settlement Payment. For the avoidance of doubt, the Settlement Payment will first be reduced by the Service Payment, Class Counsel's Fees and Expenses, the cost of the Settlement Administrator, and required federal and state employer withholding, unemployment, and similar taxes. The remainder (the "Net Settlement Payment") shall be allocated to each Class Member in the amount of his or her Pro Rata Share, subject to federal and state income withholdings and employment taxes, as applicable.

f. Taxation of the WARN Claim Distribution: The calculation, withholding, and reporting for all income tax withholdings and statutory taxes to the taxing authorities shall be made from the Net Settlement Payment. Such withholding and payment of payroll taxes is conditioned on the Debtors production of each Class Member's social security number. Payroll withholding shall include all applicable federal and local income taxes, and statutory taxes include, without limitation, Federal Insurance Contribution Act ("FICA") and federal and state unemployment insurance (respectively, "FUTA" and "SUI") amounts associated with the distributions to Class Members receiving payments under the Settlement Agreement (collectively, the "Payroll Taxes"). Class Counsel or the Settlement Administrator shall determine the amount of any Payroll Taxes that will become due and owing and shall be withheld. All such Payroll

Taxes shall be paid promptly to the appropriate taxing authorities. The payment of the employer's share of all FICA, FUTA, and SUI amounts from shall be made from the Net Settlement Payment. Class Counsel or the Settlement Administrator, shall be responsible for fulfilling reporting requirements, including federal and state payroll tax returns.

g. Class Representative Service Payment: Subject to the Court's approval, Plaintiff Lauren Wilrich, as the Class Representative, shall be entitled to a one-time payment of $3,000 (the "Service Payment"), payable from the Qualified Settlement Fund, in addition to her Pro-Rata Share.

h. Class Counsel Fees: Subject to the Court's approval, Class Counsel shall receive attorneys' fees in the amount of one-third (1/3) of the Settlement Amount, net of: (i) litigation expenses (including the costs associated with the production and mailing of the Class Notices) not to exceed $10,000; (ii) the Service Payment; and (iii) the cost of the Settlement Administrator not to exceed $10,000 Dollars.

i. Effective Date: The "Effective Date" shall be the earlier of (i) the date that is 14 days following the entry of the Final Order by the Court with no notice of appeal filed or (ii) if a notice of appeal is filed, the date upon which the Final Order is finally affirmed on appeal.

j. Release of the Trustee, the Debtors, and Related Parties: Except for the rights and obligations arising out of, provided for, or reserved in the Settlement Agreement, Plaintiff and all other Class Members, for and on behalf of themselves and their respective predecessors, successor, assigns, affiliates, and subsidiaries (collectively, the "Releasing Parties"), do hereby fully and forever release and discharge the Debtors and each of their current and former shareholders and affiliated entities and each of their respective officers, directors, shareholders, agents, employees, partners, members, accountants, attorneys, representatives, and other agents and all of their respective predecessors, successors, and assigns (collectively, the "Released Parties"), of and from any and all claims and rights of any kind including demands, debts, liabilities, obligations, liens, actions and causes of action, costs, expenses, attorneys' fees, and damages of whatever kind or nature, at law, in equity, and otherwise, whether known or unknown, anticipated, suspected or disclosed, that the Releasing Parties may have as of the date hereof against the Released Parties arising out of or related to the factual allegations raised in the Complaint or similar factual allegations, including those asserted by any individual Class Member; *provided*, *however*, that claims filed by former employees that do not arise from or relate to the WARN Act, including, but not limited to, any claims arising from or related to pre-petition wages, salaries, or benefits earned by former employees shall not be released hereby. It is the intent of the parties that the Settlement Agreement as well as the aggregate settlement funds resolve the Class Members' claims. The Debtors expressly reserve the right to object to, offset, or oppose any and all other claims, obligations, or causes of action, of any type, except those claims allowed pursuant to the Settlement Agreement.

BASIS FOR RELIEF

I. The Court Should Certify the Settlement Class.

15. Where, as in this case, the Court has not already certified a class, before approving a class settlement pursuant to Civil Rule 23, the Court must determine whether the proposed settlement class satisfies the certification requirements of Civil Rule 23. *Amchem v. Windsor*, 521 U.S. 591, 620 (1997); *In re Cmty. Bank of N. Va.*, 418 F.3d 277, 300 (3rd Cir. 2005). "[A]ll Federal Circuits recognize the utility of Rule 23(b)(3) settlement classes." *Amchem*, 521 U.S. at 618; *Cmty. Bank*, 418 F.3d at 299. "The settlement class action device offers defendants the opportunity to engage in settlement negotiations without conceding any of the arguments they may have against class certification." *Cmty Bank*, 418 F.3d at 299; *see also In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 786 (3rd Cir. 1995) ("By specifying certification for settlement purposes only . . . the court preserves the defendant's ability to contest certification should the settlement fall apart.").

16. To be certified, a settlement class must comply with the requirements of Civil Rule 23(a) and (b). Subdivisions (a) and (b) of Civil Rule 23 "focus court attention on whether a proposed class has sufficient unity so that absent members can fairly be bound by decisions of class representatives." *Amchem*, 521 U.S. at 621. To be certified, a class must satisfy the four requirements of Civil Rule 23(a): (a) numerosity, (b) commonality, (c) typicality, and (d) adequacy of representation. FED. R. CIV. P. 23; *Community Bank*, 418 F.3d at 302. The class also must satisfy the requirements of Civil Rule 23(b)(1), (2), or (3). Here, the Parties are requesting conditional certification under Rule 23(b)(3), which requires the court must make two additional findings: (a) predominance; and (b) superiority. The Parties believe that the proposed settlement Class satisfied each of the foregoing requirements.

A. The Settlement Class Satisfies the Requirements of Civil Rule 23(a).

17. A settlement class must satisfy the following four requirements of Civil Rule 23(a) to be certified: (i) numerosity; (ii) commonality; (iii) typicality; and (iv) adequacy of representation. The Parties believe the Settlement Class satisfies the requirements, each as set forth in turn below.

1. The Settlement Class Is Sufficiently Numerous.

18. Numerosity requires a finding that the putative class is "so numerous that joinder of all members is impracticable." *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 182 (3d Cir. 2001). "No single magic number exists satisfying the numerosity requirement." *Beherend v. Comcast Corp.*, 245 F.R.D. 195, 202 (E.D. Pa. 2007). However, the Third Circuit "typically has approved classes numbering 40 or more." *Gates v. Rohm & Haas Co.*, 248 F.R.D. 434, 440 (E.D. Pa. 2008). Here, the proposed Settlement Class is comprised of 218 Class Members, a list of whom is attached to the Settlement Agreement as Exhibit A. This amount is sufficiently numerous to make joinder of all members impractical. Accordingly, the Parties respectfully submit the proposed Settlement Class satisfies the numerosity requirement.

2. There Are Legal and Factual Issues Common to all Class Members.

19. The threshold to satisfy the commonality requirement is low. *Baby Neal for & by Kanter v. Casey*, 43 F.3d 48, 55 (3d Cir. 1994) ("Because the requirement may be satisfied by a single common issue, it is easily met."). It does not require "an identity of claims or facts among class members." *Johnston v. HBO Film Mgmt., Inc.*, 265 F.3d 178, 184 (3d Cir. 2001). Instead, the commonality requirement requires existence of at least one common question of law or fact among the class. *Johnston*, 265 F.3d at 184. Here, issues of law and fact regarding notice of termination, applicability of potential affirmative defenses, measure of damages, and priority of

claims are common to all Class Members. Accordingly, the Parties respectfully submit that the commonality requirement is satisfied.

3. Plaintiff's Claims are Typical to Those of the Class Members.

20. Typicality requires that the "named plaintiff['s] claims are typical, in common-sense terms, of the class, thus suggesting that the incentives of the plaintiff[] are aligned with those of the class." *Baby Neal for & by Kanter v. Casey*, 43 F.3d 48, 55 (3d Cir. 1994). "The typicality requirement is designed to align the interests of the class and the class representatives so that the latter will work to benefit the entire class through the pursuit of their own goals." *Barnes v. Am. Tobacco Co.*, 161 F.3d 127, 141 (3d Cir. 1998). "[F]actual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members, and if it is based on the same legal theory." *Beck v. Maximus, Inc.*, 457 F.3d 291, 296 (3d Cir. 2006) (internal quotations omitted).

21. The proposed Class Representative, Ms. Wilrich's, claims are typical to the claims of the Class Members. Ms. Wilrich does not allege that she was singled out for disparate treatment in the way she was terminated. Instead, she alleges that she suffered harm because of the same conduct that allegedly injured each of the other Class Members: they were not paid 60 days' wages upon termination by the Debtors without cause during the relevant period. Accordingly, the Parties respectfully submit that the typicality requirement is satisfied.

4. The Proposed Class Representative and Class Counsel Will Adequately Protect the Interests of the Settlement Class.

22. To satisfy the adequacy requirement, the class representatives must "fairly and adequately protect the interests of the class." FED. R. CIV. P. 23(a)(4). The adequacy inquiry "assures that the named plaintiff['s] claims are not antagonistic to the class and that the attorneys for the class representatives are experienced and qualified to prosecute the claims on behalf of the

entire class." *Beck*, 457 F.3d at 296 (internal quotation omitted). Thus, "the court must determine whether the representative['s] interests conflict with those of the class and whether the class attorney is capable of representing the class." *Johnston*, 265 F.3d at 185.

23. Here, the proposed Class Representative has, and will continue to, adequately represents the interests of the Class Members. Ms. Wilrich has maintained contact with her counsel and assisted them throughout the litigation thus far to the benefit of the Class.

24. Further, the proposed Class Counsel is "qualified, experienced and generally able to conduct the proposed litigation," satisfying the adequacy inquiry. *Eisen v. Carlisle & Jacquelin*, 391 F.2d 555, 562 (2d Cir. 1968). The attorneys of Raisner Roupinian LLP, proposed Class Counsel, have been appointed class counsel in more than 100 active or settled certified or putative WARN Act class actions, including the following in district and bankruptcy courts in the District of Delaware: *Turner v. Klausner Lumber Two, LLC*, Case No. 20-11518 (KBO) (Bankr. D. Del) (final approval of settlement against debtor Klausner Lumber Two, LLC granted on September 14, 2021); *Thomay v. Klausner Lumber One, LLC*, Case No. 20-50602 (KBO) (Bankr. D. Del) (final approval of settlement against debtor Klausner Lumber One, LLC granted on May 20, 2021); *Miller v. Columbus Steel Castings Co.*, Adv. Proc. No. 16-50997 (CSS) (Bankr. D. Del.); *Karaniewsky v. US Investigative Servs. LLC*, Case No. 15-50204 (KBO) (Bankr. D. Del.); *Etzelberger v. FAH Holdings, Inc.*, Case No. 13-13087 (BLS) (Bankr. D. Del.); *Hampton v. Navigation Cap. Partners, Inc.*, Case No. 13-00747 (LPS) (D. Del.); *Willock v. Pemco World Air Servs., Inc.*, Case No. 12-50799 (PJW) (Bankr. D. Del.); *Kohlstadt v. Solyndra LLC*, Case No. 11-53155 (MFW) (Bankr. D. Del.); *Folk v. Monaco Coach Corp.*, Case No. 09-50402 (KJC) (Bankr. D. Del.); *Jackson v. Qimonda NA*, Case No. 09-50192 (Bankr. D. Del.); *Decuir v. WL Homes LLC*, Case No. 09-52270 (BLS) (Bankr. D. Del.); *Czyzewski v. Jevic Transp., Inc.*, Case No. 08-50662

(BLS) (Bankr. D. Del.); *Austen. v. Archway Cookies*, Case No. 08-12323 (CSS) (Bankr. D. Del.); *Rasheed v. Am. Home Mortg. Corp.*, Case No. 07-51688 (Bankr. D. Del.); *Mekonnen v. HomeBanc Mortg. Corp.*, Case No. 07-51695 (Bankr. D. Del.); *Aguiar v. Quaker Fabric Corp.*, Case No. 07-51716 (Bankr. D. Del.); *Jones v. All. Bancorp*, Case No. 07-51799 (Bankr. D. Del.); *Bressmer v. Delta Fin. Corp.*, Case No. 07-51808 (Bankr. D. Del.).

B. The Settlement Class Satisfies the Requirements of Civil Rule 23(b)(3).

25. To satisfy the requirements of Civil Rule 23(b)(3), the "[i]ssues common to the class must predominate over individual issues, and the class action device must be superior to other means of handling the litigation." *Gates*, 248 F.R.D. at 442–43 (internal quotations omitted). The proposed Settlement Class satisfies these requirements. Accordingly, the Parties respectfully request that the Court certify the Settlement Class for settlement purposes only, appoint Plaintiff as Class Representative, and appoint Plaintiff's counsel as the Class Counsel.

1. Common Questions of Law and Fact Predominate Over Individual Issues.

26. Predominance tests whether the proposed class is sufficiently cohesive to warrant adjudication by representation. *Amchem*, 521 U.S. at 623; *Cmty. Bank*, 418 F.3d at 308–09. The proper predominance inquiry "trains on the legal or factual questions that qualify each member's case as a genuine controversy, questions that preexist any settlement." *Amchem*, 521 U.S. at 623. "In this vein a predominance analysis is similar to the requirement of Rule 23(a)(3) that claims or defenses of the named representatives must be typical of the claims or defenses of the classes." *Cmty. Bank*, 418 F.3d at 309 (internal quotations omitted).

27. Here, just as typicality exists, predominance also exists. All of the claims arise from an alleged violation of the WARN Act resulting from the terminations carried out by Debtors on or about July 12, 2019, without advance notice. The claims of Plaintiff are typical of the other

class members and no one is subject to any particularized defenses. Indeed, the only individualized issues appear to be limited to each Class Member's pay and benefits at the time of termination. Accordingly, the Parties respectfully request that the Court find that the predominance requirement is met.

2. A Class Action Will Result in the Most Fair and Efficient Adjudication of this Controversy.

28. Civil Rule 23(b)(3) requires a determination that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." FED. R. CIV. P. 23(b)(3). In effect, "[t]he superiority requirement asks the court to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication." *Krell v. Prudential Inc. Co. (In re Prudential Inc. Co.)*, 148 F.3d at 283, 316 (3d Cir. 1998) (internal quotation omitted). Civil Rule 23 sets forth several factors relevant to the superiority inquiry: "(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." FED. R. CIV. P. 23(b)(3). When a class certification is being considered for settlement purposes only, the difficulties in managing a class action are not considered. *Gates*, 248 F.R.D. at 443.

29. Here, a class action is superior to individual actions. First, the amount of each Class Member's claim is relatively small. Individually, there is little incentive in controlling the prosecution of separate actions. *See Amchem*, 521 U.S. at 617 ("The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights." (internal quotation

omitted)). "A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor." *Id.* (same). Second, it is appropriate that all the claims against Debtors arising from the Class Representative's allegations should be concentrated in this Court, where the Debtors' chapter 11 cases are pending. Third, determining the claims of some Class Members, but not all Class Members, could prejudice the claims of the remaining Class Members. Accordingly, the Parties respectfully submit that the superiority element is met.

II. The Settlement Agreement Satisfies the Requirements of Bankruptcy Rule 9019.

30. Bankruptcy Rule 9019(a) provides, "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." FED. R. BANKR. P. 9019. "Ultimately, the decision whether or not to approve a settlement agreement lies within the sound discretion of the Court." *In re Nortel Networks, Inc.*, 522 B.R. 491, 510 (Bankr. D. Del. 2014). This sound discretion should be used to approve reasonable settlements because "[t]o minimize litigation and expedite the administration of a bankruptcy estate, compromises are favored in bankruptcy." *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996) (internal quotation omitted); *see also Will v. Northwestern Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 644 (3d Cir. 2006) ("Settlements are favored [in bankruptcy].").

31. When exercising such discretion, the court may approve a proposed settlement that is fair, reasonable, and in the best interest of the estate. *In re Marvel Entm't Grp., Inc.*, 222 B.R. 243, 249 (D. Del. 1998) ("[T]he ultimate inquiry [is] whether the compromise is fair, reasonable, and in the interest of the estate." (internal quotation marks omitted)); *In re Key3Media Grp., Inc.*, 336 B.R. 87, 92 (Bankr. D. Del. 2005) ("[T]he bankruptcy court has a duty to make an informed, independent judgment that the compromise is fair and equitable."). The Third Circuit set forth a four-factor balancing test under which bankruptcy courts are to analyze proposed settlements. The

factors the Court must consider are: "(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors." *Martin*, 91 F.3d at 393.

32. It is well-established that a settlement proponent need not convince the court that the settlement is the best possible compromise, but only that the settlement falls "within the reasonable range of litigation possibilities somewhere above the lowest point in the range of reasonableness." *In re Nutritional Sourcing Corp.*, 398 B.R. 816, 833 (Bankr. D. Del. 2008); *see also In re W.R. Grace & Co.*, 475 B.R. 34, 77–78 (Bankr. D. Del. 2012) ("In analyzing the compromise or settlement agreement under the Martin factors, courts should not have a mini-trial on the merits, but rather should canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness." (citations and internal quotation marks omitted)); *Key3Media Grp.*, 336 B.R. at 93 (holding that a settlement need only "fall[] within the reasonable range of litigation possibilities"). In this respect, it is unnecessary for the court to consider the information necessary to resolve the factual dispute, nor is it necessary for the court to "conclusively determine claims subject to a compromise." *Key3Media Grp.*, 336 B.R. at 92.[4]

33. Based on the foregoing considerations, and the facts set forth herein, the Parties respectfully submit that the Settlement Agreement represents a fair and reasonable compromise that is in the best interest of the Debtors' estates. First, the Debtors believe that the outcome of the complex litigation to be resolved under the Settlement Agreement is uncertain. The WARN

[4] Further, under section 105(a) of the Bankruptcy Code, the Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." Authorizing the Parties to proceed with the Settlement Agreement falls squarely within the spirit of Bankruptcy Rule 9019, as well as the Bankruptcy Code's preference for compromise. Thus, to the extent necessary, section 105(a) of the Bankruptcy Code relief is appropriate in this instance and would best harmonize the settlement process contemplated by the Bankruptcy Code.

Action involves numerous legal issues regarding the application of the WARN Act and its statutory and other legal defenses to complex facts. These issues include, *inter alia*: (a) whether during the relevant time period the applicable Debtors were an employer as defined by the WARN Act; (b) whether Debtors provided adequate notice to the Class Members under the WARN Act; (c) whether Debtor was entitled to give fewer than 60 days' notice because of statutory exceptions under the WARN Act; (d) the computation of the amount of damages; and (e) whether attorneys' fees are to be awarded to the Class Members if they prevail.

34. Second, continued litigation would be costly and time-consuming and expose the Parties to significant litigation risks. Such expensive litigation would result in significant administrative expenses for the Debtors' estate, likely reducing amounts available for the Debtors' other creditors. The settlement provides for a final settlement payment and eliminates any further accrual of litigation expenses in prosecuting or defending the WARN Action, including a possible trial and potential appeals. Further, continued litigation could potentially delay a consensual resolution of the Debtors' chapter 11 cases.

35. Third, the Debtors firmly believe that the Settlement Agreement is in the best interest of their creditors and estates. When determining whether a compromise is in the best interests of the estate, a bankruptcy court must "assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal." *Martin*, 91 F.3d at 393. To properly balance these values, a court should consider all factors "relevant to a full and fair assessment of the wisdom of the proposed compromise." *Marvel*, 222 B.R. at 249 (internal quotation omitted); *see Key3Media*, 336 B.R. at 93 (explaining that, in determining whether a compromise is in the best interests of the estate, courts must "assess and balance the value of the claim that is being compromised against the value of the estate of the

acceptance of the compromise proposal"). The proposed settlement provides to the Class a portion of the gross cash recoveries that the Debtors will bring into the estate through avoidance actions. This resolution takes into account the limited funds in the estate, portions the risk between the Class and the Debtors, and leaves some recovery from the avoidance actions to the Debtors' other creditors.

36. Accordingly, the Parties respectfully submit that the Settlement Agreement (a) is a reasonable compromise in light of the competing arguments and complex legal issues, (b) represents, in the Debtors' business judgment, the most efficient and value-maximizing resolution of the WARN Action, (c) was negotiated at arm's length and in good faith between the Debtors and the Plaintiff, and (d) is in the best interests of the Debtors' estates and their stakeholders.

III. The Bankruptcy Court Should Approve the Settlement Agreement on a Preliminarily Basis.

37. After class certification, approval of a "class settlement generally requires two hearings: one preliminary approval hearing and one final 'fairness' hearing." *Gates*, 248 F.R.D. at 438. "The preliminary approval decision is not a commitment [to] approve the final settlement; rather, it is a determination that there are no obvious deficiencies and the settlement falls within the range of reason." *Id.* (internal quotation omitted). The preliminary approval determination requires the Bankruptcy Court to consider whether "(1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected." *Gen. Motors*, 55 F.3d at 785–86. When class certification is sought in conjunction with preliminary approval, then class member objections are not relevant. *Gates*, 248 F.R.D. at 444.

38. The Settlement Agreement has no obvious deficiencies and falls well within the range of reason. Each of the above-cited factors favors preliminary approval of the Settlement Agreement. First, the settlement is the result of good faith, arm's length negotiations between capable adversaries, each represented by sophisticated counsel. Second, the Parties have informally exchanged information during litigation, mediation, and settlement negotiations. Third, counsel for the Parties, and Class Counsel in particular, has the experience and the skill to both vigorously litigate WARN Act claims and to determine when and to what extent settlement is appropriate. Class Counsel has litigated over 100 WARN cases in bankruptcy court, many of which have been in Delaware, and has routinely been appointed Class Counsel.

39. Considering the foregoing, the Bankruptcy Court should preliminarily approve the Settlement Agreement.

IV. The Court Should Approve the Form and Manner of Notice of the Settlement and the Fairness Hearing.

40. Once a settlement is approved on a preliminary basis, notice of the settlement and of the final fairness hearing must be provided to class members. Civil Rule 23(e) requires that all members of the class be notified of the terms of any proposed settlement. The Civil Rule 23(e) requirements are "designed to summarize the litigation and the settlement and to apprise class members of the right and opportunity to inspect the complete settlement documents, papers, and pleadings filed in the litigation." *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 327 (3rd Cir. 1998) (internal quotation omitted). In accordance with Civil Rule 23(e), Class Counsel will serve notice of the settlement and fairness, substantially in the form attached to the Preliminary Order as Exhibit 2 (the "Notice") on each Class Member, within seven days following entry of the Preliminary Order. Class Counsel will mail the Notice to each Class

Member at their last known addresses according to the relevant books and records, and as updated by Class Counsel.

41. The Notice includes each of the facts required by Civil Rule 23(c)(2)(B). Specifically, the Notice contains the following information:

- that the Settlement Agreement shall become effective only if it is approved by the Court, under Bankruptcy Rules 7023 and Rule 9019, on a Final Basis and without material modifications;
- that, upon approval, the Settlement Agreement shall be effective as to all Class Members in the Settlement Class;
- that Class Members have the right to opt out of the Settlement Class and object to the Settlement Agreement either in person or through counsel at the Fairness Hearing; and
- that upon the Effective Date, all Released Claims of a Class Member in the Settlement Class (other than those claims to be paid under the terms of the Settlement Agreement) shall be waived, and that no person, including the Class Members, shall be entitled to any further distribution thereon.

42. The Class Notice also outlines the terms of the Settlement Agreement, including the attorneys' fees proposed to be paid to Class Counsel and describes how each Class Member may obtain a copy of the pleadings in the WARN Action and a copy of the Settlement Agreement. The Notice also states the date, time, location, and purpose of the Fairness Hearing, informs Class Members of their right to appear at the Fairness Hearing, and describes the procedure for objecting to the Settlement Agreement. Accordingly, the Parties respectfully submit that the proposed form and manner of distribution of the Notice is sufficient and should be approved.

V. The Court Should Approve the Proposed Settlement Schedule.

43. As stated above, once a settlement is approved on a preliminary basis, notice of the settlement and of the final fairness hearing must be provided to class members, and the court must conduct a final fairness hearing to determine whether to approve the settlement on a final basis. The Parties propose the following timeline for the settlement process:

- Deadline to mail the Notice to the Class Members: seven days following entry of the Preliminary Order;
- Deadline to opt-out of the settlement: seven days prior to the Fairness Hearing;
- Deadline to object to the settlement: seven days prior to the Fairness Hearing; and
- Fairness Hearing: approximately 45 days following entry of the Preliminary Order, subject to the Court's availability.

44. The Parties believe that the proposed timeline is sufficient to provide the Class Members notice of the settlement, their ability to opt out of the settlement, and the Fairness Hearing. Accordingly, the Parties respectfully request that the Court approve the proposed timeline.

VI. At the Fairness Hearing, the Court Should Approve the Settlement Agreement on a Final Basis.

45. Civil Rule 23(e) provides that "[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed or compromised only with the court's approval." *Id*. Final approval of a settlement pursuant to Civil Rule 23(e) turns on whether the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *see In re Cendant Corp. Litig.*, 264 F.3d 201, 231 (3d Cir. 2001) (The court "acts as a fiduciary guarding the rights of absent class members and must determine that the proffered settlement is fair, reasonable, and adequate." (internal quotation omitted)). This rule requires a court "to in independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interest of those whose claims will be extinguished." *Gen. Motors*, 55 F.3d at 785.

46. The Third Circuit developed a nine-factor test to determining whether a proposed class settlement is fair, reasonable, and adequate: "(1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the

risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation." *Id.* (citing *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975)). This list is not exhaustive. *In re AT & T Corp.*, 455 F.3d 160, 165 (3d Cir. 2006).

47. The following factors strongly support approval of the Settlement Agreement: (a) further litigation will be complicated, protracted, and expensive; (b) Plaintiff supports the Settlement Agreement and Class Counsel believe that the bulk of the other Class Members will have a favorable reaction to the Settlement Agreement and will not object to it; (c) the Settlement Agreement was reached after the essential facts had been thoroughly investigated by Class Counsel and the Parties had shared their respective views of the case during mediation and subsequent settlement negotiations; (d) the risk that Plaintiff would be unable to establish liability is significant because of the defenses asserted by the Debtors; and (e) when considered in light of the best possible recovery and the attendant risks, the Settlement falls well within the range of reasonableness. Based on the foregoing, the Parties respectfully request that the Court approve the Settlement Agreement on a final basis at the Fairness Hearing.

VII. The Court Should Approve Class Counsel's Attorneys' Fees and Costs.

48. Class Counsel is entitled to be paid a fee out of the settlement fund created for the benefit of the Class. *See* Fed. R. Civ. P. 23(h); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478–79 (1980) (the Supreme Court has consistently recognized the common fund doctrine to permit attorneys who obtain a recovery for a class to be compensated from the benefits achieved as a result of their efforts); *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) (calculation of fees based

on the common fund doctrine is based on a percentage of the common fund recovered). The Debtors do not oppose this request.

49. The law in the Third Circuit is settled that in common fund cases, fees for class counsel are awarded primarily based on a percentage of the common fund recovered for the class and that the lodestar is considered only when a court cannot otherwise come to a resolution of class counsel's fees. *Cendant Corp.*, 264 F.3d at 221; *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000). Generally, reference to the lodestar (*i.e.*, the time reasonably spent at a reasonable hourly rate) is disfavored as "very time consuming" and is only to be resorted to if the court is concerned that the fee award may result in a "windfall." To avoid that result, courts may "cross-check" the percentage award against the lodestar. *Cendant*, 264 F.3d at 285; *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 338 (E.D. Pa. 2007). Here, reference to the lodestar is unnecessary, especially in view of the burdens of carrying-out a lodestar "cross-check" and its limited utility here where the amount ultimately recovered in avoidance actions and therefore the Settlement Amount is unknown. Class Counsel submits that the award of a fee of one-third of the Settlement Amount is fully warranted.

50. Generally, the reasonableness of a percentage award is based on the following seven, non-exclusive factors: "'(1) the size of the fund created and the number of persons benefited; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases.'" *Cendant*, 264 F.3d at 283(quoting *Gunter*, 223 F.3d at 195 n.1). Courts also consider an eighth

factor: "the percentage likely to have been negotiated between private parties in a similar case." *In re Ikon Office Solutions, Inc. Secs. Litig*., 194 F.R.D. 166, 193 (E.D. Pa. 2000).

51. Class Counsel submits that the application of these eight factors to the WARN Action shows that the agreed attorneys' fee of one-third of the Settlement Amount should be approved:

- As to the size of the class and the recovery, the Class is 218 members and the Settlement Amount will give the Class twenty-five percent (25%) of the gross cash recoveries received by the Debtors on account of claims and causes of action brought by the Debtors under chapter 5 of the Bankruptcy Code.

- Plaintiff supports the Settlement and Class Counsel anticipates that few, if any, Class Members will object, and that those objections, if any, will not be substantial or merited.

- As shown by the favorable settlement of this matter achieved in the face of the difficult liability and collectability issues and bankruptcy procedural issues, Class Counsel provided legal services with considerable skill. The services were rendered with efficiency, considering the complexity of the issues, the difficulty of addressing the several defenses, and the need for discovery.

- The risk of non-payment at the outset was substantial as it was not known at that time whether there would be sufficient funds available to pay the putative class' claims. In addition, the defenses asserted by the Debtors created further risk of non-payment.

- As to fees in similar cases, Class Counsel submits that in WARN Act class actions that Class Counsel has prosecuted, Class Counsel's requests for attorneys' fees—almost always for one-third the class recovery—have never been denied or reduced.

- As to the percentage likely to have been negotiated between private parties in a similar case, Class Counsel was retained by the Class Representative and on a one-third contingency basis, plus expenses. Class Counsel has been consistently retained in other WARN Act class actions on a one-third contingency basis.[5]

[5] As to fees in similar cases, Class Counsel has consistently been awarded fees of one-third of the class recovery in WARN Act cases by bankruptcy and district courts across the country, including in the bankruptcy courts of the Third Circuit. Most recently, in a WARN Act case that Class Counsel settled in 2021, *Karaniewsky v. US Investigative Services LLC*, Case No. 15-50204 (KBO) (Bankr. D. Del.) (Adv. D.I. No. 77), this Court granted

52. Moreover, the requested fee of one-third of the Settlement Amount is supported by the percentage awards in other types of common fund cases. "The Third Circuit favors the percentage-of-recovery method of calculating fee awards in common fund cases." *Glaberson v. Comcast Corp*., No. 03-6604 (JRP), 2015 WL 5582251, at *11 (E.D. Pa. Sept. 22, 2015) (citing *AT & T Corp.*, 455 F.3d at 164; *In re Rite Aid Corp. Secs. Litig*., 396 F.3d 294, 300 (3d Cir. 2005)). Attorneys' fee awards based upon a percentage of a common fund mostly "fall in the range of nineteen to forty-five percent." *Ikon,* 194 F.R.D. at 194; *see Levit v. Filmways, Inc*., 620 F. Supp. 421, 427 (D. Del. 1985) (approving attorneys' fees equal to 33% of the common fund); *In re Flonase Antitrust Litig*., 951 F. Supp. 2d 739, 751 (E.D. Pa. 2013) (approving attorneys' fees of $50 million, representing 33 1/3% of common fund of $150 million); *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 336 (E.D. Pa. 2007) (approving attorneys' fees of 35% of common fund). Class Counsel submits that the fees of one-third of the total expected Class recovery on account of the WARN Action should be approved under the multi-factor test applicable in this circuit to fee awards from common fund recoveries.

53. In addition to an attorney fee of one-third of the Settlement Amount, Class Counsel is seeking reimbursement for out-of-pocket costs and expenses incurred in the WARN Action, including the costs associated with the producing and mailing the Notice. The costs and expenses are capped at $10,000. To date, Class Counsel has incurred approximately $4,750.00 in out-of-pocket costs and expenses prosecuting the WARN Action and expects to incur additional expenses

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final approval of one-third of the common fund in a $10.5 million settlement. In *Thomay v. Klausner Lumber One, LLC*, Case No. 20-50602 (KBO) (Bankr. D. Del.) (Adv. D.I. No. 71), and *Turner v. Klausner Lumber One, LLC*, Case No. 20-11518 (KBO) (Bankr. D. Del.) (D.I. No. 986), the Court granted final approval of one-third of the common fund. In another WARN Act case that Class Counsel settled in 2020, *Etzelberger v. FAH Holdings, Inc*., Case No. 13-13087 (BLS) (Bankr. D. Del.), the Court granted final approval of a WARN Act settlement of approximately $1.9 million, including attorneys' fees of 33⅓% and a service award of $20,000 to the Class Representative. (D.I. No. 2386, *Order Granting Preliminary Approval of Settlement*, October 21, 2020) (D.I. No. 2394, *Order Granting Final Approval of Settlement*, November 30, 2020). Indeed, in all of Class Counsel's more than 100 WARN Act class action settlements, it has not been awarded less than one-third.

in connection with seeking preliminary and final approval of the Settlement Agreement, mailing the Class Notice, and communicating with Class Members regarding the Settlement Agreement. Class Counsel respectfully submits that the payment of Class Counsel's out-of-pocket costs and expenses in reasonable and appropriate.

VIII. The Service Payment to the Class Representative and Should Be Approved.

54. The Class Representative should be awarded the $3,000 proposed Service Payment for the significant work she undertook on behalf of the Class. *Bradburn,* 513 F. Supp. 2d at 342 ("Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." (internal quotation omitted)). The Debtors do not oppose the payment of the Service Payment to the Class Representative.

55. Plaintiff filed a federal lawsuit that is searchable on the internet and may become known to prospective employers when evaluating her application for employment. She retained Class Counsel to commence this action shortly after being terminated from her employment with the Debtors. She agreed to initiate the class action as the sole named plaintiff at a point when her future was uncertain and employment prospects potentially dimmed by suing her former employer. Plaintiff has expended time and effort to assist with the preparation of pleadings, informal discovery, and mediation. But for her efforts, the work done in prosecuting this case would have come to naught. Accordingly, the Service Payment is appropriate and justified as part of the overall Settlement Agreement considering the value of her services to the Class in the face of considerable risks. *See Bradburn*, 513 F. Supp. 2d at 344 (awarding a $75,000 incentive award to class representative approved).

56. Finally, the amount of the Service Payment is consistent and on scale with amounts awarded in WARN Act class actions in this and other districts. *See, e.g.*, *Turner v. Klausner*

Lumber One, LLC, Case No. 20-11518 (KBO) (Bankr. D. Del.) (D.I. No. 986) ($10,000 service payment to class representative in $540,000 settlement); *Thomay v. Klausner Lumber One, LLC*, Case No. 20-50602 (KBO) (Bankr. D. Del.) (Adv. D.I. No. 71) ($20,000 service payment to class representative in $1.4 million settlement); *Miller v. Columbus Steel Casting Co.*, Adv. Proc. No. 16-50997 (CSS) (Bankr. D. Del. Sept. 27, 2017) (D.I. No. 69) ($10,000 service payment to class representative on behalf of a certified class of 666 for $2.1 million); *Etzelberger v. FAH Holdings, Inc.*, Case No. 13-13087 (BLS) (Bankr. D. Del.) (D.I. No. 2394) ($20,000 service payment to the class representative); *Kohlstadt v. Solyndra, LLC.*, Adv. Proc. No. 11-53155 (MFW) (Bankr. D. Del.) (D.I. no. 51) ($20,000 combined service award to two class representatives in $3.5 million settlement); *Austen v. Archway Cookies*, Adv. Proc. No. 08-51530 (CSS) (Bankr. D. Del.) (D.I. No. 73) ($10,000 service award to two class representatives in $4.0 million settlement); *Rasheed v. American Home Mortgage Corp.*, Adv. Proc. No. 07-51688 (CSS) (Bankr. D. Del.) (D.I. No. 108) ($7,500 service award to six class representatives in $6.5 million settlement); *see also, e.g.*, *AWTR Liquid., Inc.*, Adv. Proc. No. 13-01209 (NB) (Bankr. C.D. Cal.) (D.I. No. 89) ($20,000 combined service award to two class representatives in settlement of $1 million); *Guippone v. BH S & B Holdings, LLC*, Case No. 09-01029 (CM) (S.D.N.Y. Sept. 23, 2016) (D.I. No. 122) ($10,000 service award to class representative in WARN Act settlement of $900,000); *Binford v. First Magnus Capital, Inc.*, Adv. Proc. No. 08-01494 (GBN) (Bankr. D. Ariz.) (awarding eight class representative service payments of $7,500 each, totaling $60,000, from settlement fund of $2.6 million); *Bridges v. Continental AFA Dispensing Co.*, Adv. Proc. No. 08-45921 (KSS) (Bankr. E.D. Mo.) (D.I. No. 108) (awarding $10,000 service payment in a class settlement of $1.5 million).

CONCLUSION

For the reasons set forth herein, the Parties respectfully request that the Court enter: (i) the Preliminary Order: (a) certifying a class for settlement purposes only; (b) appointing Plaintiff as the Class Representative and Plaintiff's counsel as Class Counsel; (c) preliminarily approving the Settlement Agreement; (d) approving the form and manner of the Notice; (e) scheduling the Fairness Hearing to consider final approval of the Settlement Agreement; and (f) granting related relief; and (ii) the Final Order: (a) approving Settlement Agreement on a final basis; (b) approving Class Counsel fees and expenses; and (c) granting related relief.

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Respectfully submitted,

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