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Honorable Timothy W. Dore
Chapter 7
Hearing Location: Seattle, Rm. 8106
Hearing Date: August 22, 2025
Hearing Time: 9:30 a.m.
Response Date: August 15, 2025

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re:

WIRELESS ADVOCATES, LLC

Debtor.

Case No. 23-10117-TWD

**REPLY IN SUPPORT OF JOINT
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT
RESOLVING WARN ACT
ADVERSARY PROCEEDING**

Plaintiffs, Jason Karroll, Brandon Pham, Armani Little, Bradley Hibbs, Robert Pauley, Joel Gitter, Rusty Clark, and Tracey Sava on behalf of themselves and the Settlement Class, by and through their undesignated counsel, hereby file this Reply in Support of the Joint Motion for Final Approval of Class Action Settlement Resolving WARN Act Adversary Proceeding (the “Motion”), which seeks final approval of (1) the settlement agreement (the “Settlement Agreement”) resolving *Karroll et. al. v. Wireless Advocates, LLC*, 23-01005 (the “Adversary”) and (2) Class Counsel’s request for attorney’s fees of \$1,087,500 (the “Counsel Fee”) and expenses of \$10,000. In Support of this Reply, Plaintiffs would show as follows:

INTRODUCTION

The U.S. Trustee asks this Court to punish an exceptional result. After Class Counsel secured a \$3.625 million settlement for nearly 1,800 former employees—a recovery larger than 92% of all reported settlements by the nation's top WARN Act firms—the U.S. Trustee objects to

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1 the requested fee. The objection is not based on the market rate, the complexity of the case, or the
2 risk involved. Instead, the U.S. Trustee advances a rule of her own invention: that an attorney
3 cannot be paid the market rate for achieving a top-tier result for the first time. This logic creates
4 an impossible catch-22, ignores the evidence, and is contradicted by the very experts the U.S.
5 Trustee holds up as the standard.

6 The U.S. Trustee's objection is a red herring. The question before the Court is not whether
7 Class Counsel is a member of a small, established cadre of WARN Act attorneys. The question is
8 whether a 30% fee is a reasonable reward for litigating a high-risk, novel case that produced a
9 settlement in the 93rd percentile of similar recoveries—especially when the undisputed market
10 rate is one-third and not a single one of the 1,785 class members has objected.

11 This brief will demonstrate that the U.S. Trustee's objection is based on a flawed
12 understanding of both the law and the facts. First, the objection improperly conflates an attorney's
13 personal fee history with the objective market rate for the legal services. Second, the objection is
14 profoundly hypocritical, as the U.S. Trustee's own preferred experts consistently affirm the very
15 market rate she now disputes. Third, the U.S. Trustee attempts to invent a new legal standard—an
16 "experience test"—that has no basis in Ninth Circuit law. Finally, the undisputed facts—the
17 exceptional result, the extreme risk, and the unanimous class support—all overwhelmingly justify
18 the requested fee. The U.S. Trustee's objection should be overruled.

18 **ARGUMENT**

19 **I. The U.S. Trustee's Objection is Based on a Flawed Understanding of "Market Rate"**

20 The U.S. Trustee's objection to Class Counsel's fee request should be overruled as it is
21 premised on a fundamental misunderstanding of the "market rate" analysis. The U.S. Trustee's
22 entire argument rests on the flawed premise that the objective market rate for legal services is
23 defined by the subjective fee history of a single attorney. This approach improperly conflates the
24 prevailing rate in the legal marketplace with the resume of an individual market participant. Our

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1 motion established the market rate by citing numerous WARN Act cases where courts approved
2 fees of one-third of the common fund. The U.S. Trustee fails to cite a single case to the contrary
3 or provide any evidence that the market rate is something different. Instead, the U.S. Trustee's
4 objection is a red herring, diverting the Court's attention from the evidence by launching an attack
5 on Class Counsel's personal experience.

6 The evidence of the market rate is overwhelming. The U.S. Trustee's objection ironically
7 focuses on the extensive experience of firms like Raisner Roupinian LLP to distinguish fee awards
8 in other cases, yet fails to acknowledge that this very firm consistently affirms that one-third is the
9 market rate. In a recent motion filed in *Hansen v. PGX Holdings, Inc.*, Adv. Proc. No. 23-50396
10 (CTG) (Bankr. D. Del.), that firm stated plainly: **"in WARN class actions that Class Counsel**
11 **has prosecuted, Class Counsel's requests for attorneys' fees - almost always for one-third of**
12 **the class recovery - have never been denied or reduced non-consensually."** (Ex. A, *PGX*
13 *Holdings* Motion at 16). In a supporting declaration, attorney René S. Roupinian further attests:
14 **"In over 150 WARN actions, Class Counsel has sought, and never been denied, its attorneys'**
15 **fees of one-third of the common fund."** (Ex. B, Roupinian Decl. at ¶ 10). The court in that case
16 subsequently approved the one-third fee. (Ex. C, *PGX Holdings* Order at 4). This is the market
17 rate, established by the very practitioners the U.S. Trustee holds up as the standard.

18 The U.S. Trustee's objection continues this flawed pattern by citing the *Rhythm and Hues*
19 case and highlighting the "substantial WARN Act litigation expertise" of counsel like Mary E.
20 Olsen of The Gardner Firm, P.C. and Stuart J. Miller of Lankenau & Miller, LLP, again attempting
21 to distinguish that award from the present case based on counsel's resume. Main Case, at ECF No.
22 926, *United States Trustee's Motion Objection to Class Counsel Fees Sought in Joint Motion for*
23 *Final Approval of Class Action Settlement Resolving WARN Act Adversary Proceeding*. The irony,
24 once again, is that these same practitioners confirm the very market rate the U.S. Trustee now
disputes. In the recent WARN Act case, *VanBuren v. American Queen Steamboat Operating*
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1 *Company, LLC*, Adv. Proc. No. 24-03029 (Bankr. S.D. Tex.), Ms. Olsen, who has served as class
2 counsel in over seventy-five WARN actions, stated unequivocally: **“An award of one-third of**
3 **the common fund as attorneys' fees to class counsel is common in WARN Act class action**
4 **settlements and, in undersigned's personal experience, is regularly approved by Courts**
5 **(including bankruptcy courts) across the country.”** (Ex. D, Olsen Decl. at ¶ 19). The court in
6 *In re Hornblower Holdings, LLC* subsequently approved the one-third fee as requested. (Ex. E,
7 *Hornblower Order* at 3)¹. The consistent position of multiple, experienced WARN Act firms—the
8 very ones the U.S. Trustee relies on for comparison—is not a coincidence; it is a clear reflection
9 of the prevailing market rate.

10 **II. The U.S. Trustee's Objection is an Act of Profound Hypocrisy**

11 The U.S. Trustee's objection is not just flawed; it is hypocritical. The email exchange
12 preceding the objection reveals that the U.S. Trustee's position is not a good-faith analysis of the
13 market but a pre-determined stance contradicted by the practices of her own former colleagues.
14 The U.S. Trustee began her inquiry by stating she worked with premier WARN litigator Charles
15 Ercole and that she would be "open to further convincing" if Class Counsel provided a resume
16 showing "particularized expertise." (Ex. F, Email Chain). This confirms the U.S. Trustee's
17 objection is an improper attack on the attorney, not the fee.

18 The hypocrisy is that the very expert she touts, Mr. Ercole, consistently and vigorously
19 argues for the exact fee structure the U.S. Trustee now opposes. In the *Matlin Patterson* case, Mr.
20 Ercole's sworn declaration states: "Class counsel is requesting a total fee of 33 1/3% of the
21 Common Fund... [which] is well within the range of reasonableness that has been repeatedly
22 approved by courts..." (Ex. G, Ercole Decl. in *Matlin Patterson* at ¶ 15). In the Motion for
23 Approval, Mr. Ercole made clear that he has "consistently been awarded fees of one-third of the

24 ¹ Notably, this settlement within 8 months of suit filing and before the Debtor filed a responsive pleading to the suit.

1 class recovery in WARN cases by courts throughout the country” and specified this has happened
2 “in more than 30 other WARN actions.” (Ex. H, Motion in *Matlin Patterson* at pp. 14-15). He
3 made the same argument in the *USF Red Star* litigation. (Ex. I, Motion in *USF Red Star* at pp. 23-
4 24). The U.S. Trustee is asking this Court to apply a standard that her own former firm and
5 esteemed colleague would not meet.

6 Furthermore, the U.S. Trustee’s attack on the 2.41² lodestar multiplier in this case is
7 disingenuous. In the *USF Red Star* case, Mr. Ercole’s firm defended a fee request that resulted in
8 a **4.85 lodestar multiplier**, arguing that such a figure was "reasonable under the law." (Ex. I,
9 Motion in *USF Red Star* at p. 26). For the U.S. Trustee to now suggest that a multiplier less than
10 half that size is unreasonable is a position that cannot be reconciled with the practices of her own
11 former firm. The U.S. Trustee’s objection is an attempt to impose a double standard that is
12 unsupported by the very evidence she purports to respect.

13 **III. The U.S. Trustee Improperly Seeks to Add a Factor Not Recognized by the Ninth** 14 **Circuit**

15 The U.S. Trustee's focus on Class Counsel's individual experience is not only a logical
16 fallacy, but it is also legally improper. The Ninth Circuit case law that the U.S. Trustee relies upon,
17 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002), does not list the "experience of
18 counsel" as a factor for determining a reasonable percentage fee from a common fund. Instead, the
19 court must look to the circumstances of the *case*.

20 In *Vizcaino*, the Ninth Circuit affirmed a 28% fee award after finding the district court
21 properly considered the relevant circumstances, which included: **(1)** the exceptional results
22 achieved; **(2)** the extreme risk of the litigation; **(3)** the non-monetary benefits generated for the
23 class; **(4)** the market rate (supported by retainer agreements and other evidence); and **(5)** the

24 ² As will be discussed in more detail herein, the 2.41 multiplier as of the filing of the Motion for Final
Approval did not include any time spent by non-attorney staff or local counsel, Richard Symmes.

1 significant burdens the case placed on counsel. *Id.* at 1048-50. Conspicuously absent from this list
2 of factors is an independent analysis of counsel's resume or prior fee awards.

3 The U.S. Trustee is attempting to insert a new, preliminary hurdle into the analysis—an
4 "experience test" that counsel must pass before the Court can even consider the recognized factors.
5 This is not the law. The proper inquiry focuses on the attributes of the case itself—its risk, its
6 complexity, and the results achieved—not on a comparative biography of the lawyers involved.
7 Counsel's experience is not a standalone factor used to justify a departure from the established
8 market rate. The U.S. Trustee's entire objection is an attempt to distract the Court with an
9 irrelevant, non-legal factor that has no basis in the very case law it cites.

10 **IV. Even Under the U.S. Trustee's Flawed "Experience" Standard, Her Objection Fails**

11 While the U.S. Trustee's focus on Class Counsel's resume is legally improper, her
12 objection also fails on its own factual terms. The U.S. Trustee's central premise—that Class
13 Counsel lacks the requisite experience to merit the requested fee—is demonstrably false.

14 To date, Class Counsel has received six class counsel appointments in complex WARN
15 Act and FLSA matters. Simpson Supplemental Declaration, ¶ 3. An additional three class and
16 collective action settlements in this same field are pending court approval, which will bring the
17 total to nine appointments. Simpson Supplemental Declaration, ¶ 4. Beyond these, Class Counsel
18 is actively litigating another fifteen WARN Act and FLSA class and collective matters and has
19 successfully resolved a mass arbitration on behalf of nearly 100 WARN Act claimants. Simpson
20 Supplemental Declaration, ¶¶ 5-6. This record demonstrates not just experience, but a substantial
21 and specialized practice dedicated to the very statutes at issue in this case. The U.S. Trustee's
22 assertion that counsel lacks expertise is factually unsupported and should be disregarded.

23 **V. The \$3.625 Million Settlement Represents an Exceptional Result**

24 One of the key factors the Ninth Circuit recognized in *Vizcaino* is whether counsel
"achieved exceptional results for the class." *Id.* at 1048. The U.S. Trustee's entire objection is
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1 predicated on the flawed idea that Class Counsel's experience, not the result, should dictate the
2 fee. However, an objective comparison of the **\$3.625 million** settlement achieved in this case
3 against the settlement histories of the very firms the U.S. Trustee holds in high esteem reveals that
4 this recovery is, without question, an exceptional result.

5 A review of the publicly available settlement data from the websites of the nation's three
6 most active WARN Act litigation firms—Raisner Roupinian LLP, Lankenau & Miller, LLP, and
7 The Gardner Firm, P.C.—demonstrates the significance of this achievement. (See Composite
8 Exhibit J, Firm Settlement Histories)³. Across these three firms' websites, a total of 229 settlements
9 are listed. Of those 229 distinct recoveries, only 17 are larger than the \$3.625 million settlement
10 secured for the Class in this case.

11 This data places the settlement achieved by Class Counsel in the **92.7th percentile** of these
12 reported recoveries by the most active practitioners in this field. To put this result in further
13 perspective, the median settlement value across all 229 cases is only **\$925,000**. This settlement is
14 nearly four times the median recovery. This result was obtained in a case of first impression in this
15 Circuit and against the vigorous opposition of the Chapter 7 Trustee. The outcome itself is the
16 strongest possible evidence of the skill and efficiency of counsel and directly refutes the U.S.
17 Trustee's argument that counsel's experience level should somehow diminish the fee award. The
18 result is exceptional, and it squarely satisfies one of the primary factors articulated in *Vizcaino* for
19 justifying the requested fee.

20 **VI. The Requested Fee is Justified by the Extreme Risk and Novelty of the Litigation**

21 The requested fee is justified not only by the exceptional result, but also by the "extremely
22 risky" nature of this case—another key factor recognized by the Ninth Circuit in *Vizcaino*. The
23 court in *Vizcaino* found a case to be risky where counsel "pursued this case in the absence of

24 ³ The lists of cases are pulled directly from the three firms' websites: Raisner Roupinian LLP
(<https://raisnerroupinian.com/settled-cases/>); Lankenau & Miller, LLP (<https://www.lankmill.com/cases/>);
and The Gardner Firm (<https://www.warnadvocate.com/index.html>).

1 supporting precedents," faced "vigorous opposition," and had to overcome initial losses in the
2 district court. *Id.* at 1048. Each of those risk factors is present here in abundance, centered on a
3 true issue of first impression in the Ninth Circuit.

4 The core legal dispute in this case was whether the WARN Act's protections extend to
5 geographically distant employees whose job losses are the direct consequence of a distant
6 headquarters closure. The U.S. Trustee advanced a narrow, geographically-bound interpretation,
7 arguing that "affected employees" could only be those who physically worked at the "single site
8 of employment" where the mass layoff was triggered. *See Jason Karroll, et al. v. Virginia Burdette*,
9 Case No. 2:23-cv-01050-JHC, Appellant's Opening Brief, ECF No. 6. Class Counsel, in contrast,
10 advanced a novel but textually-grounded causal theory: that the definition includes any employee
11 whose job loss is a "consequence of" the triggering event, regardless of their work location. *See*
12 *Jason Karroll, et al. v. Virginia Burdette*, Case No. 2:23-cv-01050-JHC, Appellee's Response
13 Brief, ECF No. 8. The Chapter 7 Trustee admitted the novelty of this issue, stating in her appeal
14 brief that it "has never been addressed by any district court in the Ninth Circuit nor the Ninth
15 Circuit itself." *See Jason Karroll, et al. v. Virginia Burdette*, Case No. 2:23-cv-01050-JHC,
16 Appellant's Opening Brief, ECF No. 6.

17 Success was highly uncertain. The Chapter 7 Trustee's position was supported by several
18 out-of-circuit cases, and this Court initially granted the Chapter 7 Trustee's motion to dismiss.
19 Main Case, at ECF No. 926, *United States Trustee's Motion Objection to Class Counsel Fees*
20 *Sought in Joint Motion for Final Approval of Class Action Settlement Resolving WARN Act*
21 *Adversary Proceeding*, p. 2. Class Counsel had to revive the case and persuade both this Court and
22 the District Court to reject the Chapter 7 Trustee's line of authority and adopt a broader, more
23 protective interpretation of the statute. Prevailing on a novel legal theory after an initial dispositive
24 loss is the very definition of risky, contingent litigation that warrants a fee at the top of the market
range.

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1 **A. The U.S. Trustee Mischaracterizes the Substantial Risk of Non-Collection**

2 The U.S. Trustee's assertion that there was no meaningful risk of collection is based on an
3 incomplete and misleadingly optimistic view of the estate's financial condition at the time the
4 adversary proceeding was commenced. The Trustee relies solely on the receiver's January 25,
5 2023, declaration, which, while noting the collection of \$6 million and negotiation of \$35 million
6 in accounts receivable, was filed in a virtual information vacuum. *See Main Case*, at ECF No. 20
7 *Declaration of David P. Stapleton in Support of Receiver's Motion for Relief from Turnover Under*
8 *11 U.S.C. § 543*. When Class Counsel filed this action on January 27, 2023, the Debtor's schedules
9 had not yet been filed, nor had a bar date been set. Consequently, it was impossible for counsel to
10 ascertain the total value of secured claims that would have priority over all other creditors, the full
11 scope of administrative expenses required to liquidate the estate, or the universe of other priority
12 unsecured claims that would share pro-rata in any potential distribution. The information that *was*
13 available at the time painted a precarious picture, as the receiver's declaration itself highlighted
14 enormous administrative costs, including a bi-weekly payroll of nearly \$300,000 and monthly rent
15 of \$260,000, all of which would be paid before any priority claims. *Id.* Furthermore, the
16 declaration's reference to "negotiating" \$35 million in receivables provided no guarantee of the net
17 amount that would actually be recovered for the estate after collection costs and potential disputes.
18 The substantial risk undertaken by Class Counsel was later confirmed by the Debtor's schedules,
19 filed on April 5, 2023, which revealed a \$5.08 million secured claim with a lien on all assets and
20 over \$2 million in competing priority claims. To suggest that the gross value of potential
21 receivables eliminated collection risk is to ignore the fundamental hierarchy of the Bankruptcy
22 Code and the significant financial uncertainties that defined the early stages of this case.

23 Furthermore, the U.S. Trustee's reliance on subsequent filings, such as the estate's April
24 2023 Monthly Operating Report and the much later Motion for Interim Distribution, is an improper
use of hindsight that fails to reflect the uncertainty Class Counsel faced at the inception of the
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1 litigation. The April 2023 report, which reflected over \$8.1 million in cash, was filed for a period
2 ending more than three months after this adversary proceeding was initiated and could not have
3 been part of counsel's initial risk analysis. Likewise, the Trustee's Motion for Interim Distribution,
4 showing nearly \$34 million on hand, was a testament to the Trustee's successful liquidation efforts
5 over many months—an outcome that was far from certain when the case was commenced. The
6 U.S. Trustee, in essence, asks the Court to judge Class Counsel's risk assessment on January 27,
7 2023, using financial clarity from documents that did not exist until April 2023 and beyond—a
8 classic and improper use of hindsight. The only relevant measure of risk is the information that
9 was known or reasonably knowable on the date the lawsuit was filed. The subsequent success of
10 the Chapter 7 Trustee in marshalling assets does not retroactively erase the initial and very real
11 risk that the estate could have proven to be administratively insolvent, leaving priority creditors
12 with no recovery.

13 **B. The Successful Outcome on a Novel Issue Benefits All Employees**

14 The successful outcome of this novel issue does more than just benefit the more than 1,700
15 class members in this case; it expands the WARN Act's protections for employees in the modern,
16 decentralized economy. The Chapter 7 Trustee's narrow "single site" rule is an outdated concept
17 that fails to protect employees in workforces like Wireless Advocates, where a headquarters
18 closure can cause a nationwide collapse. The rulings from this Court and the District Court
19 establish a vital precedent, affirming that the WARN Act's protections are not limited by antiquated
20 geographical lines but follow the chain of causation. This ensures that companies cannot use
21 complex corporate structures with many small, remote worksites to evade their WARN Act
22 obligations, thereby vindicating the core, remedial purpose of the statute.

23 **VII. The Lodestar Cross-Check Confirms the Reasonableness of the Fee**

24 The U.S. Trustee objects that Class Counsel failed to submit contemporaneous billing
records to support the lodestar calculation. Main Case, at ECF No. 926, *United States Trustee's*
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1 *Motion Objection to Class Counsel Fees Sought in Joint Motion for Final Approval of Class Action*
2 *Settlement Resolving WARN Act Adversary Proceeding*, p. 15. That is now cured. Submitted along
3 with the Supplemental Declaration is a detailed log of the 830.2 hours Class Counsel has expended
4 on this matter to date. Simpson Supplemental Declaration, pp. 6-27. This figure, however, does
5 not include the significant future work required to bring this case to a final resolution, including
6 preparing for and attending the final approval hearing and administering the settlement, which is
7 anticipated to require at least another 30 hours of attorney time.

8 Furthermore, the initial lodestar calculation did not account for the time expended by local
9 counsel. Local counsel has submitted a declaration attesting to 50 hours of work on this matter. At
10 the same reasonable rate of \$550 per hour, this adds an additional \$27,500 to the lodestar. Symmes
11 Declaration, ¶ 6. The total lodestar for all counsel for time already expended is therefore **\$484,110**
12 (\$456,610 + \$27,500). In a demonstration of billing judgment, Class Counsel has written off all
13 time expended by non-attorney staff.

14 When the requested fee of \$1,087,500 is cross-checked against this updated and
15 conservative lodestar, the resulting multiplier is **2.25**. This modest multiplier is well within the
16 typical range of 1.0 to 4.0 that is "frequently awarded in common fund cases," and is significantly
17 more reasonable than the 3.65 multiplier approved by the Ninth Circuit in *Vizcaino*. *Vizcaino*, 290
F.3d at 1051 n.6. The U.S. Trustee's concern regarding the multiplier is therefore unfounded.

18 **VIII. Class Counsel's Requested Rate is Reasonable**

19 Class Counsel's requested hourly rate is reasonable given the rates the Chapter 7 Trustee's
20 counsel charged—and this Court approved—in this very litigation. The most reliable evidence of
21 the market rate for legal services in a specific case is what a sophisticated, willing buyer actually
22 paid. Here, the Chapter 7 Trustee, on behalf of the estate, retained the national law firm of K&L
23 Gates LLP to defend this matter.

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1 According to K&L Gates's own fee applications, the Court has already approved hourly
2 rates of **\$650 for a partner** (Brian Peterson) and **\$560 for an associate** (Monica Romero) for their
3 work in 2025 and **\$725 for a partner** (Michael Gearin) for his work in 2024. (Ex. K, Gearin Decl.
4 at 17). Class Counsel's requested rate of **\$550 per hour** is not only reasonable in comparison, it is
5 substantially lower than the rate approved for the Chapter 7 Trustee's lead attorney on this matter.

6 It is axiomatic that the rates charged by opposing counsel are a powerful benchmark for
7 reasonableness. The U.S. Trustee cannot credibly argue that a \$550 hourly rate is excessive for
8 lead counsel who bore all the contingent risk of this litigation, when the Chapter 7 Trustee paid
9 her non-contingent defense counsel a higher rate for the same matter. If \$650 or \$725 per hour is
10 a reasonable market rate to *defend* this case, then \$550 per hour is an inherently reasonable—and
indeed, conservative—rate to *prosecute* it.

11 **IX. The Unanimous Support of the Class Weighs Heavily in Favor of Approval**

12 The reaction of the class members is a critical factor in determining the reasonableness of
13 a settlement and the associated fee request. Here, the reaction has been overwhelmingly positive:
14 of the 1,785 Class Members who received notice of the settlement and the requested attorneys'
15 fees, not a single one has objected. Main Case, at ECF No. 903, *Joint Motion for Final Approval*
16 *of Class Action Settlement Resolving WARN Act Adversary Proceeding*, p. 4.

17 Courts have repeatedly held that the absence of objections is powerful evidence of fairness.
18 The lack of any objections "raises a strong presumption that the terms of a proposed class
19 settlement action are favorable to the class members." *Dixon v. Cushman & Wakefield W., Inc.*,
20 No. 18-CV-05813-JSC, 2022 WL 1189883, at *8 (N.D. Cal. Apr. 21, 2022) (internal quotation
21 marks omitted). Indeed, a court "may appropriately infer that a class action settlement is fair,
22 adequate, and reasonable when few class members object to it." *Id.* This principle is consistently
23 applied. *See, e.g., Ralston v. Mortg. Inv'rs Grp., Inc.*, No. 5:08-CV-00536-JF, 2013 WL 5290240,
24 at *5 (N.D. Cal. Sept. 19, 2013) (noting the fee reasonableness was "confirmed by the fact that no

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1 class members have objected to the proposed award"); *Syed v. M-I LLC*, No. 1:14-742 WBS BAM,
2 2016 WL 310135, at *9 (E.D. Cal. Jan. 26, 2016) (noting no objections to the fee request by class
3 members); *Martin v. AmeriPride Servs., Inc.*, No. 08CV440-MMA (JMA), 2011 WL 2313604, at
4 *7 (S.D. Cal. June 9, 2011) ("The absence of any objector strongly supports the fairness,
5 reasonableness, and adequacy of the settlement.").

6 This unanimous support is particularly compelling in cases where courts award fees at or
7 above the 25% benchmark. In *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 148-49 (E.D. Pa.
8 2000), the court approved a one-third fee, emphasizing that out of over 5,250 class members, there
9 was only one objector. Similarly, in *In re Heritage Bond Litig.*, No. 02-ML-1475-DT(RCX), 2005
10 WL 1594389, at *16 (C.D. Cal. June 10, 2005), the court justified a one-third fee award in part
11 because the "remarkably small" number of objectors given the wide dissemination of notice
12 supported the request. The unanimous approval from the Class—the actual parties whose recovery
13 is affected by the fee—is compelling evidence that the fee is fair and reasonable from the
14 perspective of those most affected.

14 **X. The U.S. Trustee's Argument on the Contingency Factor is Without Merit**

15 The U.S. Trustee dismisses the contingency factor with the circular argument that because
16 "all WARN Act litigation is essentially contingency based work that fact alone does not warrant a
17 finding that a 5% upward deviation is warranted." Main Case, at ECF No. 926, *United States*
18 *Trustee's Motion Objection to Class Counsel Fees Sought in Joint Motion for Final Approval of*
19 *Class Action Settlement Resolving WARN Act Adversary Proceeding*, p. 14. This argument
20 completely misapprehends the purpose of the factor. The contingency factor exists to compensate
21 counsel for the **risk of non-payment** and the **delay in payment**, not to reward them for the novelty
22 of their fee arrangement. The Ninth Circuit in *Vizcaino* explicitly recognized this, explaining that
23 enhancing a fee award "mirrors the established practice in the private legal market of rewarding
24 attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly
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1 rates for winning contingency cases." *Vizcaino*, 290 F.3d at 1051. The court further noted that in
2 common fund cases, "attorneys whose compensation depends on their winning the case[] must
3 make up in compensation in the cases they win for the lack of compensation in the cases they
4 lose." *Id.* (internal citation omitted).

5 The U.S. Trustee's argument fails to engage with the specific, heightened risks of this
6 particular contingent representation. The risk of non-payment in a bankruptcy case against a
7 liquidating debtor is substantially higher than in typical litigation against a solvent company. At
8 the outset of this case, it was entirely possible that even a complete victory on the merits would
9 yield no recovery for the Class, and therefore no fee for counsel. Litigating a novel and complex
10 case for over two years without any compensation, and while advancing costs, is precisely the
11 burden the contingency factor is meant to address. The U.S. Trustee's attempt to dismiss this
12 critical factor with a single, flawed sentence should be rejected.

13 **XI. The Requested Fee is Reasonable Under Any Standard**

14 The U.S. Trustee's rigid focus on the 25% benchmark is misplaced. For a common fund of
15 this size—\$3.625 million—a 30% fee is not an upward deviation requiring extraordinary
16 justification but is instead squarely within the normal and expected range. Courts in this circuit
17 and others consistently recognize that for settlements under \$10 million, fees are "often more than
18 the 25% benchmark," typically falling in the 30-40% range. *Martin v. AmeriPride Servs., Inc.*, No.
19 08cv440-MMA (JMA), 2011 WL 2313604 at *8 (S.D. Cal. June 9, 2011). More specifically, courts
20 have repeatedly affirmed that a one-third fee is the de facto market rate for WARN Act cases. *See,*
21 *e.g., Mees v. Skreened, Ltd.*, No. 2:14-CV-142, 2016 WL 67521, at *5 (S.D. Ohio Jan. 6, 2016)
22 ("[A]n attorneys' fee award of one-third of the fund is common in WARN Act class action
23 settlements."); *see also Guippone v. BH S & B Holdings, LLC*, No. 09 CIV. 01029 CM, 2011 WL
24 5148650, at *9 (S.D.N.Y. Oct. 28, 2011); *Knapp v. Badger Techs., Inc.*, No. 12-CV-6637-CJS-

REPLY IN SUPPORT OF JOINT MOTION FOR FINAL APPROVAL OF
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1 MWP, 2015 WL 3745303, at *5 (W.D.N.Y. June 15, 2015); *Hutson v. CAH Acquisition Co. 10,*
2 *LLC*, No. 1:15CV742, 2017 WL 5574016, at *2 (M.D.N.C. June 26, 2017).

3 Even setting aside the exceptional result and extreme risk present in this case, the requested
4 30% fee is squarely within the "usual range" of 20-30% for common fund cases discussed in
5 *Vizcaino*, 290 F.3d at 1047. The U.S. Trustee's objection is thus an attack on a fee that is, by all
6 objective measures, entirely conventional.

7 Finally, awarding the market rate serves the public policy underlying the WARN Act.
8 Courts have recognized that adequate fee awards are "necessary to encourage enforcement of the
9 WARN Act by employees and their private counsel." *Bennett v. Roark Cap. Grp., Inc.*, No. 2:09-
10 CV-00421-GZS, 2011 WL 1703447, at *2 (D. Me. May 4, 2011). This is especially true where, as
11 here, counsel must litigate novel and untested legal theories to secure a recovery. Rewarding
12 counsel for pursuing meritorious but novel claims with tenacity is essential to the development of
13 the law and the protection of workers. *See Adoma v. Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964,
14 983 (E.D. Cal. 2012) (approving an above-benchmark fee of 29% to reward counsel for "pursuing
15 novel claims... with tenacity"). The U.S. Trustee's position, if adopted, would chill the private
16 enforcement of this critical worker protection statute.

17 CONCLUSION

18 The U.S. Trustee's logic creates an impossible paradox: an attorney cannot be paid the
19 market rate for an exceptional result until they have *already* been paid the market rate for an
20 exceptional result. This "experience tax" is not the law. It is a fiction designed to punish success
21 and ignore the undisputed facts: a settlement in the 93rd percentile of comparable cases, achieved
22 in a high-risk matter of first impression, with the unanimous support of the 1,785 class members
23 whose recovery is at stake.

24 The market rate is determined by the market, not by the resume of a single participant.
Here, the market—evidenced by the very practitioners the U.S. Trustee cites—has spoken clearly.

REPLY IN SUPPORT OF JOINT MOTION FOR FINAL APPROVAL OF
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1 A one-third fee is the standard. The requested 30% fee is not an upward deviation; it is a discount
2 from the established market rate, earned by achieving a top-tier outcome.

3 For the foregoing reasons, Class Counsel respectfully requests that the Court overrule the
4 U.S. Trustee's objection and grant the motion for final approval, including the requested attorneys'
5 fees and costs.

6 Respectfully Submitted,

7 /s/ William "Jack" Simpson
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23 *Counsel for Plaintiffs*

24 REPLY IN SUPPORT OF JOINT MOTION FOR FINAL APPROVAL OF
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1
2
3 **CERTIFICATE OF SERVICE**

4 The undersigned declares that he caused the foregoing document to be filed electronically
5 through the CM/ECF system which caused Registered Participants to be served by electronic
6 means, as fully reflected on the Notice of Electronic Filing.

7 I declare under penalty of perjury under the laws of the State of Mississippi and the
8 United States that the foregoing is true and correct.

9 Executed on the 19th day of August, 2025 in Booneville, Mississippi.

10 /s/ William "Jack" Simpson
11 William "Jack" Simpson
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24 REPLY IN SUPPORT OF JOINT MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT RESOLVING
WARN ACT ADVERSARY PROCEEDING

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: PGX HOLDINGS, INC., <i>et al.</i> , Debtors. ¹	Chapter 11 Case No. 23-10718 (CTG) (Jointly Administered) Hearing Date: April 8, 2024 @ 10:00 a.m. Objection Deadline: April 1, 2024 @ 4:00 p.m.
KIRSTEN HANSEN on behalf of herself and all others similarly situated, Plaintiff, v. PGX HOLDINGS, INC.; PROGREXION HOLDINGS, INC.; PROGREXION TELESERVICES, INC.; PROGREXION MARKETING, INC.; PROGREXION ASG, INC.; PROGREXION IP, INC.; EFOLKS, LLC; CREDITREPAIR.COM, INC.; CREDIT.COM, INC.; and JOHN C. HEATH, ATTORNEY AT LAW PC, Defendants.	Adv. Proc. No. 23-50396 (CTG)

JOINT MOTION FOR AN ORDER

**(i) PRELIMINARILY APPROVING SETTLEMENT AGREEMENT, (ii) APPROVING
CLASS NOTICE, (iii) SCHEDULING FAIRNESS HEARING, (iv) APPROVING
SETTLEMENT AGREEMENT ON A FINAL BASIS, (v) APPROVING CLASS
COUNSEL’S FEES AND EXPENSES, AND (vi) GRANTING RELATED RELIEF**

The Plan Administrator of (the “**Plan Administrator**”) PGX Holdings, Inc., and its subsidiaries, Progexion Holdings, Inc., Progexion Teleservices, Inc., Progexion Marketing, Inc., Progexion ASG, Inc., Progexion IP, Inc., eFolks, LLC, Creditrepair.com, Inc., Credit.Com, Inc., and John C. Heath, Attorney at Law, PLLC (cumulatively, the “**Debtors**” and after the Effective



Date of the Plan, the “**Reorganized Debtors**” or **Defendants**”), on the one hand, and Kirsten Hansen (the “**Plaintiff**” or “**Class Representative**”), on behalf of herself and all others similarly situated (the “**Class Members**” or the “**Class**”), by and through their counsel, respectfully submit this Joint Motion, pursuant to section 105 of title 11 of the United States Code, Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 23 of the Federal Rules of Civil Procedure, applicable hereto by Bankruptcy Rule 7023 (cumulatively with FRCP 23 “**Rule 23**”), for entry of an order: (i) preliminarily approving the settlement as set forth in *Findings of Fact, Conclusions of Law, and Order Approving the Debtors’ Disclosure Statement for, and Confirming the Second Amended Joint Plan of PGX Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 681] (the “**Confirmation Order**”), which confirmed the *Second Amended Joint Chapter 11 Plan of PGX Holdings, Inc. and Its Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 570] (as amended, the “**Plan**”), (ii) approving the form and manner of notice to the members of the Class (as described in the Motion and Settlement Agreement), (iii) scheduling a fairness hearing to consider final approval of the settlement, (iv) approving the Settlement Agreement on a final basis at the fairness hearing, (v) approving Class Counsel’s fees and expenses, and (vi) granting related relief. In support of the Motion, the Parties respectfully represent as follows:

RELIEF REQUESTED

By this Motion, the Parties seek entry of a preliminary order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Preliminary Order**”): (i) preliminarily approving the settlement described in the Settlement Agreement.

In further support of the Motion, the Parties rely on upon the Declaration of René S. Roupinian attached hereto as **Exhibit B**, and all prior pleadings and exhibits filed in this action.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the 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 3018, 9019 and 7023.
4. The statutory and legal predicates for the relief requested herein are section 105(a) of title 11 of the Bankruptcy Code, Bankruptcy Rule 9019 and 7023 of the Bankruptcy Rules, and Rule 23 of the Federal Rules of Civil Procedure.

BACKGROUND

5. On April 5, 2023, Plaintiff and other employees of Defendants were allegedly terminated without cause, with additional terminations occurring on or about May 11, 2023 and June 6, 2023.
6. On June 4, 2023, each of the Defendants filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The chapter 11 cases are being jointly administered under Case No. 23-10718 (CTG).

7. On June 5, 2023, Plaintiff filed a Class Action Adversary Proceeding Complaint against Defendants in this Court for alleged violations of the Worker Adjustment and Retraining Notification Act (“**WARN Act**”), 29 U.S.C. § 2101 *et seq.* (Adv. D.I. 1, in Adversary Proceeding No. 23-50396 (CTG) in the Bankruptcy Court. The Complaint asserts that Defendants are liable to Plaintiff and the putative class for damages in the amount of 60 days’ pay and ERISA benefits because of Defendants’ violation of the WARN Act. (Adv. D.I. 1, ¶¶ 2, 3).

8. On July 5, 2023, Defendants filed an Answer generally denying Plaintiff’s allegations and asserting affirmative defenses, including, but not limited to, faltering company, unforeseeable business circumstances, good faith, and liquidating fiduciary (Adv. D.I. 4, Third, Fourth and Fifth Defense).

9. On August 4, 2023, Plaintiff filed a Motion for Class Certification and Related Relief (Adv. D.I. 5), which Defendants opposed on August 18, 2023 (Adv. D.I. 8). On October 24, 2023, the Court granted the Motion for Class Certification and Related Relief (Adv. D.I. 29), and on November 8, 2023 issued an Order (Adv. D.I. 36) certifying a Class defined as:

Plaintiff and other similarly situated employees of Defendants: (i) who worked at, received assignments from, or reported to any of the Defendants' sites, (ii) who were terminated within 90 days of April 5, 2023, and (iii) who have not filed a timely request to opt-out of the class.

10. The Court appointed Kirsten Hansen the Class Representative and her counsel the Class Counsel. (Adv. D.I. 36). Notice of Class Action was mailed to 947 Class Members on December 8, 2023 (Adv. D.I. 74), and one Class Member elected to opt-out of the Class. (Adv. D.I. 77). The Parties subsequently determined that the class definition should include an additional 131 terminated employees. These additional putative class members shall receive notice of the settlement and be given an opportunity to opt-out of the class. The complete list of 1077 class members is attached hereto as **Exhibit C**.

11. On November 22, 2023, Defendants filed a Motion for Summary Judgment (Adv. D.I. 16), which the Plaintiff opposed on October 20, 2023 (Adv. D.I. 28). On November 1, 2023, the Court denied Defendants' Motion for Summary Judgment (Adv. D.I. 31).

12. The Parties completed discovery in early December 2023, including cross motions for summary judgment, Defendants' Motion for Partial Decertification (Adv. D.I. 50), and the filing of other pretrial documents. Trial was set to begin on December 11, 2023.

13. Following arm's-length negotiations, there appear to be significant, complex legal and factual issues in dispute between the Parties that would, absent consensual resolution, require protracted litigation. In order to avoid further extensive, costly and uncertain litigation, the Parties desire to enter into a final settlement and release of all demands, claims, damages, and causes of action arising out of or relating in any way to the Hansen Adversary Proceeding Complaint in accordance with the terms of this settlement, subject to approval by this Court. They have reached agreement on a compromise that will fully and finally resolve the WARN Action, which they now jointly present to the Court for approval.

ESSENTIAL TERMS OF THE PROPOSED SETTLEMENT

14. The essential terms of the Settlement Agreement are summarized herein as follows¹:

a) **Definition of the Class:** The Class was certified by the Court on November 8, 2023 (Adv. D.I. 36), and defined as: Plaintiff and other similarly situated employees of Defendants: (i) who worked at, received assignments from, or reported to any of the Defendants' sites, (ii) who were terminated within 90 days of April 5, 2023, and (iii) who have not filed a timely request to opt-out of the class. Additionally, Plaintiff Kirsten Hansen is the class representative and her counsel is Class Counsel.

¹ This is a summary of the terms of the Settlement Agreement. In the event there is any ambiguity or inconsistency, the terms set forth in the Settlement Agreement, as set forth in the Confirmation Order, shall govern. Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Settlement Agreement.

b) **Allowed Class Claim:** The Class, in full and final settlement of the WARN Action, shall be granted an aggregate allowed priority class claim against Defendants pursuant to 11 U.S.C. §507(a)(4) of \$1,450,000 (the “**Allowed Class Claim**”), which amount shall be subject to the 11 U.S.C. §507(a)(4) statutory cap of \$15,150 per employee, which is the statutory cap in effect as of the Order for Relief Date. Of that amount, \$1,200,000 shall be paid on the Effective Date and an additional sum up to \$250,000 shall be paid from funds remaining in Defendants’ wind-down budget (“**WDB**”), if any, at the conclusion of the chapter 11 cases. The Allowed Class Claim is inclusive of all amounts payable in connection with the Settlement, including without limitation, Class Counsel’s Fees and Expenses, the Class Representative Service Payment, Employer Payroll Taxes, costs of the Settlement Administrator and any other applicable, federal, state, or local taxes. Neither the Plaintiff, any Class Member, or any of their counsels or representatives shall have any claim against any of the Debtors, the Reorganized Debtors, or their estates arising from or related to the actions alleged in the Complaint and the Reorganized Debtors shall modify the claims registers to reflect such without the need for further action from the Court. Class Counsel acknowledges that it has received the initial payment of \$1,200,000. The Defendants’ Plan Administrator, through its counsel, will provide to Class Counsel on a monthly basis a report (email being sufficient) of the actions to date regarding resolution of claims and progress toward concluding the chapter 11 cases and fees incurred following the Effective Date. Such report shall include all amounts paid to date to professionals from the Wind-Down Budget on a line-item basis.

c) **Allocation of Allowed Class Claim and Distribution to Class Members:** Each individual Class Member shall be entitled to receive such Class Member’s Pro Rata Share from the net Allowed Class Claim. The Allowed Class Claim (after being reduced on account of the Class Representative Service Payment, Class Counsel’s Fees and Expenses and the costs of the Settlement Administrator) shall be distributed to individual Class Members on a pro rata basis (their “**Pro Rata Share**”) based upon each individual Class Member’s (a) average monthly gross wages or salary and any benefits under any employee benefit plan, and (b) their hire date, notice date and termination date, based on Defendants’ books and records (the “**Back Pay**”).

d) **Taxation of the Class Member’s Pro Rata Share:** The Settlement Administrator shall be responsible for calculating, withholding, and remitting payment from the Allowed Class Claim funds all payroll tax withholdings to the taxing authorities in accordance with applicable law. Payroll tax withholding shall include all applicable federal, state and local income taxes, and statutory taxes including, without limitation, Federal Insurance Contribution Act and federal and state unemployment insurance amounts associated with the distributions to Class Members receiving payments under the Settlement Agreement.

e) **Responsibilities of Class Counsel:** Class Counsel shall be responsible for the production, mailing and expense of all notices required to be provided to the Class Members.

f) **Class Representative Service Payment:** Subject to approval of the Court, Plaintiff as the Class Representative, shall be entitled to a one-time payment of \$25,000, payable from the Allowed Class Claim in addition to her pro rata share of the Allowed Class Claim.

g) **Class Counsel’s Fees and Expenses:** Subject to the Court’s approval, Class Counsel shall be paid the amount of one-third (1/3) of the Allowed Class Claim, net of 1) the Class

Representative Service Payment, 2) Class Counsel's expenses, and 3) the cost of the Settlement Administrator. Class Counsel's expenses and the cost of the Settlement Administrator shall not exceed \$100,000. Class Counsel's Fees and Expenses shall be payment in full for Class Counsel's work and expenses in connection with the matter. Class Counsel's Fees and Expenses, as well as any cost of the Settlement Administrator, shall be paid exclusively from the Qualified Settlement Fund.

h) **Release of Defendants:** Upon the Settlement Effective Date (as defined below), the Class Members, for and on behalf of themselves, and their respective predecessors, successors, assigns, heirs, personal representatives and estates (collectively, the "**Releasing Parties**"), will fully and forever release and discharge, to the extent not previously released and discharged, the Defendants and each of their respective current and former members, subsidiaries 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, 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 now have or hereafter may have against the Released Parties, including, but not limited to, any claims related to or based upon the WARN Act, or any other federal, state, or local laws or regulations of similar effect arising from or out of or relating to the allegations asserted in the Complaint (the "**Released Claims**").

i) **Proofs of Claim** – The Final Approval Order shall provide that any and all proofs of claim filed on account of liabilities asserted, assertible, arising from or out of or relating to the allegations asserted in the Complaint or the Adversary Proceeding by Class Members in the Class shall be disallowed and expunged from the Defendants' claims register on the Settlement Effective Date. Nothing in this Settlement Agreement shall waive or limit defenses available to the Defendants and their successors and assigns against a proof of claim that has been or may be filed against the Defendants in these Bankruptcy Cases.

j) **Residual Funds:** Any distributions from the Qualified Settlement Fund to Class Members that are not deposited or presented for payment within one hundred eighty (180) days of the distribution shall be deemed residual funds and be distributed to anyone omitted from the Class, who Class Counsel qualify to be Class Members, with any remaining funds donated to Towards Justice, a non-profit 501(c)(3) charitable organization which advocates on behalf of employees' rights.

k) **Settlement Effective Date:** The Settlement Agreement shall become effective on the date on which the final settlement order becomes a "final order" (the "**Settlement Effective Date**"). The final settlement order shall become a final order when the time for taking an appeal under Bankruptcy Rule 8002 has expired or, in the event that an appeal has been taken, the day the final settlement order has been affirmed with no further right of appeal under the Bankruptcy Rules.

BASIS FOR RELIEF REQUESTED

A. The Court Should Approve the Settlement Pursuant to Bankruptcy Rule 9019.

15. Bankruptcy Rule 9019(a) authorizes a bankruptcy court to approve a compromise or settlement after notice and a hearing, and section 105(a) of the Bankruptcy Code empowers a bankruptcy court to issue any order that is “necessary or appropriate.” *In re Key3Media Group, Inc.*, 336 B.R. 87, 92 (Bankr. D. Del. 2005) “[T]he authority to approve a compromise settlement is within the sound discretion of the bankruptcy court.”). *See also In re Louise’s, Inc.*, 211 B.R. 798, 801 (D. Del. 1997). When exercising such discretion, the bankruptcy court must determine whether the compromise is “fair, reasonable, and in the best interest [sic] of the estate.” *Key3Media*, 336 B.R. at 92. *See also, Fry’s Metals, Inc. v. Gibbons (In re RFE Industries, Inc.)*, 283 F.3d 159, 165 (3d Cir. 2002); *In re Louise’s, Inc.*, 211 B.R. at 801; *In re Marvel Entertainment Group, Inc.*, 222 B.R. 243, 249 (Bankr. D. Del. 1998).

16. The bankruptcy court is not required to determine that the proposed settlement is the best possible compromise. *In re Key3Media Group*, 336 B.R. at 92-93 (citing *In re Coram Healthcare Corp.*, 315 B.R. 321, 329 (Bankr. D. Del. 2004)). Rather, the settlement should be approved as long as it does not fall below the lowest point in the range of reasonableness. *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). In this respect, it is unnecessary for the bankruptcy court to consider the information necessary to resolve the factual dispute, nor is it necessary for the bankruptcy court to “conclusively determine claims subject to a compromise.” *Key3Media Group*, 336 B.R. at 92.

(i) Standards for Approval of the Settlement Agreement.

17. Courts consider the following four factors when determining whether a settlement is in the best interests of the estate: (i) the probability of success in the litigation; (ii) the difficulties,

if any, to be encountered in the matter of collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attendant thereto; and (iv) the paramount interest of the creditors and a proper deference to their reasonable opinions. *Martin*, 91 F.3d at 393; *Aetna Casualty & Surety v. Jasmine, Ltd. (In re Jasmine, Ltd.)*, 258 B.R. 119, 123 (Bankr. D.N.J. 1999); *Key3Media Group*, 336 B.R. at 93; *Marvel*, 222 B.R. at 249.

18. In addition to these criteria, bankruptcy courts have also scrutinized additional factors, such as: (i) the competency and experience of counsel who support the settlement; (ii) the relative benefits to be received by individuals or groups within the class; (iii) the nature and breadth of releases to be obtained by the parties to the settlement; and (iv) the extent to which the settlement is the product of arm's length bargaining. See *Fischer v. Pereira (In re Charles Street, Inc.)*, 209 B.R. 618, 620 (S.D.N.Y. 1997); *In re Spielfogel*, 211 B.R. 133, 144 (Bankr. S.D.N.Y. 1997); *In re Dow Corning Corp.*, 198 B.R. 214, 223 (Bankr. E.D. Mich. 1996).

(ii) Application of the *Martin* Factors to the Proposed Settlement.

19. The results of a trial are uncertain, and the litigation is complex. The Parties had completed discovery and were set to begin trial on December 11, 2023. The Action involves numerous legal issues regarding the application of the WARN Act and its statutory and other legal defenses to complex facts, all of which were disputed. These issues include, *inter alia*: (i) whether Defendants laid off employees through a “plant closing” or “mass lay off” at a single site of employment under the WARN Act; (ii) whether the Defendants were entitled to give fewer than sixty (60) days’ notice because of statutory exceptions under the WARN Act; (iii) whether the Defendants operated as a “single business enterprise” for purposes of the WARN Act; (iv) whether the Defendants provided adequate notice to the Class Members under the WARN Act; (v) the computation of the amount of damages, if any; (vi) whether the Defendants constitute an

“employer” under the WARN Act’s provisions, and (vii) whether attorneys’ fees are to be awarded to the Class Members if they prevail.

20. Continued litigation would be costly and time-consuming and expose the Parties to significant litigation risks. Class Counsel has asserted that the aggregated liability of sixty (60) days’ wages and benefits under the WARN Act is more than \$11 million. The proposed settlement provides for prompt payment and eliminates any further accrual of litigation expenses in prosecuting the action against the Defendants, including trial and possible appeals.

21. The Plaintiff views the \$250,000 in contingent proceeds from the WDB as a significant component of the overall settlement. Moreover, the costs of distribution of the settlement to the Class Members will be paid from the Allowed Class Claim, making an interim distribution economically unfeasible. Accordingly, the Class must wait until the Plan Administrator completes his work in winding up the Defendants’ estate for the full settlement amount to be known.

22. The Settlement Agreement is in the best interest of creditors and the Defendants’ estate. 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.’” *In re Key3Media Group*, 336 B.R. at 93 (quoting *In re Martin*, 91 F.3d at 393 (citing *TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968))). See also *In re Nationwide Sports Distributors, Inc.*, 227 B.R. 455, 460 (Bankr. E.D. Pa. 1998) (“[I]n deciding whether to approve a particular compromise, courts utilize various criteria designed to achieve the objective of having the Trustee or debtor in possession act in [the] best interests of the estate”). To properly balance these values, a bankruptcy court should consider all factors “relevant to a full and fair assessment of the wisdom of the proposed compromise.” *In*

re Marvel, 222 B.R. at 249 (quoting *TMT Trailer Ferry, Inc.*, 390 U.S. at 424). See also *Key3Media Group*, 336 B.R. at 92 (“[t]he bankruptcy court must be ‘apprised of all relevant information that will enable it to determine what course of action will be in the best interest of the estate.’”) (quoting *In re Martin*, 91 F.3d at 393).

23. The paramount interest of creditors and reasonable deference to their views also favors approval of the Settlement Agreement. Moreover, as set forth above, the Settlement Agreement spares the Defendants the significant expense and uncertainty associated with the litigation of the myriad of liability issues under the WARN Act. Applying each of the *Martin* factors, the Settlement Agreement should be approved.

B. The Court Should Preliminarily Approve the Settlement.

24. 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. 434. “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.”” *Gates v. Rohm & Haas Co*, 248 F.R.D. 434, 438 (E.D. Pa. 2008) quoting *Smith v. Professional Billing & Mgmt. Sys., Inc.*, 2007 WL 4191749, at *1 (D.N.J. Nov. 21, 2007); see also, *In re Community Bank of Northern Virginia*, 2008 WL 3833271 (W.D. Pa. Aug. 15, 2008). The preliminary approval determination requires the 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.” *In re General Motors Corp.*, 55 F.3d 768, 785-86 (3d Cir. 1995).

25. The Third Circuit has emphasized that “to 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) (quoting 9 Collier on Bankruptcy ¶ 9019.03[1] (15th ed. 1993)). See also *In re Culmtech, Ltd.*, 118 B.R. 237, 238 (Bankr. M.D. Pa. 1990) (“[C]ompromises are favored in bankruptcy and ... much of litigation in bankruptcy estates results in settlements”).

26. 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. Second, the Parties have completed discovery and are aware of all the legal issues and risks attendant to conduct a trial on those issues. They have carefully weighed their chances of prevailing at trial. Third, counsel for the Parties have the experience and the skill to both vigorously litigate WARN Act claims and to determine when and to what extent settlement is appropriate. Considering the foregoing, the Court should preliminarily approve the Settlement Agreement.

27. Once a settlement is preliminarily approved, notice of the settlement and of the final fairness hearing is provided to class members. Federal Rule of Civil Procedure 23(e) requires that all members of the class be notified of the terms of any proposed settlement. The 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*, 148 F.3d at 326-27 (3rd Cir. 1998). The proposed Notice of Settlement and Fairness Hearing will be served by Class Counsel on each Class Member. A form of notice to class members who already had an opportunity to opt out is attached hereto as **Exhibit D**. A form of notice to class members who were added subsequently is attached hereto as **Exhibit E**. Class Counsel proposes that within fifteen days following entry of the order

preliminarily approving the Notice of Settlement and Fairness Hearing, 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.

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

- That the Settlement Agreement shall become effective only if it is approved by the Court and an Approval Order is entered by the Court without material modification under Bankruptcy Rules 7023 and Rule 9019;
- That, upon approval, the Settlement Agreement shall be effective as to all Class Members;
- That Class Members who have not been given the right to opt-out of the class shall have that right, and that all Class Members shall have the right to object to the Settlement Agreement either in person or through counsel at the Fairness Hearing; and
- That upon the Settlement Effective Date, all Released Claims of a Class Member (other than those claims to be paid under the terms of the Settlement Agreement) shall be waived, and that no person, including the Class Member, shall be entitled to any further distribution thereon.

29. 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 action and a copy of the Settlement Agreement. The proposed 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 proposed form of and manner to distribute the Notice of Settlement and Fairness Hearing is sufficient and should be approved.

C. The Court Should Set a Fairness Hearing and Finally Approve the Settlement at the Fairness Hearing.

30. At the Fairness Hearing, the Court should finally approve the Settlement Agreement. 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); *In re Cendant Corp. Litig.*, 264 F.3d 201, 231 (3d Cir. 2001). "This inquiry requires the court's independent and objective analysis of 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." *Community Bank*, 2008 WL 3833271 at * 5 (quoting *General Motors*, 55 F.3d at 785.).

31. The Third Circuit has held that the following nine factors are relevant in determining whether a proposed class settlement is fair, reasonable, and adequate: (1) the complexity, expense, and likely 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 the class action through trial; (7) the ability of the Debtors to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation. *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975). This list is not exhaustive. *Community Bank*, 2008 WL 3833272 at *6.

32. The following *Girsh* factors strongly support approval of the Settlement Agreement: (i) further litigation will be complicated, protracted and expensive; (ii) Plaintiff supports the Settlement Agreement and Class Counsel believes the bulk of the other Class Members will have a favorable reaction to the Settlement Agreement and will not object to it; (iii) 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 settlement negotiations; (iv) the risk that Plaintiff would be unable to establish liability was significant

because of the defenses asserted by the Defendants if litigation had continued; and (v) when considered in light of the best possible recovery and the attendant risks, the settlement falls well within the range of reasonableness.

33. Based on the foregoing, the Court should finally approve the Settlement Agreement.

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

34. Class Counsel is entitled to be paid a fee out of the settlement fund created for the benefit of the Class. 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).

35. The law in this 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 the court cannot otherwise come to a resolution of class counsel's fees. *In re Cendant Corp. Litig.*, 264 F.3d at 221, 283; *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195, n.1 (3d Cir. 2000). Class Counsel submits that the award of a fee of one-third of the Allowed Class Claim, as provided in the Settlement Agreement, is fully warranted.

36. The percentage award should be based on seven factors, among others, that were enumerated in *Gunter*, 223 F.3d at 195, n. 1, and then quoted with approval in *Cendant*, 264 F.3d at 283, as follows: (a) the size of the fund created and the number of persons benefited; (b) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (c) the skill and efficiency of the attorneys involved; (d) the

complexity and duration of the litigation; (e) the risk of nonpayment; (f) the amount of time devoted to the case by plaintiffs' counsel; and (g) the awards in similar cases. An eighth factor — “the percentage likely to have been negotiated between private parties in a similar case” — which was considered in determining the percentage fee award from a common fund in the case *In re Ikon Office Solutions, Inc. Secs. Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000).

37. Class Counsel submits that the application of these eight factors to the action shows that an attorneys' fee award of one-third of the Allowed Class Claim should be approved for the following reasons:

- As to the size of the class and the recovery, the Class is 1077 members and the Allowed Class Claim provides for prompt payment upon the Settlement Effective Date, as opposed to trial on the merits of the case, the risks attendant with trial and depletion of resources of a trial and possible appeals.
- 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 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 and the difficulty of addressing the Defendants' affirmative defenses.
- 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 Class's claims. In addition, the defenses asserted by the Defendants created further risk of non-payment.
- As to fees in similar cases, Class Counsel submits that in WARN 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 non-consensually.
- As to the percentage likely to have been negotiated between private parties in a similar case, Class Counsel was retained by the Class Representative on a one-third contingency basis, plus expenses, or, 40% had it gone to judgment. Class Counsel has been consistently retained in other WARN class actions on a one-

third contingency basis. Class Counsel submits that each of the factors weighs in favor of the one-third fee request.

38. The requested fee of one-third of the proposed Allowed Class Claim is supported by the percentage awards in other common fund cases. Moreover, the “Third Circuit favors the percentage-of-recovery method of calculating fee awards in common fund cases.” *Glaberson v. Comcast Corp.*, 2015 WL 5582251, at *11 (E.D. Pa. Sept. 22, 2015), citing *In re AT&T Corp. Secs. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006); *In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005). As pointed out in *Ikon*, 194 F.R.D. at 194, attorneys’ fee awards based upon a percentage of a common fund mostly “fall in the range of nineteen to forty-five percent.” See *Levit v. Filmways, Inc.*, 620 F. Supp. 421 (D. Del. 1985) (33% of the common fund); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 751 (E.D. Pa. 2013) (attorneys’ fees of \$50 million, representing 33 1/3% of common fund of \$150 million, approved); *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 336 (E.D. Pa. 2007) (attorneys’ fees of 35% of common fund approved). Class Counsel submits that the fees of one-third of the total expected Class recovery on the WARN claims should be approved under the multi-factor test applicable in this Circuit to fee awards from common fund recoveries.

39. 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. Recently WARN class actions that have been settled in this Court include: *Boyko v. Virgin Orbit, LLC*, Case No. 23-50324 (KBO); *Karaniwsky v. US Investigative Services LLC*, Case No. 15-50204 (KBO); *Wilrich v. Charming Charlie Holdings, Inc.*, Case No. 19-50276 (MFW); *Turner et al. v. Klausner Lumber*

Two, LLC, Case No. 20-115189 (KBO); *Thomay, et al. v. Klausner Lumber One, LLC*, Case No. 20-50602 (KBO); *Etzelsberger v. FAH Holdings, Inc.*, Case No. 13-13087-BLS.

40. In addition, to an attorney fee of one-third of the Allowed Class Claim, Class Counsel is seeking reimbursement for out-of-pocket costs incurred in the litigation (including the costs associated with the production and mailing of the notices) and the cost of the Settlement Administrator not to exceed \$100,000. To date, Class Counsel has incurred more than \$50,000 in expenses prosecuting the action and expects to incur additional expenses in connection with seeking preliminary and final approval of the Settlement, including mailing the Class Notice, the cost of the settlement administrator to distribute the settlement funds, monitoring the WDB, and communicating with Class Members regarding the Settlement. All such expenses are to be paid out of the settlement funds and the Defendants shall not contribute to such expenses.

41. In the Third Circuit 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 can “cross-check” the percentage award against the lodestar. *Cendant*, 264 F.3d at 285; *Bradburn*, 513 F. Supp. 2d at 338. 63. The Court should resolve the fee request without reference to the lodestar, especially in view of the burdens of carrying-out a lodestar “cross-check.” Such a cross-check would, in any event, demonstrate that the requested fee results in a negative multiplier.

E. The Court Should Approve the Service Payment to the Class Representative.

42. The Class Representative should be awarded a 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.”) (citing *Cullen v. Whitman*

Med. Corp., 197 F.R.D. 136, 145 (E.D. Pa. 2000)). Defendants do not oppose the requested service payment and are neutral regarding the points discussed in this section of the Motion. The requested service payment shall be paid out of the settlement funds without further contribution by the Defendants.

43. Plaintiff filed a federal lawsuit that is searchable on the internet, which makes her 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 Defendants. 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 significant time and effort to assist with the preparation of pleadings and discovery, including Plaintiffs' motion for class certification, opposing Defendants' motion for summary judgment, giving deposition testimony, objecting to Defendants' initial bankruptcy plan in October 2023, and preparing for and attending trial. Plaintiff took time from work to travel to Delaware for the December 11, 2023 trial. She was an integral part of the effort to prepare for trial in this case on an expedited schedule. 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 considering the value of her services to the Class in the face of considerable risks.

44. Finally, the amount of the Service Payment of \$25,000 is commensurate and on par with amounts awarded in WARN Act class actions. The following is a sampling of WARN cases where service payments were commensurate with the amount requested here: *Federman, et al. v. ITT Educational Corp.*, Adv. Proc. No. 16-07207-JMC-7A (Bankr. S.D. Ind.) (\$25,000 service awards to each of three class representatives in a \$10 million settlement); *Etzelsberger v. FAH*

Holdings, Inc., Case No. 13-13087-BLS. (\$20,000 to class representative in \$1.8 million settlement); *Boyko v. Virgin Orbit, LLC*, Case No. 23-50324 (KBO) (\$20,000 service award in \$1.455 million settlement); *Thomay, et al. v. Klausner Lumber One LLC*, Case No. 20-50602-KBO (Bankr.D.Del.) (\$20,000 service payment in \$1.4 million settlement); *Aguiar v. Quaker Fabric Corporation*, Adv. Proc. No. 07-51716-KG (Bankr. D. Del. 2007) (service award of \$15,000 in \$1 million settlement); *Jones v. Alliance Bancorp*, Adv. Proc. No. 07-51799 (Bankr. D. Del.) (\$15,000 service award in \$1 million settlement with Chapter 7 debtor); *Turner et al. v. Klausner Lumber Two, LLC*, Case No. 20-115189-KBO (Bankr. D. Del) (\$10,000 service payment to class representative in \$540,000 settlement). But Ms., Hansen, among other things, was deposed for several hours, had to prepare to testify for trial and travel across country to attend trial. No other WARN class representative has done as much in Class Counsel's experience.

F. Proposed Notice Schedule

45. The Court's entry of an Order granting preliminary approval of settlement would, among other things, (i) preliminarily approve the Settlement Agreement, (ii) direct notice of settlement to the Class, and (iii) schedule a fairness hearing to consider final approval of the Settlement Agreement. Accordingly, the Parties propose the following schedule:

- Deadline for Notice of Settlement to be mailed to Class Members: fifteen (15) days following entry of the Order granting Preliminary Approval of Settlement.
- Deadline to opt-out of the Class: fourteen (14) days prior to the Final Fairness Hearing.
- Deadline to Object to the Settlement: seven (7) days prior the Final Fairness Hearing.
- Final Fairness Hearing: forty-five (45) days from preliminary approval of the Settlement.

CONCLUSION

WHEREFORE, the Parties respectfully request the Court to enter an Order substantially in the form attached hereto as **Exhibit A**: (i) preliminarily approving the Settlement Agreement pursuant to Bankruptcy Rule 7023, (ii) approving the form and manner of notice of settlement, (iii) scheduling a Fairness Hearing to consider final approval of the Settlement Agreement, (iv) approving the Settlement Agreement on a final basis at the fairness hearing in accordance with the proposed final order attached hereto as **Exhibit F**, (v) approving Class Counsel's fees and expenses, and (vi) granting related relief.

Dated: March 18, 2024

/s/ Michael W. Yurkewicz
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and Debtors in Possession*

EXHIBIT B

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

<p>In re:</p> <p>PGX HOLDINGS, INC., <i>et al.</i>,</p> <p>Debtors.¹</p>	<p>Chapter 11</p> <p>Case No. 23-10718 (CTG)</p> <p>(Jointly Administered)</p>
<p>KIRSTEN HANSEN on behalf of herself and all others similarly situated,</p> <p>Plaintiff,</p> <p>v.</p> <p>PGX HOLDINGS, INC.; PROGREXION HOLDINGS, INC.; PROGREXION TELESERVICES, INC.; PROGREXION MARKETING, INC.; PROGREXION ASG, INC.; PROGREXION IP, INC.; EFOLKS, LLC; CREDITREPAIR.COM, INC.; CREDIT.COM, INC.; and JOHN C. HEATH, ATTORNEY AT LAW PC,</p> <p>Defendants.</p>	<p>Adv. Proc. No. 23-50396 (CTG)</p>

**DECLARATION OF RENÉ S. ROUPINIAN IN SUPPORT OF JOINT MOTION FOR
AN ORDER (i) PRELIMINARILY APPROVING SETTLEMENT AGREEMENT, (ii)
APPROVING CLASS NOTICE, (iii) SCHEDULING FAIRNESS HEARING, (iv)
APPROVING SETTLEMENT AGREEMENT ON A FINAL BASIS, (v) APPROVING
CLASS COUNSEL’S FEES AND EXPENSES, AND (vi) GRANTING RELATED RELIEF**

René S. Roupinian hereby declares the following under penalty of perjury:

1. I am a partner of Raisner Roupinian LLP, the law firm that represents Kirsten Hansen (“Plaintiff”) in the above-captioned action. I am an attorney in good standing admitted to practice in the State of Michigan and New York and admitted *pro hac vice* before this Court. I make this Declaration in support of the Joint Motion for entry of an order: (i) preliminarily

approving the settlement (the “**Settlement Agreement**”) as set forth in *Findings of Fact, Conclusions of Law, and Order Approving the Debtors’ Disclosure Statement for, and Confirming the Second Amended Joint Plan of PGX Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 681] (the “**Confirmation Order**”), which confirmed the *Second Amended Joint Chapter 11 Plan of PGX Holdings, Inc. and Its Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 570] (as amended, the “**Plan**”), (ii) approving the form and manner of notice to the members of the Class (as described in the Motion and Settlement Agreement), (iii) scheduling a fairness hearing to consider final approval of the settlement, (iv) approving the Settlement Agreement on a final basis at the fairness hearing, (v) approving Class Counsel’s fees and expenses, and (vi) granting related relief.

2. The settlement will result in a common fund consisting of an aggregate allowed priority class claim against Defendants pursuant to 11 U.S.C. §507(a)(4) of \$1,450,000 (the “**Allowed Class Claim**”), which amount shall be subject to the 11 U.S.C. §507(a)(4) statutory cap of \$15,150 per employee, which is the statutory cap in effect as of the Order for Relief Date. Of that amount, \$1,200,000 shall be paid on the Effective Date and an additional sum up to \$250,000 shall be paid from funds remaining in Defendants’ wind-down budget (“**WDB**”), if any, at the conclusion of the chapter 11 cases.

3. The Parties had completed discovery and were set to begin trial on December 11, 2023. The Action involves numerous legal issues regarding the application of the WARN Act and its statutory and other legal defenses to complex facts, all of which were disputed. These issues include, *inter alia*: (i) whether Defendants laid off employees through a “plant closing” or “mass lay off” at a single site of employment under the WARN Act; (ii) whether the Defendants were entitled to give fewer than sixty (60) days’ notice because of statutory exceptions under the WARN

Act; (iii) whether the Defendants operated as a “single business enterprise” for purposes of the WARN Act; (iv) whether the Defendants provided adequate notice to the Class Members under the WARN Act; (v) the computation of the amount of damages, if any; (vi) whether the Defendants constitute an “employer” under the WARN Act’s provisions, and (vii) whether attorneys’ fees are to be awarded to the Class Members if they prevail.

4. Class counsel believes the settlement to be in the best interests of the Class. Continued litigation would be costly and time-consuming and expose the Parties to significant litigation risks. Class Counsel has asserted that the aggregated liability of sixty (60) days’ wages and benefits under the WARN Act is more than \$11 million. The proposed settlement provides for prompt payment and eliminates any further accrual of litigation expenses in prosecuting the action against the Defendants, including trial and possible appeals.

5. The Plaintiff views the \$250,000 in contingent proceeds from the WDB as a significant component of the overall settlement. Moreover, the costs of distribution of the settlement to the Class Members will be paid from the Allowed Class Claim, making an interim distribution economically unfeasible. Accordingly, the Class must wait until the Plan Administrator completes his work in winding up the Defendants’ estate for the full settlement amount to be known.

6. Class Counsel seeks an award of attorneys’ fees of one-third (1/3) of the Allowed Class Claim, net of 1) the Class Representative Service Payment, 2) Class Counsel’s expenses, and 3) the cost of the Settlement Administrator. Class Counsel’s expenses and the cost of the Settlement Administrator shall not exceed \$100,000. Class Counsel’s Fees and Expenses shall be payment in full for Class Counsel’s work and expenses in connection with the matter. Class

Counsel's Fees and Expenses, as well as any cost of the Settlement Administrator, shall be paid exclusively from the Qualified Settlement Fund.

7. Class Counsel accepted this case on a contingency basis of one-third of the common fund recovery. The contingency required that Class Counsel be prepared to invest what could be years of litigation with the very real possibility of receiving no fee of any kind. In this case, which was filed more than seven years ago, Class Counsel had to be prepared for the possibility that even if successful, Class Counsel could come away empty-handed, or with an amount that falls well below their lodestar and expenses because the estates are penniless. The demands and risks of this type of litigation overwhelm the resources - and deter the participation - of many traditional firms.

8. Even when a bankruptcy estate has access to funds, fierce opposition to funding a WARN distribution often arises from it or other stakeholders, such as contesting the right to even file a WARN lawsuit in bankruptcy or receive wage priority treatment. Class Counsel has beaten back the opposition by filing an adversary complaint in virtually all courts, including the U.S. Circuit Court of Appeals for the Fifth Circuit. *Teta v. TWL Corp., et al.*, 712 F.3d 886 (5th Cir. 2013). To overcome the obstruction to priority treatment in this Circuit, Class Counsel won relief from the U.S. Supreme Court. *Czyzewski v. Jevic Holding Corp.*, 137 S.Ct. 973, 197 L.Ed.2d 398 (2017). Opposition to WARN cases in bankruptcy proceedings has given rise to an unending array of unique uncertainties that must be borne and overcome.

9. Inimical to the need for thrift in most bankruptcies is the hourly lodestar billing method of attorney fees. While that method is associated with incentivizing work, the use of the percentage fee method for awarding fee rewards efficiencies. This can maximize creditor recoveries by avoiding the dissipation of estate assets on unnecessary litigation. Class Counsel's approach has been to focus the parties on issue-critical essentials to reach an outcome in step with

the pace of the Chapter 11 that might have consumed resources over years. Here, that streamlined process added value by achieving a recovery without the additional expense of a multi-day trial.

10. In over 150 WARN actions, Class Counsel has sought, and never been denied, its attorneys' fees of one-third of the common fund. The following is a partial list of WARN Act cases, in bankruptcy and district courts, in the Third Circuit, in which I, as Class Counsel, have been awarded one-third or 33 1/3% of the common fund:

- *Daveler, et al. v. Worley & Obetz, Inc., et al.*, Case No. 18-00132-MDC (Bank. E.D. PA) (\$2.2 million settlement);
- *Boyko v. Virgin Orbit, LLC*, Case No. 23-50324-KBO (Bank.D.Del.) (\$1.455 million settlement);
- *Karaniewsky v. US Investigative Services LLC*, Case No. 15-5020-KBO Bankr.D.Del.)((\$10.5 million settlement);
- *Turner et al. v. Klausner Lumber Two, LLC*, Case No. 20-115189-KBO (Bankr. D. Del.) (\$540,000 million settlement);
- *Thomay, et al. v. Klausner Lumber One, LLC*, Case No. 20-50602-KBO (Bankr. D. Del.) (\$1.4 million settlement);
- *Folk, et al. v. Monaco Coach Corporation*, Adv. Proc. No. 09-50402-KJC (Bankr. D. Del.);
- *Austen v. Archway Cookies*, Adv. Proc. No. 08-51530-CSS (Bankr. D. Del.) (\$4 million settlement);
- *Miller v. Columbus Steel Casting Co.*, Adv. Proc. No. 16-50997-CSS (Bankr.D.Del.) (\$2.1 million settlement);
- *Primavera v. Crowne Architectural Corp.*, Adv. Proc. No. 17-1272-SML (Bankr D.N.J.) (\$900,000 settlement);
- *Bergeron v. DGI Services, LLC*, No. 11-2712-JNP (Bankr. D. N.J.) (\$1.1 million settlement);
- *Etzelberger v. FAH Holdings, Inc.*, Case No. 13-13087-BLS (Bankr. D. Del.) (\$1.8 million settlement);
- *Wilrich v. Charming Charlie Holdings, Inc., et al*, Adv. Pro. No. 19-50276-MFW (Bankr.D.Del) (awarding attorneys' fees of one third of settlement of percentage of gross cash recoveries in Ch. 11 bankruptcy);
- *Jones v. Alliance Bancorp*, Adv. Proc. No. 07-51799-CSS (Bankr. D. Del. 2007)(\$1 million settlement);
- *Jackson v. Qimonda*, Adv. Proc. No. 09-50192-MFW (Bank.D. Del.) (\$10 million settlement);
- *Rasheed v. American Home Mortgage Corp.*, Adv. Proc. No. 07-51688-CSS (Bankr. D. Del.)((\$6.5 million settlement);
- *Reynolds v. Corinthian Colleges, Inc.*, Case No. 15-50309-JTD (Bankr.D.Del) (\$900,000 settlement);

- *Aguilar v. Quaker Fabric Corporation*, Adv. Proc. No. 07-51716-KG (Bankr. D. Del.) (\$1 million settlement).

11. The following is a partial list of WARN Act class action settlements in Courts outside the Third Circuit where I have been class counsel, and in which Courts have awarded one-third or 33 1/3% of the common fund:

- *Piron, et al. v. General Dynamics Information Technology, Inc.*, No. 19-709-REP (E.D. VA)(\$2.988 million settlement);
- *Phillips, et al. v. Munchery, Inc.*, Case No. 19-cv-00469-JSC (N.D. CA) (\$400,000 settlement);
- *Federrman, et al. v. ITT Educational Corp.*, Adv. Proc. No. 16-07207-JMC-7A (Bankr. S.D. IN) (\$10 million settlement);
- *In re Colortree*, Case No. 19-34739-KLP (E.D. VA) (\$500,000 settlement);
- *Wojciechowski v. ClearEdge Power, Inc.*, Adv. Proc. No. 14-04152-CN (Bankr.N.D. CA) (\$1.3 million WARN settlement);
- *Capizzi, et al. v. AWTR Liquidation, Inc. f/k/a Rhythm and Hues, Inc.*, Adv. Proc. No. 2: 13-ap-01463-NB (Bankr.C.D. CA) (\$1 million settlement).
- *Schuman v. The Connaught Group, Ltd.*, Adv. Proc. No. 12-01051-SMB (Bankr. S.D. NY)(\$675,000 settlement);
- *Hiergersell v. Level Solar*, Adv. Proc. No. 18-1012-MKV (Bankr. S.D. NY) (\$400,000 settlement);
- *Mochnal v. EOS Airlines, Inc.*, Adv. Proc. No. 08-08279-ASH (Bankr. S.D. NY) (\$1.7 million settlement);
- *Iannacone v. Fortunoff Holdings Inc.*, Adv. Proc. No. 09-22581-ASH (Bankr. S.D. NY) (\$1,330,000 settlement);
- *Guippone v. BH S & B Holdings, LLC*, Case No. 09-01029-CM (S.D. NY) (\$900,000 settlement);
- *Matzen v. Corwood Laboratories, Inc.*, Adv. Proc. No. 10-08003-AST (Bankr. E.D. NY) (\$500,000 settlement);
- *Curry v. Caritas Health Care Inc.*, Adv. Proc. No. 09-40901-CEC (Bankr. S.D. NY) (\$2.65 million settlement);
- *Callahan v. Taylor Bean & Whitaker Mortgage Corp.*, Adv. Proc. No.09-00439-JAF (Bankr. M.D. FL)(\$15 million settlement);
- *Updike v. Kitty Hawk Cargo, Inc.*, Adv. Proc. No. 07-04179-RFN (Bankr. N.D. TX) (\$1.4 million settlement);
- *Bridges v. Continental AFA Dispensing Co.*, Adv. Proc. No. 08-45921-KAS (Bankr. E.D. MO) (\$1.5 million settlement);
- *Johnson v. First NLC Financial Services, LLC*, Adv. Proc. No. 08-01130-PGH (Bankr. S.D. FL) (\$400,000 settlement);
- *Hiergersell v. Level Solar*, Adv. Proc. No. 18-1012 (MKV) (Bankr. S.D.NY) (\$400,000 settlement);
- *Johnson v. First NLC Financial Services, LLC*, Adv. Proc. No. 08-01130 (Bankr. S.D. FL) (\$400,000 settlement);

- *Phillips, et al. v. Munchery, Inc.*, Case No. 19-cv-00469-JSC (N.D.CA) (\$400,000 settlement);
- *Binford et al v. First Magnus Capital, Inc.*, Adv. Proc. No. 08 -01494-GBN (Bankr. D. AZ) (\$2.6 million common fund and \$2.9 million contingent proceeds).

12. To date, we have incurred expenses of more than \$50,000 prosecuting this action and expects to incur additional expenses in connection with seeking preliminary and final approval of the Settlement, including mailing the Class Notice, the cost of the settlement administrator to distribute the settlement funds, monitoring the WDB, and communicating with Class Members regarding the Settlement. The expenses were reasonable and necessary and in furtherance of the litigation and ultimate settlement of this matter. We have advanced costs in this litigation since its inception. The risk of non-payment that existed, had Plaintiff lost at trial and appeal, and the possibility that the Defendants' estates' resources be depleted even if Plaintiff prevailed, directed us to incur only those costs and expenses that were necessary to litigate this case.

13. As of March 12, 2024, Class Counsel has expended 1106.7 hours litigating this action, representing a lodestar of \$841,094.50, based on Class Counsel's current billing rates. This is a negative lodestar. Class Counsel estimates that it will spend more than 30 additional hours of time preparing for and attending the preliminary and final hearings, overseeing the distribution of the settlement notices, responding to Class Members' inquiries regarding the status of the settlement and their settlement checks, and overseeing the Settlement Administrator's distribution of the settlement checks and W2s to Class Members. For these reasons, the final lodestar and cost amounts are expected to be higher than that reported here.

14. The Plaintiff, Ms. Hansen filed a federal lawsuit that is searchable on the internet, which makes her 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 Defendants. 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 significant time and effort to assist with the preparation of pleadings and discovery, including Plaintiffs' motion for class certification, opposing Defendants' motion for summary judgment, giving deposition testimony, objecting to Defendants' initial bankruptcy plan in October 2023, and preparing for and attending trial. Plaintiff took time from work to travel to Delaware for the December 11, 2023 trial. She was an integral part of the effort to prepare for trial in this case on an expedited schedule. But for her efforts, the work done in prosecuting this case would have come to naught. The Class Representative performed important services for the benefit of the Class in commencing the litigation and in supporting the litigation on behalf of the Class.

15. In the following settled WARN Act cases in which I served as class counsel, the class representatives were each granted a service award commensurate with that requested in this proposed settlement:

- *Daveler, et al. v. Worley & Obetz, Inc., et al.*, Case No. 18-00132 (MDC) (Bank.E.D.PA) (\$20,000 to each of two class representatives in \$2.2 million settlement);
- *Boyko v. Virgin Orbit, LLC*, Case No. 23-50324 (KBO) (Bank. D.Del.)(\$20,000 service award in \$1.455 million settlement);
- *Walker v. Product Quest Manufacturing, LLC, et al.*, No. 18-06028 (LMJ) (Bankr.M.D. NC) (\$20,000 service payment in \$2.65 million settlement);
- *Etzelberger v. FAH Holdings, Inc.*, Case No. 13-13087 (BLS) (Bankr. D. Del.) (\$20,000 service payment in \$1.8 million settlement);
- *Kohlstadt v. Solyndra, LLC.*, Adv. Proc. No. 11-53155 (MFW) (Bankr. D. Del.) (\$20,000 service award to each of two class representatives in \$3.5 million settlement);
- *Capizzi et al v. AWTR Liquidation, Inc.*, Adv. Proc. No. 2:13-ap-01209 (NB) (Bankr. C.D. CA) (\$10,000 service award to each of two class representatives in \$1 million settlement);
- *Binford v. First Magnus Capital, Inc.*, Adv. Proc. No. 08-01494 (GBN) (Bankr. D. AZ) (\$7,500 to each of eight class representatives in settlement of \$2.6 million cash plus \$2.9 million contingent proceeds).

16. Compared to the size and percentage of recovery to the Class and the time Ms. Hansen spent in this matter, the requested award to the Class Representative for her service, and the fees and expenses for Class Counsel are reasonable.

17. In view of the foregoing and the Motion and exhibits thereto, I ask the Court to grant preliminary and final approval of the Settlement, including Class Counsel's attorneys' fees and expenses and the service award to the Class Representative.

Dated: March 18, 2024

RAISNER ROUPINIAN LLP

/s/ René S. Roupinian
René S. Roupinian

EXHIBIT C

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: PGX HOLDINGS, INC., et al., Debtors. ¹	Chapter 11 Case No. 23-10718 (CTG) (Jointly Administered) Re: D.I. <u>855</u>
KIRSTEN HANSEN on behalf of herself and all others similarly situated, Plaintiff, v. PGX HOLDINGS, INC.; PROGREXION HOLDINGS, INC.; PROGREXION TELESERVICES, INC.; PROGREXION MARKETING, INC.; PROGREXION ASG, INC.; PROGREXION IP, INC.; EFOLKS, LLC; CREDITREPAIR.COM, INC.; CREDIT.COM, INC.; and JOHN C. HEATH, ATTORNEY AT LAW PC, Defendants.	Adv. Proc. No. 23-50396 (CTG) Re: D.I. <u>82</u>

**ORDER GRANTING FINAL APPROVAL OF SETTLEMENT, APPROVING CLASS
COUNSEL’S FEES AND EXPENSES AND GRANTING RELATED RELIEF**

Upon 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, applicable hereto by Bankruptcy Rule 7023, of the Plan Administrator of PGX Holdings, Inc., and its subsidiaries, Progrexion Holdings, Inc., Progrexion Teleservices, Inc., Progrexion Marketing, Inc., Progrexion ASG, Inc., Progrexion IP, Inc., eFolks, LLC, Creditrepair.com, Inc., Credit.Com, Inc., and John C. Heath,



Attorney at Law, PLLC (cumulatively, the “Debtors” and after the Effective Date of the Plan, the “Reorganized Debtors” or Defendants”), on the one hand, and Kirsten Hansen (the “Plaintiff” and the “Class Representative”), for entry of Orders: for (i) preliminarily approving the settlement described in the Settlement Agreement; (ii) approving the form and manner of notice to the members of the Class (as described in the Motion); and (iii) scheduling a final fairness hearing to consider approval of the Settlement (the “Motion”)¹; and upon the arguments of counsel presented at the Fairness Hearing; and the Court finding that:

(A) the Court has jurisdiction over the Motion pursuant to 28 USC §§ 157 and 1334;

(B) this is a core proceeding pursuant to 28 USC § 157(b)(2);

(C) notice of the Motion and the hearing on the Motion was due and adequate under the circumstances;

(D) no other notice need be given; and

(E) and the Court having reviewed the terms of the Settlement Agreement and all objections against the Settlement Agreement; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court having determined that the relief sought in the Motion is in the best interest of the Defendants and Defendants’ estate, the Class Representative and the Class Members, and any other parties in interest; and after due deliberations and sufficient cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.

¹ Capitalized terms used but not defined in this Order shall have the meaning defined in the Settlement Agreement.

2. All objections to the Motion or the relief requested in the Motion, if any, that have not been withdrawn, waived, or settled, and all reservation of rights in such objections, if any, shall be and hereby are, **OVERRULED** in all respects on the merits and denied.

3. The Settlement Agreement is approved on a final basis and in all respects as being fair, reasonable, adequate to the Class Members and other affected employees for the following reasons:

- a. If the Settlement is not approved, the Adversary Proceeding will likely be complicated, protracted, and expensive, thereby unnecessarily diminishing distributions to the Class Members if Plaintiff prevails in this Action.
- b. The Class Representative supports the Settlement, and the terms of the Settlement are favorable to Class Members.
- c. The Settlement was reached after a thorough investigation, litigation, and negotiation by the Parties.
- d. The Settlement is well within the range of reasonableness given the uncertainty of Plaintiff's ability to establish liability and to recover against the Defendants.
- e. The Settlement Agreement was negotiated at arm's-length by experienced counsel and in good faith, is fair, equitable, and in the best interests of the Parties.

4. On the Settlement Effective Date, the terms of the Settlement Agreement shall become binding upon the Parties.

5. On the Settlement Effective Date, subject to and consistent with the terms of the Settlement Agreement, the releases set forth in the Settlement Agreement shall become effective. The Reorganized Debtors are authorized to modify the claims registers in these cases to expunge the claims of the Class Members arising from or relating to the actions alleged in the Complaint without need for further action from this Court. Any and all proofs of claim filed on account of liabilities asserted, assertible, arising from or out of or relating to the allegations asserted in the Complaint or the Adversary Proceeding by Class Members in the Class shall be disallowed and

expunged from the Defendants' claims register on the Settlement Effective Date. Nothing in the Settlement Agreement shall waive or limit defenses available to the Defendants and their successors and assigns against a proof of claim that has been or may be filed against the Defendants in these Bankruptcy Cases.

6. The Parties are hereby authorized to take all actions necessary to implement the Settlement Agreement. The Settlement Administrator is authorized to make all distributions in accordance with the terms of the Settlement Agreement, and to make all deductions for employee payroll taxes prior to making the distributions. The Defendants shall have no obligation or liability relating to the distributions to or withholdings on behalf of the Class Members.

7. Class Counsel is awarded its fees of one-third of the Allowed Class Claim Settlement Amount, net of 1) the Class Representative Service Payment of \$25,000, 2) Class Counsel's expenses, and 3) the cost of the Settlement Administrator, all of which shall be paid from the Settlement Amount in accordance with the terms of the Settlement Agreement. Class Counsel's expenses and the Cost of the Settlement Administrator shall not exceed \$100,000.

8. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent that any of the findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the conclusions of law constitute findings of fact, they are adopted as such.

9. The entry of this Order is without prejudice to the relief granted in the Preliminary Order and entry of this Order shall not serve to extend or stay the time of filing any appeal regarding any of the relief granted in the Preliminary Order.

10. The Parties are hereby authorized and empowered to take such steps and perform such acts as may be necessary to implement and effectuate the terms of this Order and the Settlement Agreement.

11. The terms and conditions of this Order shall be immediately effective and enforceable upon entry.

12. This Court shall retain jurisdiction over all matters arising from or related to the interpretation and/or implementation of the Settlement Agreement and this Order.



Dated: May 16th, 2024
Wilmington, Delaware

CRAIG T. GOLDBLATT
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT D

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re

HORNBLOWER HOLDINGS, LLC *et al.*¹

Chapter 11

Case No. 24-90061 (MI)

Adversary Proceeding No. 24-03029

Debtors.

-----X
**THERESA VANBUREN, MONICA MILLER,
CAPTAIN BERTRAND M. SUAREZ, and
CAPTAIN JOHN COOK on behalf of themselves
and all others similarly situated,**

Plaintiffs,

v.

**American Queen Steamboat Operating Company,
LLC, *et al.*,**

Defendants.

**SUPPLEMENTAL DECLARATION OF MARY E. OLSEN IN FURTHER
SUPPORT OF APPROVAL OF THE WARN ACT SETTLEMENT**

Mary E. Olsen hereby declares the following under penalty of perjury:

Background

1. I am a member of The Gardner Firm, P.C., in Mobile, Alabama.

¹ The last four digits of Debtor Hornblower Holdings LLC's tax identification number are 6035. Due to the large number of debtor entities in these chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://omniagentsolutions.com/Hornblower>. The location of the Debtors' service address for purposes of these chapter 11 cases is: Pier 3 on The Embarcadero, San Francisco, CA 94111.

2. This supplemental declaration (“Supplemental Declaration”) is submitted in further support of the approval of the Settlement and Release Agreement (the “Settlement Agreement” or the “Settlement”)² (Doc. 131-1), as requested in the Joint Motion filed on November 27, 2024 (Doc. 131), by Plaintiffs, Theresa VanBuren, Monica Miller, Captain Bertrand M. Suarez and Captain John Cook (the “Plaintiffs”), on behalf of themselves and the Settlement Class, defined herein, together with Hornblower Group Holdco, LLC, as Administrator of AQV Wind Down Co., successor in interest to American Queen Steamboat Operating Company, LLC, (“Defendant” and together with Plaintiffs, the “Parties”), by and through their respective counsel.

3. The Settlement is between the Plaintiffs, on behalf of themselves and the Settlement Class, and the Defendant.

4. The Settlement was preliminarily approved by this Court on January 13, 2025 (“Preliminary Approval Order”). (Doc. 135). The Gardner Firm, P.C., along with Fishman Haygood, LLP and Lankenau & Miller, LLP, represent the Plaintiffs and the Settlement Class as Settlement Class Counsel, pursuant to the Preliminary Approval Order. *Id.* The Preliminary Approval Order also approved the Class Notice. *Id.*

5. The Class Notice, which was revised by the Parties in accordance with the Court’s direction at the Preliminary Approval Hearing on January 13, 2025, describes the history of the litigation and the essential terms of the Settlement.

² A true copy of the Settlement Agreement was attached as Exhibit A to the Joint Motion (Doc. 131-1). Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Settlement Agreement, and in the event of any conflict between these documents, the definitions in the Settlement Agreement shall control.

6. As reflected in Attachment 1 hereto, the Class Notice was mailed by the Settlement Administrator on January 21, 2025, to the last known address of each of the 428 Settlement Class Members, in accordance with the Preliminary Approval Order. (Doc. 135).

7. The deadline to opt-out or object to the Settlement was February 25, 2025, which was thirty-five (35) days from the date of mailing (“Opt-Out and Objection Deadline”), as specified in the Preliminary Approval Order. *Id.*

8. There were no opt-outs and no objections to the Settlement, timely or untimely.

9. In general, and as described in the Joint Motion and Class Notice, Defendant has agreed to pay Two Million Eight Hundred Twenty-Five Thousand and No/100 Dollars (\$2,825,000.00) (“Total Settlement Fund”) to resolve this matter and related claims. The Settlement provides that within fifteen days of the Court’s Final Approval Order of this Settlement becoming final and non-appealable, Defendant will pay the Total Settlement Fund into an account overseen by the Administrator, chosen by the Parties to administer the Settlement. The Administrator will then promptly distribute the Total Settlement Fund to the Settlement Class Members who have not opted-out of the Settlement, after first deducting the following: Service Awards in the amount of \$10,000 to each of the four Settlement Class Representatives for their services on behalf of the Settlement Class Members in this matter; Class Counsel’s Fees consisting of one-third (1/3) of the Total Settlement Fund; Class Counsel’s Expenses, projected to be \$30,000 or less and consisting of Class Counsel’s litigation costs and expenses related to the WARN Action and the Administrator’s Fees and Costs, not to exceed \$20,000, related to the administration of the Settlement. Each Settlement Class Member’s pro rata share of the Total Settlement Fund was calculated by Class Counsel, using the company’s payroll records.

10. The Settlement was the product of good faith, arms-length negotiations between the Parties and was reached after the essential facts and applicable law had been thoroughly researched and reviewed by Class Counsel and discussed with Defendant's Counsel. The Parties prepared for and participated in a formal mediation on August 27, 2024, which was followed by over a month of continuing negotiations before reaching a resolution after the Parties accepted a mediator's proposal.

11. I submit that the team of lawyers representing the Plaintiffs and the Settlement Class in this case is highly skilled and experienced.

12. I submit that I, along with co-counsel in this matter, have unique and substantial experience prosecuting WARN class actions, as described in my first declaration and incorporated here, by reference. (Doc. 131-4). This experience has been and will be a real benefit to the Settlement Class.

13. The Class Notice, which was mailed to every Class Member, fairly apprised the Class Members that the undersigned are seeking one-third of the Total Settlement Fund as Class Counsel's Fees, plus Class Counsel's Expenses and the costs of administration. None of the Settlement Class Members objected to the reasonableness of the settlement or the fees and expenses sought.

14. Many Circuits, including the Fifth, endorse the district courts' use of the percentage method in approving attorneys' fees in common fund class action cases, crosschecked for reasonableness using the *Johnson*³ factors. See, e.g., *Jenkins v. Trustmark Nat'l Bank*, 300 F.R.D. 291, 307 (S.D. Miss. 2014) (citing *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 644 (5th Cir. 2012)). Courts utilize the percentage method in class actions because it "allows for

³ See, *Johnson v. Ga. Hwy. Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974).

easy computation" and "aligns the interests of class counsel with those of the class members." See, e.g., *Dell*, 669 F.3d at 643. It is not unusual for district courts in the Fifth Circuit to award percentages of approximately one third. *Jenkins*, 300 F.R.D. at 307. In fact, this Court recently approved a one-third fee in a WARN class action settlement. *Lamotte, on behalf of herself and those similarly situated v. Zachry Indus., Inc.*, Adv. Pro. No. 4:24-AP-3122 (Bankr. S.D. Tex. 2024).

15. The one third fee sought here is reasonable and appropriate, as demonstrated through a review of the *Johnson* factors: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the 'undesirability' of the case; (11) the nature and the length of the professional relationship with the client; (12) fee awards in similar cases. See, e.g., *Jenkins*, 300 F.R.D. at 306–07 (citing *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974)).

16. As to the first *Johnson* factor, Class Counsel have collectively expended significant time and effort in this matter on behalf of, and for the benefit of, Plaintiffs and the Settlement Class, including many interviews of putative class members (Class Counsel were individually retained by more than 150 class members); researching the underlying facts, drafting and filing litigation against more than 100 debtor entities; participating in the application and interview process on behalf of the WARN Representative selected for participation on the Official Committee of Unsecured Creditors (the "Committee") and who served as the Chair of the

Committee; actively participating in all Committee meetings and review of Committee materials; cooperatively consolidating the WARN litigation originally filed as two separate adversary proceedings; formulating early informal information requests and repeatedly engaging with debtors to efficiently and expeditiously address the WARN dispute; review of Company records and formulation of a complex damages model; selection of a mediator; preparation for and attendance at mediation, including the drafting of a comprehensive confidential mediation submission and private conferences with the mediator before and after mediation; drafting and editing proposed settlement terms; drafting and editing materials related to the approval process, including the Joint Motion and exhibits thereto; preparing for and attendance at the preliminary approval hearing; preparing revisions to the Class Notice as requested by the Court; providing instruction to the Settlement Administrator with regard to noticing; responding to a myriad of inquiries from the Settlement Class Members after the Class Notice was mailed; and, of course, drafting this declaration. Additionally, there will be additional preparation for the final fairness hearing, all requiring significant time. If the Court grants final approval of the Settlement, Class Counsel will continue to represent the Settlement Class and monitor the administration and completion of the Settlement, working together with the Settlement Administrator toward completion of all duties as set forth in the Settlement. Class Counsel will also continue to assist Settlement Class Members and will continue to respond to their inquiries. Therefore, Class Counsel will have significantly more time in this matter to bring it to full and final resolution once the case is complete. I submit that the above amply supports the first *Johnson* factor and demonstrates the reasonableness of the fees sought by Class Counsel in this action.

17. The second *Johnson* factor recognizes that attorneys should be appropriately compensated for accepting novel and difficult cases, while the third *Johnson* factor focuses on the

"[t]he skill requisite to perform the legal service properly." *Johnson*, 488 F.2d 718. Because the second and third *Johnson* factors are related, Plaintiffs analyze them together. WARN Act class action litigation is highly specialized and complex. This case was no exception, particularly in light of the maritime and bankruptcy issues involved here. Class Counsel has demonstrated the requisite skill and experience to have ably represented the Plaintiffs and Settlement Class, and to continue to do so. This case is novel and presented difficult questions of both fact and law. Class Counsel has the expertise to pursue this case and the expertise to marshal it to a favorable outcome, having collectively served as Class Counsel in more than one hundred (100) WARN Act cases. I submit that few lawyers possess the depth of experience in this area of the law as Class Counsel to pursue and successfully resolve such a matter, against debtors and highly skilled defense and bankruptcy counsel. These factors also weigh heavily in favor of the reasonableness of the requested fee. Class Counsel have shown themselves to be highly skilled. The complexity of this area of class action litigation, the genuine possibility of the debtors' funds being significantly reduced or depleted had the parties engaged in drawn out litigation; the ability to achieve a very favorable outcome under all of the circumstances present here, and the complexity inherent with any class action, all demonstrate that Class Counsel are highly skilled practitioners. I submit that these factors weigh in favor of finding the fee sought of one-third of the common fund to be reasonable.

18. The fourth *Johnson* factor is "[t]he preclusion of other employment by the attorney due to acceptance of the case." *Johnson*, 488 F.2d at 718. This factor requires the dual consideration of otherwise available business which is foreclosed because of conflicts of interest arising from the representation, and the fact that once the employment is undertaken, the attorney is not free to use the time spent on the case for other purposes. Here, the time and attention required

to prosecute this action limited the amount of time that Class Counsel had available to devote to other matters over the period of this litigation, which has lasted more than a year. As shown above, this case involves three separate law firms on Plaintiffs' side, all of whom worked cooperatively to achieve an outstanding result for the Settlement Class. Thus, I submit that this factor also weighs in favor of finding the requested fee reasonable.

19. The fifth and twelfth *Johnson* factors focus on the customary fee and fee awards in similar cases. Because these two factors are similar, Class Counsel analyzes them together. An award of one-third of the common fund as attorneys' fees to class counsel is common in WARN Act class action settlements and, in undersigned's personal experience, is regularly approved by Courts (including bankruptcy courts) across the country. *See e.g., Guippone v. BH S&B Holdings, LLC*, Case No. 09 Civ. 01029 (CM), 2011 U.S. Dist. LEXIS 126026, at *27–28 (S.D.N.Y. Oct. 28, 2011) (“[I]n more than 30 WARN actions class counsel was awarded a one-third fee.” (citing *In re Consol. Freightways Corp.*, Case No. 02-24284-MG (Bankr. C.D. Cal.); *Powell v. Creighton Inc.*, Case No. 1:01CV779 (M.D.N.C.); *In re CTC Commc’ns Grp., Inc.*, Case No. 02-12873 (PJW) (Bankr. D. Del.); *Madley v. Fla. Cypress Gardens, Inc.*, Case No. 8:03-CV-00795-T-17TBM (M.D. Fla.); *In re Dollar Land, Inc.*, Case No. 02-14547 (Bankr. E.D. Pa); *Johnson v. GMAC Mortg. Grp., Inc.*, Case No. C04-2004-LRR, (N.D. Iowa); *Morris v. Greenwood Mills. Inc.*, Civil Action No. 8:02-221-24, (D. S.C.); *In re Inacom Corp*, Case No. 00-2426 (PJW) (Bankr. D. Del.); *Teligent, Inc.*, Case No.: 01-12974(SMB) (S.D.N.Y.); *Bandel v. L.F. Brands Mktg., Inc.*, Civil Action No. 04 CV 1672 (CSH) (S.D.N.Y.); *Baker v. The Nat’l Mach. Co.*, Case No. 3:02CV7444 (N.D. Ohio); *Deninno v. Penn Am. Coal Co., L.P.*, Civil Action No. 03-0320 (D. W.D. Pa.); *In re Pliant Sys., Inc.*, Case No. 01-01264-5 ATS (Bankr. E.D.N.C.); *Adkins v. Pritchard-Brown*, Case No. 5:03CV129-OC 10 GRJ, (M.D. Fla.); *Gibson v. Sonic Foundry, Inc.*, Case No. CV-03-4062

SVW (CD. Cal.); *In re Thomaston Mills, Inc.*, Case No. 01-52544 (RFH) (Bankr. M.D. Ga); *Ballentine v. Triad Intn'l Maint. Corp.*, Case No. 0 1-1 0357 (E.D. Miss.); *Trout v. Transcom USA*, Case No. 1:03-cv-0537-LJM-WTL, (S.D. Ind.); *Padgett v. Wireless Retail, Inc.*, Case No. CV04 1170 PHX-SR, (D. Ariz.)). In addition to the cases cited by the *Guippone* Court, this Court and other courts have awarded a third of the common fund as attorneys' fees in WARN Act class action settlements. See, e.g., *Lamotte, on behalf of herself and those similarly situated v. Zachry Indus., Inc.*, Adv. Pro. No. 4:24-AP-3122 (Bankr. S.D. Tex. 2024); *Kizer v. Summit Partners, L.P.*, Case No. 1:11-CV-38 (E.D. Tenn. Jul. 10, 2012); *In re Quantegy*, Case No. 05-80042 (Bankr. M.D. Ala. 2005); *Nieves v. Cmty. Choice Health Plan of Westchester, Inc.*, Case No. 7:08-CV-321 (S.D.N.Y. May 8, 2012); *Robbins v. Durham Sch. Servs., L.P.*, Case No. 1:09-CV-609 (W.D. Tex. May 31, 2011); *Hackworth v. Telespectrum Worldwide, Inc.*, Case No. 3:04-CV-1271 (S.D. W.Va. Aug. 3, 2006); *Knapp v. Badger Techs, Inc.* 2015 U.S. Dist. LEXIS 77186 (W.D.N.Y. 2015); *Mees v. Skreened, Ltd.*, 2016 U.S. Dist. LEXIS 1242 (S.D. Ohio 2016); *Bennett v. Roark Cap. Grp., Inc.*, 2011 U.S. Dist. LEXIS 48094 (D. Me. 2011); *Williams v. Microfibres, Inc.*, Bk. No. 16-10154, A.P. No.16-01002 (Bankr. R.I. 2016); *Almaraz, et al., v. Hamilton Sci., LLC, et al.*, Case No. 1:15-CV-206-SS (W.D. Tex. 2015); *Lewis, et al. v. N. Am. Commc'ns, Inc.*, Bk. No. 19-70349-JAD, AP Case No. 19-07010-JAD (Bankr. W.D. Penn. 2019); *Morris v. Moon Ridge Foods, LLC, et al.*, Case No.18:CV-03219-SRB (W.D. Mo. 2018); *Hightower v. Alfred Angelo Newco, Inc.*, Bk. Case 17-18864-MAM (Bankr. S.D. Fla. 2017); *In re The Hertz Corp., et al.*, Case No.: 20-11218-MFW (Bankr. Del. 2020); *Foy v. Durham Sch. Servs. L.P., et al.*, Case No. 2:20-cv-02750-JPM-tmp (W.D. Tenn. 2020); *Forsyth v. Lucky's Market Parent Co., LLC, et al.*, Bk. Case 20-10166 (JTD) (Bankr. Del. 2020); *Abraham, et al. v. Akorn Operating Co., et al.*, Bk. Case 23-10253

(KBO) (Bankr. Del. 2023). Based on the above, I submit that these factors support the approval of the requested amount of attorneys' fees.

20. This case was taken on a contingency basis. The sixth *Johnson* factor concerns the type of fee arrangement (hourly or contingent) entered by the attorney. *Johnson*, 488 F.2d at 718. The Class Representatives, as well as more than 150 other Settlement Class members in this matter, who personally retained Class Counsel agreed to at least a one third contingency fee⁴, and expenses, to be paid from any gross recovery, if Class Counsel were successful enough to create one. In the plaintiff's employment law arena, the typical contingency fee retainer requires clients to consent to a fee of forty percent (or more) of the gross recovery – a percentage higher than that sought by Class Counsel in this case. Importantly, Class Counsel regularly spends hundreds of hours each year investigating WARN Act inquiries which do not result in litigation and for which we are not compensated. Additionally, by their nature, WARN Act cases present a high degree of risk of recovery. This case was no different in that respect. There was the risk that Class Counsel might never be paid for the work performed in this matter. In fact, over the years, undersigned has litigated a number of WARN cases in which defendants or debtors were ultimately unable to pay, so that there was no fee. Here, Class Counsel pursued difficult claims on behalf of the Class Representatives and the Settlement Class, against debtor entities. There were no assurances that the Class Representatives, themselves, would be paid, even if successful in the bankruptcy context, much less achieve a \$2.825 million cash recovery for the Settlement Class of 428 members. For these reasons, I submit that this factor supports the approval of the requested amount of attorneys' fees.

⁴ The Lankenau & Miller, LLP/The Gardner Firm, PC retainer in this matter provided for a one third fee. The Fishman Haygood retainer agreement in this matter provided for a 35% contingency fee.

21. The seventh *Johnson* factor concerns time limitations imposed by the clients or the circumstances. While there were no limitations imposed by the clients in this matter, this factor is relevant in the bankruptcy context where prolonged litigation often results in depletion of estate assets and resulting diminished returns for creditors. Thus, expeditious, efficient resolutions, such as this one, serve the interest of creditors. I submit that this factor also weighs in favor of the reasonableness of the requested fees.

22. The eighth *Johnson* factor concerns the results obtained. Class Counsel secured from Defendant a Total Settlement Fund totaling \$2,825,000.00 on behalf of the Settlement Class, which is more than 60% of the priority wage damages calculated by Class Counsel for the Settlement Class. In doing so, Class Counsel effectively achieved a Settlement that provides meaningful monetary relief for all Settlement Class Members, despite significant risks which could have resulted in the event of adverse rulings or depletion of the estate assets through prolonged litigation. Accordingly, given the excellent and expeditious results achieved, I submit that this factor weighs heavily in favor of awarding the requested fee.

23. The ninth *Johnson* factor concerns the experience, reputation, and ability of the attorneys. This case has, at all stages, been handled on both sides by very experienced and skilled lawyers. And, as noted above and in undersigned's prior declaration, having collectively served as Class Counsel in more than one hundred (100) WARN Act cases, I submit that few lawyers possess the depth of experience in this area of the law, on a nationwide basis, as Class Counsel. I submit that this factor also weighs in favor of awarding the requested fees.

24. The tenth *Johnson* factor concerns the undesirability of the case. In the above sections, and in undersigned's prior declaration, Class Counsel highlighted the skill required to prosecute this action as well as the risks involved due to the complexity of the issues as well as

debtors' bankruptcy. The risk in prosecuting such litigation on a contingent basis, with no guarantee, and considering the uncertainties of bankruptcy, would make this case highly undesirable for many attorneys. And in fact, no other WARN litigation was brought against debtors other than the current, consolidated action. Therefore, I submit that this factor, too, supports the requested amount of attorneys' fees.

25. The eleventh *Johnson* factor concerns the nature and the length of the professional relationship with the clients. Class Counsel was not representing a long-term client in this matter. I submit that this factor is neutral.⁵

26. In sum, and based on the *Johnson* factors above, I submit that the amount of Class Counsel's Fees sought here should be deemed reasonable and approved.

27. In addition, Class Counsel has incurred, and will continue to incur, reasonable expenses and costs associated with the litigation of this case. Class Counsel's Expenses, for past expenditures, as well as projected future expenditures relating to the Administrator's expenses and preparation and distribution of any distributions on the Allowed WARN Claims are projected below the total of \$50,000. The requested award of Class Counsel's Expenses here consists of case-related costs, the bulk of which consist of costs related to the mediation; PACER and legal research charges and the quoted costs related to the administration of the Settlement, if the Settlement is approved. These expenses are in line with normal expenditures in a case of this type and Class size and are projected to be below \$50,000, based upon the following:

*For The Gardner Firm, PC, the current expense total is \$4,002.11 which includes mediation-related expenditures and travel/lodging; legal research and PACER charges;

⁵ The twelfth *Johnson* factor was addressed above, in conjunction with the fifth Johnson factor, focusing on the customary fee and awards in similar cases—both of which support the requested amount of attorneys' fees.

*For Fishman Haygood, LLP, the current expense total of \$7,104.44 includes PACER charges, legal research charges, mediation-related expenses and court/filing fees;

*For Lankenau & Miller, LLP, the current expense total of \$5,168.95 includes PACER charges, local counsel and mediation related expenditures.

*For ALCS (the Administrator) the quote for the noticing work and the projected amount for administration is \$13,222.44, (i.e., below the \$20,000 cap on the Administrator's Fees and Costs in the Settlement).

28. Class Counsel's Expenses sought herein by Class Counsel currently total \$16,275.50 and are below the projected cost figure of \$30,000 used to create Schedule 1 to the Settlement Agreement. Class Counsel's Expenses consist of necessary expenses related to this litigation and settlement of this matter, as shown above. The Administrator's Fees and Costs quoted/projected at \$13,222.44 are below the \$20,000 cap on such expenses provided in the Settlement. I submit that Class Counsel's Expenses and the Administrator's Fees and Costs are both reasonable and should be awarded from the common fund, as provided in the Settlement Agreement and as described in the Class Notice.

29. Society has a great stake in rewarding attorneys who produce benefits for Class Members such as those provided by the Settlement, here. Society, not just the individual workers, is burdened when mass layoffs and plant closings occur without adequate and proper notice and opportunity for worker retraining. Government and communities are affected horribly. Further, because a typical WARN Act claimant, who has just lost his/her job, lacks the resources to hire counsel on anything other than a contingency fee basis, attorneys that accept such cases take on huge risks of receiving no fee and no reimbursement of expenses. I submit that society benefits when attorneys agree to take such risks. If attorneys did not take such risks, it would be highly

unlikely that legitimate WARN Act claims would be asserted and vindicated. I submit that such risks must be rewarded appropriately if attorneys are to be incentivized to litigate cases on behalf of citizens of communities disrupted by mass layoffs and plant closings.

30. In February 2024 and thereafter, soon after the terminations at issue in this matter, Plaintiffs, through Class Counsel, initiated WARN Act litigation against the Debtors. Class Counsel have worked on the WARN claims in this matter for more than a year, for which they have not been paid due to the contingent nature of the case. Class Counsel's Fees and Class Counsel's Expenses, as well as the Class Representatives Service Payments, are to be paid exclusively from the Total Settlement Fund.

31. The Service Payments of \$10,000 each to the Plaintiffs for their services rendered in this action should also be approved for the reasons provided in my prior declaration. (Doc. 131-4, pp. 10-11). Further, the Service Payments were described in the Class Notice and no Settlement Class Members have objected to this aspect, or any other aspect, of the Settlement.

Conclusion

32. In view of all of the foregoing, Attachment 1 hereto, as well as the Joint Motion in support of the Settlement and all attachments thereto, (Doc. 131), I ask the Court to approve the Settlement, including Class Counsel's Fees, Class Counsel's Expenses, the Administrator's Fees and Costs, as well as the Class Representatives' Service Payments.

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

Dated: March 11, 2025

/s/ Mary E. Olsen
Mary E. Olsen (OLSEM4818)

THE GARDNER FIRM, P.C.
182 St. Francis Street; Suite 103
Mobile, AL 36602
Telephone: (251) 433-8100
Admitted Pro Hac Vice
molsen@thegardnerfirm.com

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of March, 2025, I filed the forgoing with the Court via CM/ECF thereby causing service on counsel of record upon all counsel of record.

/s/ Mary E. Olsen
Mary E. Olsen

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re
HORNBLOWER HOLDINGS, LLC et al.

THERESA VANBUREN, MONICA MILLER,
CAPTAIN BERTRAND M. SUAREZ, and
CAPTAIN JOHN COOK on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

AMERICAN QUEEN STEAMBOAT
OPERATING COMPANY, LLC, et al.,

Defendants.

Chapter 11

Case No. 24-90061 (MI)

Adversary Proceeding No.: 24-03029

**DECLARATION OF AMERICAN LEGAL CLAIM SERVICES, LLC
REGARDING DUE DILIGENCE IN NOTICING**

I, Mark Unkefer, declare as follows:

1. I am a competent adult, over the age of eighteen, and this declaration is based on my personal knowledge.
2. I am a Case Manager for American Legal Claim Services, LLC ("ALCS").
3. CAFA Notice Mailing: On December 6, 2024, I was responsible for overseeing the dissemination of the CAFA Notice letter (attached hereto as Exhibit A) which included an attachment showing the Attorneys General Service List (attached hereto as Exhibit B) and a CD with copies of the following documents:
 - a. VanBuren Class Action Adversary Proceeding Complaint
 - b. VanBuren First Amended Class Action Adversary Proceeding Complaint
 - c. Suarez Class Action Adversary Proceeding Complaint
 - d. VanBuren Second Amended Class Action Adversary Proceeding Complaint
 - e. Settlement Agreement and Release
 - f. Joint Motion to Approve the Settlement Agreement and attachments
 - g. Proportionate Share of Class Members by State

4. **Class List Receipt and Processing:** On or about January 16, 2025, ALCS processed 2 data files to produce the mailing list ("Class List") containing 428 records with names and addresses. ALCS reviewed and processed the data. The files represented 428 class members. No duplicates were found on the class list. Throughout the noticing process, ALCS utilized several means of ensuring the most accurate mailing addresses for class members. These methods included National Change of Address through USPS, skip-tracing, and manual updates from class members.
5. **Initial Class Notice:** On January 21, 2025, ALCS mailed the Settlement Notice ("Notice"), substantially in the form approved by the Court (attached hereto as Exhibit C), to 428 class members.
6. **Returned Mail Handling:** ALCS processed all Notices returned by USPS. None of the return mail included an updated address provided by USPS. All of the mail returned by USPS did not contain an updated address ("UAA"). For these, ALCS conducted address searches using a nationally recognized location service to attempt to locate new addresses for these class members. Of the 428 Initial Notices mailed, 27 were returned by USPS as of the date of this declaration. Of those 27 returned, 21 were remailed to updated addresses. 0 of those remails were returned by USPS. 6 Notices were deemed undeliverable.
7. **Noticing Campaign Summary:** The following is a summary of the noticing, as of the date of this Declaration:
 - Total Class Members: 428
 - Initial Notices mailed via USPS: 428
 - Notices returned by USPS: 27
 - Notices remailed via USPS: 21
 - Remailed Notices returned by USPS: 0
 - Notices deemed undeliverable: 6
 - Percentage of Notices deemed delivered: **98.60%**
8. **Exclusions:** The Notice instructed those who wish to be removed from the proposed settlement to fill out the "Opt Out Form" and send it to The Gardner Firm. It further states that the request must be received no later than February 25, 2025. As of the date of this declaration, ALCS is not aware of any requests to be removed from the proposed settlement.
9. **Objections:** The Notice instructed those who wish to object to the proposed settlement to send a written objection to the United States Bankruptcy Court for the Southern District of Texas, Office of the Clerk, Bob Casey United States Courthouse. It further stated that objections must be received by February 25, 2025. As of the date of this declaration, ALCS is not aware of any objections to the proposed settlement.

I declare under penalty of perjury pursuant to the laws of the State of Florida that the foregoing is true and correct to the best of my knowledge. Executed on March 3, 2025, in Jacksonville, Florida.


Mark Unkefer

EXHIBIT E

ENTERED

March 13, 2025

Nathan Ochsner, Clerk

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re

HORNBLOWER HOLDINGS, LLC *et al.*¹

Chapter 11

Case No. 24-90061 (MI)

Adversary Proceeding No. 24-03029

Debtors.

-----X
**THERESA VANBUREN, MONICA MILLER,
CAPTAIN BERTRAND M. SUAREZ, and
CAPTAIN JOHN COOK on behalf of themselves
and all others similarly situated,**

Plaintiffs,

v.

**American Queen Steamboat Operating Company,
LLC, *et al.*,**

Defendants.

FINAL ORDER APPROVING WARN CLASS ACTION SETTLEMENT AGREEMENT

The Court has considered the Joint Motion of the above-captioned Plaintiffs, Theresa VanBuren, Monica Miller, Captain Bertrand M. Suarez and Captain John Cook (the “Plaintiffs”), on behalf of themselves and the Settlement Class, defined herein, together with Hornblower Group Holdco, LLC, as Administrator of AQV Wind Down Co., successor in interest to American Queen

¹ The last four digits of Debtor Hornblower Holdings LLC’s tax identification number are 6035. Due to the large number of debtor entities in these chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://omniagentsolutions.com/Hornblower>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: Pier 3 on The Embarcadero, San Francisco, CA 94111.

Steamboat Operating Company, LLC, (“Defendant” and together with Plaintiffs, the “Parties”), by and through their respective counsel, 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”), made applicable hereto by Bankruptcy Rule 7023, for the entry of orders: (a) approving the *Settlement and Release Agreement* (the “Settlement Agreement” or the “Settlement”) among the Parties pursuant to Bankruptcy Rule 9019, (b) preliminarily approving the Settlement Agreement pursuant to Civil Rule 23, (c) approving the form and manner of notice to Settlement Class of the settlement, (d) scheduling a fairness hearing (the “Fairness Hearing”) to consider final approval of the Settlement Agreement pursuant to Civil Rule 23, (e) after the Fairness Hearing, finally approving the Settlement Agreement pursuant to Civil Rule 23, and (f) granting related relief; and the Court having considered the Joint Motion and any opposition thereto, the Court finds that. The Court finds:

A. The Court entered an Order on January 13, 2025, granting preliminary approval of the Settlement Agreement and approving the form and manner of notice of the Settlement Agreement to be given to all Settlement Class Members;

B. Due notice has been given to the Settlement Class of the Settlement Agreement and the right to appear in person or by counsel at the Fairness Hearing; and no other and further notice is required and such notice is deemed proper and sufficient under the circumstances;

C. The Court has held a Fairness Hearing on March 12, 2025 to consider final approval of the Settlement Agreement;

D. All Settlement Class Members who did not submit a timely and valid request for exclusion are bound by this Order and the terms of the Settlement Agreement;

E. The terms of the Settlement Agreement are fair, reasonable and adequate under Federal Rule of Civil Procedure 23 incorporated by Rule 7023 of the Federal Rules of Bankruptcy Procedure and the factors considered by the Fifth Circuit. *Reed v. General Motors Corporation*, 703 F.2d 170, 172 (5th Cir. 1983) (citing *Parker v. Anderson*, 667 F.2d 1204, 1209 (5th Cir. 1982));

F. The Settlement Agreement was negotiated at arm's-length and in good faith, is fair equitable and in the best interests of the Parties; and

G. Other good and sufficient cause exists for granting the relief requested in the Joint Motion.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. Omitted.

2. The Court grants final approval to the settlement of this Action in accordance with the terms of the Settlement Agreement and finds that the settlement is fair, reasonable, and adequate in all respects, including, without limitation, the Service Awards of \$10,000 each for the Class Representatives; Class Counsel's Fees of \$941,666.67; as well as Class Counsel's Expenses and the Administrator's Fees and Costs, not to exceed a combined total of \$30,000.00, all to be paid out of the Total Settlement Fund of \$2,825,000.00.

3. The Court has determined that the Notice given to Settlement Class Members fully and accurately informed the Settlement Class Members of all material elements of the proposed settlement and constituted valid, due, and sufficient notice to the Settlement Class Members.

Defendant has complied with all its obligations pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715 ("CAFA") with respect to the Settlement.

4. The Court orders the Parties to the Settlement Agreement to perform their obligations thereunder pursuant to the terms of the Settlement Agreement.

5. Upon the Effective Date, the Released Claims shall be disallowed and deemed withdrawn in their entirety, including those proofs of claim filed by Settlement Class Members identified on Annex A hereto.

6. Upon the Effective Date, the Defendant and the claims agent appointed in these Chapter 11 Cases are each authorized and directed to make such revisions to the Debtors' schedules of assets and liabilities and/or the claims register maintained in these cases as are necessary to reflect the relief granted in this Order including.

7. Upon the Effective Date, the Action and the Suarez Action (as defined in the Settlement Agreement), and all claims and causes of action asserted therein, are deemed dismissed with prejudice.

8. The Court permanently enjoins the Settlement Class Representatives and all Settlement Class Members from prosecuting against any of the Released Parties (as defined in the Settlement Agreement) any and all claims released pursuant to the terms of the Settlement Agreement.

9. Without affecting the finality of the order in any way, the Court shall retain jurisdiction, even after the closing of these Chapter 11 Cases, with respect to all matters arising from or related to the implementation of the Settlement Agreement and this Order.

Signed: March 13, 2025



Marvin Isgur
United States Bankruptcy Judge

Annex A

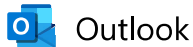
Released Claims

Claim #	Claimant
C100-566	CARMEN ARMSTRONG
C100-415	ILAN BIRAN
C100-664	LISSETTE BALBIERS
C100-574	ADAM BELKAID
C100-590	ALEX BERNHARDT
C100-441	ALEXANDRA MARTINEZ
C100-496	ALMIRA LOVETT
C100-655	AMANDA STRAUSBAUGH
C100-547	ANDREW TODD
C100-564	ANGEL HUDDLESTON
C100-413	ANGELA COMPOSTO
C100-631	ANTHONY OLIVER
C100-616	APRIL BUTLER
C100-608	ARNOLD LAYUG
C100-556	AUGUST DORSEY
C100-387	AUSTIN GATES
C100-614	AUSTIN WRIGHT
C100-554	BERTRAND M SUAREZ
C100-669	BLAKELY MARQUEZ
C100-587	BRANDON JANSSEN
C100-639	BREANNA COLLIER
C100-636	BRIAN MOULTRIE
C100-543	BRIANNA HARVEY
C100-633	BRUCE DAILEY
C100-670	CALVIN AVANT
C100-678	CHRISTOPHER KAIL
C100-498	CURTIS LEVERS
C100-433	CURTIS WILLIAMS, III
C100-582	CYNDEE LARSON
C100-621	DAMON GILBERT
C100-431	DANA ANTHONY JENKINS
C100-504	DANNY GRIFFIN
C100-443	DANVIS GREEN
C100-603	DAWN STANDBERRY
C100-448	DEANNA BECKFORD
C100-617	DEANNA JULIAN
C100-447	DEDRICK GRADLEY
C100-627	DERRICK ANDERSON
C100-446	DERRICK SIMMONS
C100-609	DESERAE NEMETH
C100-499	DEVON CLARKE
C100-679	DIANA SHINSATO-BARNACHEA
C100-450	DIANE WALTON
C100-622	EARL GADSON III
C100-560	ELAINE GULLIKSEN
C100-657	ELIZABETH MOORE
C100-613	ELLIOTT HOWARD
C100-542	ERIC DERR
C100-430	ERIC GORTZIG
C100-619	ERIC LONG
C100-673	FAWN HELTON
C100-585	GARY PETERSON

Claim #	Claimant
C100-561	GEORGE DALE
C100-618	GLENN SPRINGS
C100-481	HAYLEY DOUGLAS
C100-630	HEIDI MCCULLY
C100-537	HELENE DAVIDSON
C100-540	INGRID DANIELS
C100-502	ISHMEL NORMAN
C100-548	JACKSON DAGATA
C100-607	JACQUELYN CABRERA
C100-579	JENNIFER PANE
C100-477	JILES WRIGHT
C100-423	JOHN COOK
C100-615	JOHN FERGUSON
C100-661	JONATHAN DUFF
C100-624	JONATHAN NEIKAM
C100-635	JULIE AVILA
C100-438	KEITH PAUL
C100-497	KELVIN NARANJO
C100-505	KERESA HOWARD
C100-425	KEVIN POOLE
C100-386	KYLE LEE PUCKETT
C100-658	LACOY COVERSON
C100-628	LARRY JACOBY
C100-612	LAUREN KIENY
C100-629	LINDSEY GEORES
C100-654	LINDY ELLIOTT
C100-549	LIZ JOHNSON
C100-651	LORI ROBBINS
C100-381	MAEISHA MOORE
C100-625	MAGGIE MCMURRAN
C100-557	MARGARET LOUISON-ASHTON
C100-573	MARIA JOEYEET FUERTES
C100-586	MARIA WHITEHORN
C100-592	MARK JACKSON
C100-541	MATTHEW SPENCER
C100-656	MCKENZIE COLLINS
C100-686	MELINDA POWELL
C100-584	MICHAEL CHAPMAN
C100-539	MICHELE ROMAN
C100-382	MONICA MILLER
C100-451	MUSAAD KALIM MCADAMS
C100-501	NICHOLAS RODSCHAT
C100-665	NICOLE SANBEG
C100-690	PAMELA ELIZONDO
C100-601	PHIL WESTBROOK
C100-641	RACHEL SANCHEZ
C100-589	RANDY CRAWFORD
C100-653	RASHELLE SHIPLEY
C100-583	REBECCA JORDAN
C100-637	REDOUANE KOUIS
C100-659	RICHARD BERNARD
C100-437	RICHARD CHARLES BRYANT, II

Claim #	Claimant
C100-495	RICHARD MCLETCHIE
C100-416	ROBERT DELUCA
C100-643	ROBIN MCGRUDER
C100-602	RUBI CRESPIN
C100-652	SABRINA OSBORN
C100-383	SARAH HENLEY
C100-620	SCOTT REEVES
C100-623	SHANIQUE JACKSON
C100-576	SHERYL WATERMAN
C100-500	SONYA JONES
C100-445	STANLEY JACKSON
C100-428	STAR CROSIER
C100-606	STARR CROSIER
C100-604	STEPHANIE GILLEN
C100-674	STEVE COTHRAN
C100-440	STEVEN CARTER
C100-626	SUQUANA JACKSON
C100-691	SYLVIA WELLS
C100-507	TALISHA PERRY
C100-689	TARA WAGNER
C100-662	TERESA MARCOU
C100-681	TERRIANNE MARTIN
C100-565	TERRY LUNDER
C100-377	THERESA VANBUREN
C100-684	THERESA VANBUREN, MONICA MILLER, CAPTAIN BERTRAND M
C100-563	TIFFANY HOSTOS
C100-503	TYANNA JACKSON
C100-663	WENDY STICKLER
C100-640	WILL KIEFER

EXHIBIT F



RE: In re Wireless Advocates, 23-10117- UST inquiry re 9019 Motion. Response requested by August 11

From Evans, Kathryn F. (USTP) <Kathryn.Evans@usdoj.gov>

Date Wed 8/6/2025 9:53 AM

To William Simpson <jack@simpson-pllc.com>; brian.peterson@klgates.com <brian.peterson@klgates.com>;
mike.gearin@klgates.com <mike.gearin@klgates.com>

Cc vab@andrewsburdette.com <vab@andrewsburdette.com>

Good Morning,

The crux of the objection is the fact that the cases cited in your correspondence provide that in the Ninth Circuit WARN Act counsel is either entitled to the lodestar fee value or a percentage-based fee, with 25% being the benchmark, and if percentage based fees are used, there should be a lodestar cross check. *McDonald v. CP OpCo, LLC*, No. 17-CV-04915-HSG, 2019 WL 2088421, at *6 (N.D. Cal. May 13, 2019) citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) and *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). See also *Philips v. Munchery Inc.*, No. 19-CV-00469-JSC, 2021 WL 326924, at *9 (N.D. Cal. Feb. 1, 2021) (“The Ninth Circuit recommends that whether the lodestar or percentage-of-recovery method is used, the district court perform a cross-check using the other method to confirm the reasonableness of the fee (e.g., if the percentage-of-recovery method is applied, a cross-check with the lodestar method will reveal if the amount requested is unreasonable in light of the hours reasonably expended”).

Here, you are seeking a 30% percentage-based fee which, when cross checked against the lodestar fees, reflects a 2.41% multiplier. Thus, the burden is on you to show that the upward deviation from the 25% benchmark is reasonable under the circumstances of the case. I have pushed back on you suggesting that a 2.41% multiplier is not appropriate, I thought perhaps if you sent me your resume, I would discover that you've got significant experience in this field and could show that you have charged this fee in other cases warranting this significant 2.41% multiplier. So far, you've just sent me cases with multipliers that are either negative or far below the 2.41% involving counsel with 30+ years' experience, which is why I again am reiterating that a 25% fee would be more appropriate in this case.

I am happy to have a call on this if you'd like. I have a 30-minute Zoom hearing in Alaska at 11:30 my time, and then another confirmation hearing at 2:30 my time and another one at 4:00 p.m. then I am out tomorrow. As such, if you could call me between noon and 2:00 my time that would be ideal. I can be reached at 206-5523-2558

From: William Simpson <jack@simpson-pllc.com>

Sent: Tuesday, August 5, 2025 4:04 PM

To: Evans, Kathryn F. (USTP) <Kathryn.Evans@usdoj.gov>; brian.peterson@klgates.com; mike.gearin@klgates.com

Cc: vab@andrewsburdette.com

Subject: [EXTERNAL] Re: In re Wireless Advocates, 23-10117- UST inquiry re 9019 Motion. Response requested by August 11

Kathryn,

Help me understand your objection and how your concerns can be cured. In your initial email, you requested that you be provided with my resume explaining my previous WARN Act experience. You have now moved on to purely focusing on the percentage and multiplier of the requested fee. But you have not referenced any of the factors considered in the Ninth Circuit to discuss whether the requested percentage is appropriate. Which of the five factors cited in the Motion do you believe is nonexistent here?

Again, I am happy to discuss this further by phone to lessen any continued email back-and-forth.

Best regards,

Jack

From: Evans, Kathryn F. (USTP) <Kathryn.Evans@usdoj.gov>

Sent: Tuesday, August 5, 2025 2:50 PM

To: William Simpson <jack@simpson-pllc.com>; brian.peterson@klgates.com <brian.peterson@klgates.com>; mike.gearin@klgates.com <mike.gearin@klgates.com>

Cc: vab@andrewsburdette.com <vab@andrewsburdette.com>

Subject: RE: In re Wireless Advocates, 23-10117- UST inquiry re 9019 Motion. Response requested by August 11

Good Afternoon,

I reviewed the case citations you sent me and none of them have convinced me that an upward deviation from the Ninth Circuit's 25% benchmark is appropriate in this case, where the former employees are receiving less than \$2k each. Specifically, in *Philips v. Munchery Inc.*, No. 19-CV-00469-JSC, 2021 WL 326924, at *9 (N.D. Cal. Feb. 1, 2021), Plaintiff's counsel requested a 1/3 recovery of \$197,884, where their loadstar fees totaled \$324,551 which is a net negative multiplier of .39%. Next in the case of *Bergman v. Thelen LLP*, No. 3:08-CV-05322-LB, 2016 WL 7178529, at *9 (N.D. Cal. Dec. 9, 2016) the attorney's fee award was not 1/3 it was the *lesser* of 1/3 or \$1M which represented only a 1.5 multiplier of the actual loadstar. I found nothing in the *In re San Diego Hospice & Palliative Care Corp.*, 2014 WL 4264750 (S.D. Cal. Oct. 28, 2014) decision which addressed why the court felt the attorneys' fees were appropriate in that case. In *In re AWTR Liquidation, Inc.*, 2013 WL 6859166 (C.D. Cal. Dec. 13, 2013) (one-third), as noted in my prior email, the load star fees in the case were \$497,986 and the 1/3 award was only \$326,666, again resulting in a negative multiplier. Finally in *McDonald v. CP OpCo, LLC*, No. 17-CV-04915-HSG, 2019 WL 2088421, at *6 (N.D. Cal. May 13, 2019) the Class sought fees equal to 30% which was \$900,000 and their fees at the time had already exceeded \$915,353, such that no multiplier was warranted. Simply put, four of your five cases you reference do not support your position that a deviation from the 25% benchmark is appropriate under the circumstances of this case. Being clear, I do NOT object to the value of the settlement, I am *only* objecting to the proposed distribution of fees on grounds the attorney's fees sought exceed the 25% Ninth Circuit Benchmark. As such, I would again, respectfully request you agree to reduce your fees to the 25% benchmark. Please respond by August 11, 2025.

Thanks,
Kathryn

From: William Simpson <jack@simpson-pllc.com>

Sent: Tuesday, August 5, 2025 10:54 AM

To: Evans, Kathryn F. (USTP) <Kathryn.Evans@usdoj.gov>; Gearin, Mike <mike.gearin@klgates.com>; Peterson, Brian T. <brian.peterson@klgates.com>

Cc: Virginia Andrews Burdette <vab@andrewsburdette.com>

Subject: [EXTERNAL] Re: In re Wireless Advocates, 23-10117- UST inquiry re 9019 Motion. Response requested by August 11

Kathryn,

Thank you for your email and for the opportunity to respond to your concerns. I appreciate your thoughtful review of the motion.

I'd like to address your points in order.

Attorney Fee Percentage

First, and as an initial matter, the requested fee is **30%**, not 33.33%. This is a key distinction that brings our request closer to the benchmark and still recognizes the significant risks and efforts in this case.

Second, your email requested a showing of expertise. Some of my experience includes the United Furniture WARN Act litigation, where I was appointed co-lead class counsel over a competing motion filed by Raisner Roupinian. That case settled on the eve of trial for \$3.5M from the alleged single employer and a \$15M claim against the bankruptcy estate. In addition, I am currently co-counseled with Mary Olson and Johnathan Miller on another WARN matter. To date, I have six class counsel appointments. There are three additional matters that are pending approval bringing my total to nine. I have 14 additional matters that are putative class and collective cases, 8 of which are set for a global mediation in November. I have also represented nearly 100 employees in a mass arbitration bringing WARN Act claims.

Regarding the multiplier, the requested fee is reasonable. The hours and rates used to compute the lodestar of \$451,000 do not include any time spent by local counsel or non-attorney staff. If we included their time, the lodestar would increase significantly, which would, in turn, reduce the multiplier to well below 2. Furthermore, this lodestar does not account for the substantial work still required to attend the final approval hearing, respond to any potential objections, and administer the settlement through to its conclusion. I anticipate this will add at least 50 hours to my time alone.

Finally, the 30% fee is not unprecedented in this Circuit for WARN Act cases. We cited several cases in our motion, and as you noted, many of those cases were handled by the same attorneys you mentioned. I have provided a brief list of cases from the Ninth Circuit that approved a one-third (33.33%) or 30% fee in a WARN Act context for your reference.

- *Philips v. Munchery Inc.*, 2021 WL 326924 (N.D. Cal. Feb. 1, 2021) (one-third)
- *Bergman v. Thelen LLP*, 2016 WL 7178529 (N.D. Cal. Dec. 9, 2016) (one-third)
- *In re San Diego Hospice & Palliative Care Corp.*, 2014 WL 4264750 (S.D. Cal. Oct. 28, 2014) (one-third)
- *In re AWTR Liquidation, Inc.*, 2013 WL 6859166 (C.D. Cal. Dec. 13, 2013) (one-third)
- *McDonald v. CP OpCo, LLC*, 2019 WL 2088421 (N.D. Cal. May 13, 2019) (30%)

Outcome and Impact

I believe you may be understating the significance of the result we achieved. Given your background, I'm confident you can appreciate the novelty of the legal argument and the importance of the opinions handed down in this case. These decisions will provide greater protections to employees who lose their jobs due to a plant closing or mass layoff.

Jack Simpson

4/5

Case 23-10117-FWD Doc 933-0 Filed 08/19/25 Entered 08/19/25 15:00:25 Pg. 6 of 6

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(206) 553-2558

EXHIBIT G

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

Monte J. Woolery, et al.
Individually and as Class Representatives,

Plaintiffs,

vs.

MatlinPatterson Global Advisers, LLC, et
al.,

Defendants.

)
) Civil Action
)
)
) C.A. No. 1:12-cv-00726 (RGA)
)
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)
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)

**DECLARATION IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR A
FINAL ORDER CERTIFYING A CLASS OF EMPLOYEES FOR SETTLEMENT
PURPOSES ONLY, APPOINTING CLASS COUNSEL, APPROVING SETTLEMENT
OF WARN ACT CLASS ACTION, AND APPROVING ATTORNEYS'
FEES, COSTS, AND SERVICE PAYMENTS TO CLASS REPRESENTATIVES**

I, Charles A. Ercole, Esquire state a follows:

1. I make the following certification based on my own personal knowledge and, if called to testify, I would and could do so under oath with respect to the information contained herein.

2. I am a member of the following bars: Commonwealth of Pennsylvania; State of New Jersey; United States District Courts for the Eastern and Middle Districts of Pennsylvania; United States District Court for the District of New Jersey; United States Court of Appeals for the Third Circuit; and the United States Supreme Court. I am appearing *Pro Hac Vice* before this Honorable Court in the above-captioned matter.

3. I am a partner with the firm of Klehr, Harrison, Harvey, Branzburg LLP, attorneys for Linda Jarvis, Sara Villanueva, Monte J. Woolery, Tysha Marie Smith, Jacque S. Wood, Kurt Glen, Craig L. Moore, Wayne E. Brown, Shawn A. Mixon, Stephen R. Porter,

Stephanie Linn Seawall, Roxanna Kipp, Javier Enriquez, Ivette Riojas, Rick Ostdiek, Laverne D. Loeffelholz, Simona Smaranda Vaipan, Matt Wilson, and Roxana Najera, on their own behalf and as representatives of a Class of other persons similarly situated. This declaration is submitted in support of the Plaintiffs' Unopposed Motion.

Notice to Class Members

4. On October 4, 2013, Class Counsel served on each potential Class member, via First Class mail, the Notice approved by this Court for the WARN Class.

5. The Notice provided that the Class members had until November 1, 2013, to postmark an objection to the settlement or Exclusion Form, which provided the Class members adequate time to insure that their objections and Exclusion Forms would be received by Class and Defendants' Counsel. No valid Opt-out/Exclusion forms have been received.¹

Class Claims

6. The Class is numerous. As a result of the closure of the plants owned and operated by Premium Protein Products, LLC and PPP Holdings, LLC ("Premium") and, allegedly, by the Defendants as a "single employer" with Premium, over 400 employees were terminated.

7. The claims of the Plaintiffs and the members of the proposed Class have common questions of law and fact. All of the Plaintiffs and members of the proposed Class allege that they were entitled to 60 days' notice under the WARN Act but did not receive it.

8. Plaintiffs' claims are typical of the claims of the Class. All such claims arise out of Defendants' failure to provide 60 days of notice of the closing. Plaintiffs and the other Class members have suffered common injuries arising out of Defendants' common course of conduct.

¹ While two Exclusion forms were received by Class Counsel, each Class Member who sent an Exclusion form requested (after speaking with Class Counsel) that their Exclusion forms be destroyed and that they be included in the Settlement.

Because, as noted, the basic facts for the claims of all Class members are virtually identical, Plaintiffs' claims must be typical and representative. Also, I am not aware that any Class members are presenting unique claims or are subject to unique defenses.

9. Plaintiffs have fairly and adequately protected the interest of the Class because Plaintiffs diligently pursued their claims against Defendants, despite the relatively modest recovery available against the costs of litigation. Plaintiffs have cooperated with the prosecution of this action and with Class Counsel.

10. The questions of law and fact common to the Class predominate over any questions affecting only individual members. As indicated above, the common questions of law and fact are substantial in nature. In this case, there are virtually no individual questions aside from the common questions.

11. The class action method is superior to other available methods for the fair and effective adjudication of this controversy because of the size of the Class and because the damages suffered by members of the Class may be relatively small when compared to the expense and burden of individual litigation.

CAFA Notices

12. On September 27, 2013, Plaintiffs served the Settlement Agreement and all other materials specified under 28 U.S.C. § 1715(b) upon the following government officials: (a) Kamala D. Harris, California Attorney General; (b) John W. Struthers, Colorado Attorney General; (c) Lisa Madigan, Illinois Attorney General; (d) Derek Schmidt, Kansas; (e) Chris Koster, Missouri Attorney General; (f) Roy Cooper, North Carolina Attorney General; (g) Greg Zoeller, Indiana Attorney General; and (h) Jon Bruning, Nebraska Attorney General. A true and correct copy of one of the CAFA notices (which is identical to all others served) is attached

hereto as Exhibit 1.2 The following documents were sent with each CAFA notice: the Plaintiffs' WARN Complaint (D.I. 1) and First Amended WARN Complaint (D.I. 21); Plaintiffs' Unopposed Motion for (and Memorandum of Law in Support of) Preliminary Approval of Class Action Settlement, to which the Settlement Agreement was attached (D.I. 55 and 56); the Settlement Agreement, which was attached to D.I. 55); the Court Order Granting Preliminary Approval of the Proposed Class Action Settlement (D.I. 57); and the post-settlement Class Notice and the Opt-Out Notice Form, which were attached to the Unopposed Motion as Exhibit 1 to the Settlement Agreement (D.I. 55).

Qualifications of Counsel

13. Klehr Harrison and I have been lead counsel in numerous employment class action lawsuits. *See, e.g., Justin Abreau v. Oakwood Homes Corporation, et al.*, C.A. 0213396 (Bankr. D. Del. 2002); *In Re USF Red Star Worker Notification Litigation*, 05-md-01655-PBT (E.D. Pa. 2005); *In re McGraw v. Independence Blue Cross*, Docket No. 000171 (Pa. Ct. Common Pleas 2007) (\$675,000 for 90 employees); *Rocco v. Sears, et al.*, No. 06-2868 (D.N.J. 2008) (\$600,000 for 200 employees); *Riley v. Hoboken Wood Flooring*, C.A. No. 2:07-cv-05666, (D.N.J. 2009); *Caccamo and Harnois v. MLN*, Adv. No. 07-51415 (D. Del. 2009); *Perez v. American Remanufacturers Inc.*, Adv. No. 06-50819 (Bankr. D. Del.); *Sane v. Liberty Fibers Corp.*, Adv. No. 06-05049 (Bankr. M.D. Tenn. 2011); *In re Qimonda North America, et al.*, Adv. No. 09-50192 (Bankr. D. Del. 2012) (as WARN Act Co-Class Counsel); *Smith v. Arrow Trucking*, No. 09-cv-810 (N.D. Okla. 2011); *In re MF Global Holdings, Ltd., et al.*, Case No. 11-15059 MG (Bankr. S.D.N.Y. 2011); *Jason McClain, et al. v. Highway Technologies, Inc.*, Case

2 Plaintiffs attached to each CAFA notice a spreadsheet listing every potential class member and their last known addresses. In the interests of protecting the privacy of the class members, I have not attached to this Declaration that spreadsheet but will produce it for *in camera* inspection if the Court so requests.

No. 13-51106-KJC (Bankr. D. Del. 2013). Klehr Harrison's Litigation Department has approximately 30 attorneys, as well as several paralegals to assist in the class action litigation.

Reasonableness of Settlement and Fee Request

14. I have personal knowledge of the settlements in the employment class action lawsuits handled by Klehr Harrison arising out of plant closings or mass layoffs. Based on that experience and my research concerning other employment class action settlements, I believe that the settlement in the current litigation is fair and reasonable. *See, e.g., In re Oakwood Homes* (D. Del. 2003) (\$2.8 million for 1100 employees); *In re USF Red Star*, 05-md-01655-PBT (E.D. Pa. 2005) (\$6.775 million for 2000 employees); *In Re McGraw v. Independence Blue Cross*, Docket No. 000171 (Pa. Ct. Common Pleas 2007) (\$675,000 for 90 employees); *Rocco v. Sears, et al.* No. 06-2868 (D.N.J. 2008) (\$600,000 for 200 employees); *In re Riley v. Hoboken Wood Flooring* (D.N.J. 2009) (\$1,050,000 for 500 employees); *Caccamo and Harnois v. MLN*, Adv. No. 07-51415 (D. Del. 2009) (\$2.7 million for 1500 employees); *Perez v. American Remanufacturers Inc.*, Adv. No. 06-50819 (Bankr. D. Del.) (\$675,000 for 500 employees); *Arrow Trucking Company*, No. 09-cv-810 (Bankr. N.D. Okla.) (\$1.97 million for 564 employees); *Fleetwood Homes*, No. 6:09-ap-01114-MJ (Bankr. C.D. Cal.) (\$1.55 million for 600 employees).

15. Class counsel is requesting a total fee of 33 1/3% of the Common Fund plus reimbursement for out-of-pocket costs incurred in the litigation for both firms involved in the litigation. The request for 33 1/3% of the Common Fund is well within the range of reasonableness that has been repeatedly approved by courts within the Third Circuit and in other circuits for similar class actions. *See e.g., Riley v. Hoboken Wood Flooring* (D.N.J. 2009); (approving 33 1/3% of the Common Fund); *Caccamo and Harnois v. MLN*, Adv. No. 07-51415

(D. Del. 2009) (33 1/3%); *Perez v. American Remanufacturers Inc.*, Adv. No. 06-50819 (Bankr. D. Del.) (33 1/3%); *In re Oakwood Homes Corp.*, Case No. 02-13396, Adv. Pro. No. 03-52178 (DE 2002); *In re Classic Kitchens*, Case No. 01-20393 (E.D. Pa. Bankr. 2001) (33 1/3%); *In re Charter Behavioral Health Sys., LLC*, Case No. 00-989, Adv. Pro. No. 00-562 (Del. 2001) (33 1/3%); *In re Home Place*, Case No. 01-0181 (Bankr. D. Del. 2001) (33 1/3%); *see also In re Global Shopping Network*, Case No. 97 B44268, (Bankr. S.D.N.Y. 1997) (33 1/3%); *In re Preston Trucking*, Case. No. 99-59994 (Bankr. D. Md. 1999) (33 1/3%); *In re Matchlogic*, Case No. 01-32495-TC, (Bankr. N.D. Cal. 2001) (33 1/3%); *In re Living.com*, Case No. 00-12523 (Bankr. W.D. Tex. 2000) (33 1/3%); *In re Value America*, Case No. 00-02269-WA3 (Bankr. W.D. Va. 2000) (33 1/3%); *In re Consolidated Freightways Corp.*, Case No. 02-24284 MG (Bankr. C. D. Cal. 2002) (33 1/3%).

16. The fee agreements signed by the Class Representatives authorize a contingent fee of 33 1/3%, plus reimbursement of out-of-pocket costs, due to the risks involved in undertaking this litigation. Class Counsel assumed a very real risk in taking on this case because they took this case on a contingency basis, and invested time, effort, and money with no guarantee of any recovery. In cases where the recovery is far from certain, as here, an award of 33 1/3% or more of the common fund as attorneys' fees is appropriate. *Alba Conte, Attorney fee awards* §2:14 at 169 (Third Edition 2004) (citing report of the *Third Circuit Task Force, Court Awarded Attorney's Fees* 108 F.R.D. 237 at 248 (1985)). In addition:

(a) Plaintiffs' counsel proceeded knowing there was a chance that Defendants would prevail and that, even if Plaintiffs prevailed, there was a chance that the case would take years to bring to trial and would not be resolved without an appeal. The risk of no recovery in complex class actions of this type is very real. There are numerous cases where plaintiffs'

counsel in contingent-fee cases such as this one, after devoting thousands of hours and advancing significant sums in out-of-pocket expenditures, received no compensation whatsoever. *See e.g., Armstrong v. Whirlpool Corp.*, 2007 U.S. Dist. LEXIS 14635 (M.D. Tenn. 2007) (denying class certification of racial harassment claims). From the outset in these cases, the Defendants have denied adamantly any liability and continue to do so today.

(b) Class Counsel obtained an excellent result for the Class. With a common fund of \$1.2 Million, Class members will receive significant distributions. Based on payroll data we received, Class Counsel estimates if, plaintiffs prevailed on all claims at trial, the maximum recovery for the WARN Class Members would be approximately \$2.0 Million. The Settlement Agreement will provide Class Members with significant compensation in the near future -- many of whom have struggled or been unable to find sufficient employment since being terminated by Defendants -- and will negate the chance that the cases might take years to bring to trial and resolve any potential appeals.

17. Moreover, Class Counsel vigorously prosecuted this litigation. By way of background, Premium, a meat-packing business, owned and operated two plants in Hastings and Lincoln, Nebraska (the "Facilities") that, during pertinent times hereto, employed over 400 people. Plaintiffs allege that some or all of the Defendants operated as a "single employer" with Premium and were directly responsible for Premium's business decisions, which allegations Defendants deny. On or about June 10, 2009, the Premium Facilities were closed and the employees (including Plaintiffs) were furloughed as a result, without having been given 60-days notice of said furlough as required under the WARN Act. In addition, on November 10, 2009, Premium filed a Chapter 11 Bankruptcy Petition in the United States Bankruptcy Court for the District of Nebraska, Docket Nos. 09-43291 and 09-4392 (the "Premium Bankruptcy"), and, as a

result, Premiums' employees (including Plaintiffs) were terminated permanently, again without having been given 60-days notice of said permanent closing as required under the WARN Act.

18. In the Premium Bankruptcy, several former employees, Erin McDermott, Linda Jarvis, and Sara Villanueva, commenced an adversary action (and filed a proof of claim seeking class status) against Premium (the "Adversary Action"), which adversary action was dismissed voluntarily. The Premium Bankruptcy was closed and Premium was discharged after Premium sold its assets at auction, without making any payment to the Class Representatives or any of Premium's former employees on their WARN Act "class action proof of claims."

19. On September 23, 2011, Ms. Jarvis and Ms. Villanueva filed a Class Action Complaint in the Federal District Court for the District of Delaware (the "Court"), captioned as *Jarvis, et al. v. MatlinPatterson Global Advisers, LLC*, Civil Action No. 1:11-cv-00864-LPS. The Court dismissed that complaint on *res judicata* grounds based on the voluntary dismissal of the Adversary Action. Ms. Jarvis and Ms. Villanueva appealed to the Federal Court of Appeals for the Third Circuit and their appeal is still pending (the "First Action").

20. Class Representatives filed another Complaint against some of the Defendants on June 8, 2012, and a First Amended Complaint against all of the Defendants on August 15, 2012 (the "Second Action"). The First Action and the Second Action shall hereinafter be referred to collectively as "the Litigation." Defendants filed a Motion to Dismiss the First Amended Complaint, which the Court denied on April 23, 2013.

21. Moreover, on the claims in the First Action and Second Action, the Parties engaged in mediation at the Third Circuit before Penny Conly Ellison, Esquire, on October 10, 2012, and February 6, 2013, respectively. Although a settlement was not reached in those discussions, the Parties had an opportunity to explore the strengths and weaknesses of each

sides' case before a neutral third party, Ms. Ellison. Ultimately, as discovery was coming to a close, the Parties reengaged in discussions in early August 2013 and, after several weeks of negotiations, agreed on the terms set forth in the Settlement Agreement.

22. Class Counsel has served voluminous discovery requests on Defendants' counsel, reviewed thousands of pages of documents, and interviewed former employees/potential witnesses. Class Counsel also engaged in numerous communications with Defendants' counsel during the course of the litigation, including negotiating an appropriate settlement. Class Counsel prepared Notices of Depositions for the depositions of several of the Defendants' executives, including Doug Yakola, Peter Schoels, Michael Watzky, Larry Teitelbaum, Marc Chodock, and Raph Posner. Before settling this action, the Parties had planned to schedule these depositions in September 2013.

23. Class Counsel believes that the discovery conducted in this case, including the review and analysis of the Defendants' documents, employment records, and payroll data has been sufficient to reliably assess the merits of the respective parties' positions, including the potential value of Class Members' claims, and has afforded the parties the ability to compromise the issues on a fair and equitable basis. The Settlement was reached after two days of mediation at the Third Circuit Court of Appeals and additional lengthy and contentious negotiations with Defendants' counsel, all of which were conducted at arm's length. Class Counsel have considered numerous risks associated with the litigation, including the possibility that the Defendants may prevail in whole or in part on one of the defenses they asserted. The risk of no recovery in complex class actions in general, and this case in particular, is very real.

24. A fee award of one-third of the common fund is consistent with Class Counsel's contractual agreement with the Class Representatives. Plaintiffs' counsel agreed with the Class

Representatives, as is customary for contingent-fee agreements in cases such as this, that Plaintiffs' counsel could seek up to one-third of any monetary recovery achieved. Plaintiffs' counsel are nationally recognized leaders in employment class actions - with particular expertise/experience in employment class action litigation - and put the full use of their skill and experience to work in the service of Plaintiffs and the Class in this case.

25. During the period since this matter has been pending, through October 31, 2013, Class Counsel, who has regularly maintained detailed daily time records including a description of the services rendered, has spent over 1,000 hours on this matter, resulting in total time value at the firms' customary rates of approximately \$400,000. Class Counsel will continue to spend a significant amount of time responding to Class members' inquiries regarding the settlement and distributions; to attend Court for the final hearing on the Unopposed Motion; and to administer the settlement.

26. In addition to an attorney fee of one-third of the common fund, Class Counsel is seeking reimbursement for out-of-pocket costs incurred in the litigation not to exceed \$50,000. To date, Class Counsel has incurred nearly \$40,000 in out-of-pocket costs prosecuting these actions, and expects to expend an additional \$15,000 using a third-party administrator to distribute the payments and do tax reporting.

27. The fee award requested is in accord with Plaintiffs' reasonable expectations as it was set forth in the services/fee agreements signed by the named Plaintiffs. The agreements provide -- as is customary for contingent-fee agreements in cases such as this -- that Plaintiffs' counsel could seek up to one-third of any monetary recovery achieved.³

³ The Agreements can be provided to the court upon request, however, the relevant language is as follows:

28. In the Third Circuit, the Court can “cross check” the percentage award against the lodestar to ensure a “windfall” does not occur. *In re Cendant*, 264 F.3d 201, 231 (3d Cir. 2001). In the present case, the requested fee does not result in a “windfall” as it results in a fee virtually equal to its lodestar value. *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 151 (E.D. Pa. 2000) (finding a multiplier of 2.04 is reasonable); *Dewey v. Volkswagen of Am.*, 728 F. Supp. 2d 546, 609 (D.N.J. 2010), *rev’d on other grounds Dewey v. Aktiengesellschaft*, 681 F.3d 170 (3d Cir. 2012) (lodestar multiplier of 2.0 is within the range the Circuit has approved). In the present case, the fee requested (\$400,000) is less than 1 times the lodestar value of the time expended by Class Plaintiffs’ counsel in prosecuting this case. Under the lodestar cross-check analysis, the fee request is reasonable.

29. The skill and reputation of Plaintiffs’ counsel justifies the fee requested here. As shown here, Plaintiffs’ counsel are nationally recognized leaders in employment class actions - - with particular expertise/experience in employment class action litigation - - and put the full use of their skill and experience to work in the service of Plaintiffs and the class in this case.

30. I have reviewed our firm’s detailed billing reports for this litigation through October 31, 2013. I believe that they accurately represent the work involved and the costs

“Klehr Harrison is being engaged on a contingency fee basis. **As such, Client will not be responsible for paying any attorneys’ fees or costs unless a recovery is obtained** Klehr Harrison’s contingency fee is 33 1/3 percent of any recovery upon Client’s claim, and Klehr Harrison shall be entitled to reimbursement of its costs . . . from any such recovery. Client understands Klehr Harrison may pursue Client’s claims as part of a class action lawsuit. Client understands that the fees and costs as to the entire class must be approved by the Court. Class action fee awards in these cases typically equal 33 1/3 percent of the total awarded to the Class [C]osts (e.g., filing fees, postage, photocopying, phone, deposition services, travel, etc.) will be reimbursed to Klehr Harrison in addition to the fees awarded. In a Class Action, Klehr Harrison’s fees and costs will be deducted from the aggregate total and the Client and Class members’ distribution will be determined on pro-rata basis depending on the Client’s compensation level.” (emphasis in original).

incurred.⁴ Below are the primary attorneys who have worked on the case. Their hourly rates are commensurate with or slightly below the average hourly rate for a lawyer of their experience in this market.

<u>Attorney</u>	<u>Hourly Rate</u> ⁵	<u>Hours</u>	<u>Time Value</u>
Charles A. Ercole	\$ 445.17	565.30	\$ 251,653.00
David Eagle	\$ 478.17	30.80	\$ 14,735.00
Lee Moylan	\$ 302.15	284.90	\$ 86,083.25
Sean Brennecke	\$ 310.70	26.30	\$ 8,171.50
Sally Veghte	\$ 256.52	19.70	\$ 5,053.50
William Clements	\$ 310.83	106.70	\$ 33,165.50
Carl Engel	\$ 210.00	30.30	\$ 6,363.00
TOTAL TIME VALUE			\$ 405,224.75

31. We expect that we will incur additional fees and costs following the submission of this Motion which will be incurred in responding to any papers submitted in opposition to this Motion, addressing questions from Class members, preparing for and attending the Fairness Hearing, and other issues that typically arise during the claims administration process.

32. The named Class Representatives, Linda Jarvis, Sara Villanueva, Monte J. Woolery, Tysha Marie Smith, Jacque S. Wood, Kurt Glen, Craig L. Moore, Wayne E. Brown, Shawn A. Mixon, Stephen R. Porter, Stephanie Linn Seawall, Roxanna Kipp, Javier Enriquez, Ivette Riojas, Rick Ost diek, Laverne D. Loeffelholz, Simona Smaranda Vaipan, Matt Wilson,

⁴ The billing records can be provided to the Court upon request for *in camera* inspection.

⁵ The hourly rates presented are an average of the respective individual's hourly rates over the four year period the Litigation has been pending.

and Roxana Najera have played a significant role in the resolution of this matter. I, therefore, request that each named Class Representative be awarded an incentive award in the amount of \$1,500 - \$2,500.

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

/s/ Charles A. Ercole
Charles A. Ercole

Dated: December 10, 2013

EXHIBIT H

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Monte J. Woolery, et al.)	
Individually and as Class Representatives,)	Civil Action
)	
Plaintiffs,)	C.A. No. 1:12-cv-00726 (RGA)
)	
vs.)	
)	
MatlinPatterson Global Advisers, LLC, et)	
al.,)	
)	
Defendants.)	

**CLASS COUNSEL'S BRIEF IN SUPPORT OF ITS UNOPPOSED MOTION FOR A
FINAL ORDER CERTIFYING A CLASS OF EMPLOYEES FOR SETTLEMENT
PURPOSES ONLY, APPOINTING CLASS COUNSEL, APPROVING SETTLEMENT
OF WARN ACT CLASS ACTION, AND APPROVING ATTORNEYS'
FEEES, COSTS, AND SERVICE PAYMENTS TO CLASS REPRESENTATIVES**

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Dated: December 11, 2013

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On September 24, 2013, Plaintiffs/Class Representatives filed an Unopposed Motion with the Court seeking: 1) preliminary approval of the proposed settlement of the WARN Act class action; 2) certification of a class for settlement purposes only; 3) approval of the form of notice to be sent to class members; and 4) a date for a final Fairness Hearing. On September 25, 2013, the Court granted the motion and subsequently, on October 4, 2013, notices of the Settlement were sent to the class members. A final Fairness Hearing is scheduled for December 17, 2013. As of the date of this filing, there have been no objections to the settlement, nor have any putative class members opted out of the settlement class. For those reasons and the reasons set forth below, Class Counsel requests that this Court enter an order granting the relief requested.

Introduction

The Plaintiffs/Class Representatives sued the defendants (“Defendants”) for allegedly failing to provide notice required by the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101 *et seq.* (the “WARN Act”). The Plaintiffs and the Class members, as defined in the First Amended Complaint, worked at facilities (“Facilities”) operated by Premium Protein Products, LLC and PPP Holdings, LLC (“Premium”) – with whom Plaintiffs alleged Defendants acted as a “single employer.” In exchange for a full release for any claim for WARN Act damages and other benefits arising from the mass layoffs and/or plant closings that occurred at the Facilities, the Defendants have agreed to create a Common Fund of \$1.2 Million, to be distributed by Class Counsel in accordance with the terms of the Settlement Agreement.

The Settlement is fair and reasonable. The above-captioned WARN litigation has been protracted and expensive, and the outcome remains uncertain. The Defendants asserted certain affirmative defenses, including that they were not a single employer with Premium and that certain members of the Class were not “affected employees” under the Act. A trial on these

issues and legal theories would require the parties to engage in extensive expert and non-expert discovery at significant expense, with inherently uncertain results at trial. In light of these factors, the parties entered into the Settlement Agreement, believing that the terms of the settlement, including the creation of the Common Fund, are well within the range of reasonableness. The Settlement Agreement provides for an immediate payment to the members of the Class. Without the settlement, these Class Members could wait years for any payment on their alleged claims, even if they prevailed at trial and on appeal.

Accordingly, Class Counsel respectfully submits that the Court should approve the Settlement and enter an Order granting final approval of the Settlement and awarding reasonable attorneys' fees, costs, and service payments to the Class Representatives.

Basis for Relief Requested

A. The Court Should Certify the Class for Purposes of Settlement

On September 25, 2013, this Court granted preliminary approval of the Settlement and certified the Class, subject to a further showing that the Class meets the criteria of Rule 23.

1. The Rule 23(a) Criteria

To obtain class certification, Plaintiffs must satisfy all of the requirements of Rule 23(a) and come within one provision of Rule 23(b). *See Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 296 (3d Cir. 2011) (citing *In re Pet Foods Prods. Liab. Litig.*, 629 F.3d 333, 341 (3d Cir. 2010)). Rule 23(a) mandates a showing of: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. *See Fed. R. Civ. P. 23(a); Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997).

Numerosity requires a finding that the putative class is "so numerous that joinder of all members is impracticable." *In re Pet Foods*, 629 F.3d at 342; *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.” *Leeseberg v. Converted Organics, Inc.*, 2010 U.S. Dist. LEXIS 124845, *4-5 (D. Del. 2010) (citing *Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001); *Moskowitz v. Lopp*, 128 F.R.D. 624, 628 (E.D. Pa. 1989)). However, the Third Circuit “generally has approved classes numbering 40 or more.” *Id.*; *Gates v. Rohm & Haas Co.*, 248 F.R.D. 434, 440 (E.D. Pa. 2008) (citing *Stewart*, 275 F.3d at 226-27).

In the present case, the Class, comprising of approximately 400 members, meets the numerosity requirement, and joinder of all Class Members is impractical. *See Gates*, 248 F.R.D. at 440 (finding that two classes made up of 400 and 1,000, respectively, satisfied the numerosity requirement). Accordingly, the Court should find that the numerosity requirement has been satisfied.

The commonality requirement requires existence of at least one question of law or fact common to the Class. Fed. R. Civ. P. 23(a)(2); *Johnston v. HBO Film Management, Inc.*, 265 F.3d 178, 184 (3d Cir. 2001). The commonality threshold is low, *Powers v. Lycoming Engines*, 245 F.R.D. 226, 236 (E.D. Pa. 2007), *rev’d on other grounds*, 328 Fed. Appx. 121 (3d Cir. 2009), and does not require “an identity of claims or facts among class members.” *Johnston*, 265 F.3d at 184. Further, the existence of individual facts and circumstances will not defeat commonality provided the Class Members allege harm under the same legal theory. *Baby Neal for & by Kanter v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994) (the commonality requirement will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class). Here, fundamental issues of law and fact regarding notice of termination,

applicability of several defenses, measure of damages, and attorneys' fees are common to all Class Members.¹

Typicality requires that the “named plaintiffs’ claims are typical, in common-sense terms, of the class, thus suggesting that the incentives of the plaintiffs are aligned with those of the class.” *Beck v. Maximus, Inc.*, 457 F.3d 291, 295-96 (3d Cir. 2006) (*quoting Baby Neal*, 43 F.3d at 55); *see also* Fed. R. Civ. P. 23(a)(3). “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.” *In re Prudential Ins. Co. Am. Sales Practices Litig. Agent Actions*, 148 F.3d 283, 311 (3d Cir. 1998). Factual 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*, 457 F.3d at 295-96 (*quoting Baby Neal*, 43 F.3d at 55).

The Class Representatives do not allege that they were singled out. Instead, they allege that they suffered harm as a result of the same conduct that allegedly injured the absentee Class Members, which is that they were laid off by the Defendants on or after June 10, 2009, without receiving 60-days-notice under the WARN Act. Accordingly, the Court should find that the typicality requirement is met.

The final prerequisite under Rule 23(a) – that the class representatives must “fairly and adequately protect the interests of the class,” Fed. R. Civ. P. 23(a)(4); *Gates*, 248 F.R.D at 441 – is satisfied as well. The adequacy inquiry “assures that the named plaintiffs’ claims are not antagonistic to the class and that the attorneys for the class representatives are experienced and

¹ Class Counsel recognizes that the amount of damages is particular to each Class Member. However, individualized damages calculations do not defeat commonality, provided the plaintiffs allege harm under the same legal theory. *Baby Neal*, 43 F.3d at 56-58.

qualified to prosecute the claims on behalf of the entire class.” *Beck*, 457 F.3d at 296. 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; *see also Amchem Prods., Inc.*, 521 U.S. at 626 n.20.

The Court should find that the Class Representatives and Class Counsel adequately represent the interests of the Class Members. Class Counsel is well-qualified and experienced to represent the Class Members. Klehr, Harrison, Harvey, Branzburg, LLP has been appointed as class counsel in numerous WARN and employment class actions.

2. The Rule 23(b)(3) Criteria

In addition to satisfying the Rule 23(a) requirements, a class must meet the conditions of one of the parts of subsection (b). *See Sullivan*, 667 F.3d at 296. In this settlement, the parties were certified pursuant to 23(b)(3), which requires findings of predominance and superiority—i.e., “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).

Common questions of law and fact predominate over the individual issues. Predominance tests whether the proposed class is “sufficiently cohesive to warrant adjudication by representation.” *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1196-97 (2013). The proper predominance inquiry turns “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. As such, “the predominance requirement 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 class.’” *Id.* at 623 n.18.

Just as typicality exists, predominance also exists. All of the claims arise from the Defendants' decision to shut down the Facilities on or about June 10, 2009. Accordingly, the Court should find that the predominance requirement is met.

Finally, Rule 23(b)(3) also requires a determination 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); *In re Pet Foods*, 629 F.3d at 341 n. 14. 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." *Johnson v. GEICO Cas. Co.*, 673 F. Supp.2d 255, 280-81 (D. Del. 2009) (citing *In re Prudential Ins. Co.*, 148 F.3d at 316).

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 form; 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, however, the difficulties in managing a class action are not considered. *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 257 (3d Cir. 2009) (citing *Amchem*, 521 U.S. at 620); *Gates*, 248 F.R.D. at 443.

Here, a class action is superior to individual actions. First, the amount of each Class Member's claim is relatively small and certainly not sufficient to provide incentive to prosecute separate individual 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. A class action

solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor.") (*quotation and citation omitted*). No litigation relating to the Defendants is pending against the Defendants outside of this Court. Further, it is appropriate that all the claims against the Defendants arising from the Class Representatives' allegations should be concentrated in this Court. In addition, determining the claims of some Class Members, but not all, could prejudice the claims of the remaining Class Members. Accordingly, the Court should find that the superiority element is met.

Based on the foregoing, the Court should finally certify the Class for settlement purposes, appoint Linda Jarvis, Sara Villanueva, Monte J. Woolery, Tysha Marie Smith, Jacque S. Wood, Kurt Glen, Craig L. Moore, Wayne E. Brown, Shawn A. Mixon, Stephen R. Porter, Stephanie Linn Seawall, Roxanna Kipp, Javier Enriquez, Ivette Riojas, Rick Ostdiek, Laverne D. Loeffelholz, Simona Smaranda Vaipan, Matt Wilson, and Roxana Najera as the Class Representatives and appoint Klehr, Harrison, Harvey, Branzburg, LLP, as Class Counsel for the Classes.

B. The Court Should Grant Final Approval of the Settlement at the Fairness Hearing

At the Fairness Hearing on December 17, 2013, the Court should give final approval to the Settlement. 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." Fed. R. Civ. P. 23(e). Final approval of a settlement pursuant to Rule 23(e) turns on whether the settlement is "fair, reasonable and adequate." Fed. R. Civ. P. 23(e)(2); *In re Cendant Corp. Litig.*, 264 F.3d 201, 231 (3d Cir. 2001). "This inquiry requires the court's independent and objective analysis of 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.” *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Products Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995).

The Third Circuit has held that the following nine “*Girsh* factors” are relevant in determining whether a proposed class settlement is fair, reasonable, and adequate: (1) the complexity, expense and likely 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 the class action through trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation. *In re Cendant*, 264 F.3d at 231-32; *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975). This list is not exhaustive. *In re AT&T Corp. Secs. Litig.*, 455 F.3d 160, 165-66 (3d Cir. 2006).

The following facts relevant to the *Girsh* factors strongly weigh in favor of an approval of the settlement:

- a. Litigation will be complicated, protracted and expensive, which would have included the production and careful review of thousands of pages of documents and correspondence between the Defendants and Premium, as well as the depositions of several executives employed by the Defendants and Premium.
- b. As of the date hereof, sixteen of the nineteen Class Representatives have signed the Settlement Agreement and we are unaware of any objection to the Settlement from the remaining three Class Representatives. Also, no other class members have opted-out or objected to it.

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The following facts relevant to the *Girsh* factors strongly weigh in favor of an approval of the settlement:

- a. Litigation will be complicated, protracted and expensive, which would have included the production and careful review of thousands of pages of documents and correspondence between the Defendants and Premium, as well as the depositions of several executives employed by the Defendants and Premium.
- b. As of the date hereof, sixteen of the nineteen Class Representatives have signed the Settlement Agreement and we are unaware of any objection to the Settlement from the remaining three Class Representatives. Also, no other class members have opted-out or objected to it.
- c. The Settlement was reached after four years of litigation (which included significant motion practice) and Class Counsel was able to weigh the risks of continuing the litigation against the value of this Settlement. During those four years, the parties engaged in both informal and formal

discovery, and engaged in good faith settlement discussions (including two mediation sessions in front of the Third Circuit Court of Appeals).

- d. The risk that the Class Representatives would be unable to establish liability was significant because the Defendants asserted the material defense that they were not a single employer with Premium or otherwise responsible for any WARN Act violation. Failing to prove that the Defendants were a single employer with Premium likely would have left the Class with no redress against the Defendants.
- e. When considered in light of the best possible recovery and the attendant risks, the settlement falls well within the range of reasonableness. The settlement provides for a lump sum payment of \$1.2 Million, representing approximately 62% of the maximum theoretical priority claim of the Class. *See Sullivan*, 667 F.3d at 323-36 (affirming trial court finding that a settlement offered a reasonable recovery when it represented 20% of the potential recovery).

Moreover, the Settlement in this case is very favorable to the Class Members when compared to other similar cases – including those that Class Counsel has been personally involved in. (Ercole Decl. at ¶ 13, attached as Exhibit A); *see also, In re Oakwood Homes*, Case No. 02-13396 (PJW) (D. Del. 2003) (\$2.8 million for 1,100 employees); *In re USF Red Star*, 05-md-01655-PBT (E.D. Pa. 2005) (\$6.775 million for 2,000 employees); *In re McGraw v. Independence Blue Cross*, No. 000171 (Pa. Ct. Common Pleas 2007) (\$675,000 for 90 employees); *Rocco v. Sears, et al.*, Case No. 06-2868 (D.N.J. 2008) (\$600,000 for 200 employees); *In re Riley v. Hoboken Wood Flooring* Civil Action No. 07-5666 (JAG) (D.N.J. 2009) (\$1,050,000 for 500 employees); *Caccamo and Harnois v. MLN*, Adv. No. 07-51415 (D. Del. 2009) (\$2.7 million for 1500 employees); *Perez v. American Remanufacturers Inc.*, Adv. No. 06-50819 (Bankr. D. Del. 2006) (\$675,000 for 500 employees); *Arrow Trucking Company*, No. 09-cv-810 (Bankr. N.D. Okla. 2009) (\$1.97 million for 564 employees); *Fleetwood Homes*, No. 6:09-ap-01114-MJ (Bankr. C.D. Cal. 2009) (\$1.55 million for 600 employees); *Rasheed v. American Home Mortgage Corp.*, Case No. 07-51688 (Bankr. D. Del. 2007) (\$6.5 million for 2,300 employees); *Mochnal v. Eos Airlines, Inc.*, Case No. 08-08279 (Bankr. S.D.N.Y. 2008)

(approximately \$1.7 million for a certified class of over 300); *Updike v. Kitty Hawk Cargo, Inc.*, Case No. 07-04179 (Bankr. N.D. Tex. 2007) (\$1.4 million for a certified class of 392 employees); *Bridges v. Continental AFA Dispensing Co.*, Case No. 08-45921 (Bankr. E.D. Mo. 2008) (\$1.5 million for approximately 325 employees); *Johnson v. First NLC Financial Services, LLC*, Case No. 08-01130 (Bankr. S.D. Fla. 2008) (\$400,000 approved after conversion to Chapter 7); *Aguilar v. Quaker Fabric Corporation*, Case No. 07-51716 (Bankr. D. Del. 2007) (\$1 million for a certified class of 900); *Jones v. Alliance Bancorp.*, Case No. 07-51799 (Bankr. D. Del. 2007) (\$1 million for a certified class of 196); *Binford v. First Magnus Capital, Inc.*, Case No. 08-01494 (Bankr. D. Ariz. 2008) (\$5.5 million for certified class of 1,400); *Mofield v. FNX Mining Company USA Inc.*, Case No. 08-00105 (M.D. Tenn. 2008) (\$975,000 for a certified class of 230).

Finally, the Third Circuit has held that “‘an initial presumption of fairness’ may apply when reviewing a proposed settlement where: ‘(1) the settlement negotiations occurred at arm’s length; (2) there was sufficient discovery; (3) proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.’” *Sullivan*, 667 F.3d at 320 n. 54 (quoting *In re Warfarin Sodium Antitrust Litig.*, 214 F.3d 395, 400 (3d Cir. 2000)). The parties are entitled to this presumption based on the facts applicable to the *Girsh* factors.

Based on the foregoing, the Court should give final approval to the Settlement.

C. Class Counsel’s Fee Request of One-Third of the Common Fund and Reimbursement of Out-of-Pocket Costs is Reasonable

Counsel for a class is entitled to be paid a fee out of the common fund created for the benefit of the class. 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 amount of an award of attorney fees is committed to the sound discretion of the Court. *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 299-300 (3d Cir. 2005).

The law in this 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 the Court cannot otherwise come to a resolution of class counsel's fees, or merely as a "cross check." *In re Cendant*, 264 F.3d at 283-85; *Gunter v. Ridgewood Energy Corp.*, 223 F. 3d 190, 195 n.1 (3d Cir. 2000). Class Counsel submits that the award of a fee of one-third the WARN component of the Settlement, as provided in the Settlement Agreement, is fully warranted.

The percentage award should be based on seven factors, among others, that were enumerated in *Gunter*, 223 F. 3d at 195 n. 1, and then quoted with approval in *In re Cendant*, 264 F. 3d at 283, as follows: (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. In addition, in *In re Ikon Office Solutions, Inc. Securities Litigation*, 194 F.R.D. 166, 193 (E.D. Pa. 2000), the court considered an eighth factor – the percentage likely to have been negotiated between private parties in a similar case – in determining the percentage fee award from a common fund.

Class Counsel submits that the application of these eight factors to the present case shows that the agreed attorneys' fee of one-third of the WARN recovery should be approved.

- As to the size of the class and the recovery, the Class has about 400 members and the recovery will be \$1.2 Million. The WARN settlement is favorable to the Class given the numerous defenses asserted by the Defendants.
- As of the date hereof, sixteen of the nineteen Class Representatives have signed the Settlement Agreement and we are unaware of any objection to the Settlement from the remaining three Class Representatives. Also, no other class members have opted-out or objected to it.
- As shown by the very favorable settlement of this matter achieved in the face of the difficult liability issues, Class Counsel provided legal services with considerable skill. The services were rendered with efficiency, in light of the complexity of the issues, the difficulty of addressing the several defenses, and the need for discovery.
- The WARN Act litigation was initiated in November 2009, and, as shown above, was complex and factually intensive.
- The risk of non-payment at the outset was substantial as it was not known at that time whether a class would be certified and whether there would be sufficient funds available to pay those claims. In addition, the risk of non-payment was increased by the defenses that the Defendants asserted.
- As to fees in similar cases, Class Counsel submits that, in WARN 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 even reduced.
- As to the percentage likely to have been negotiated between private parties in a similar case, Class Counsel states that they were retained by the nineteen Class Representatives, who all are former employees of Premium and the Defendants on a one-third contingency basis, plus expenses. (Exhibit A, Ercole Decl. at ¶¶ 3 and 17). Class Counsel has been consistently retained in other WARN class actions on a one-third contingency basis.

Each of the factors to be weighed in considering a fee request favor the award of one-third of the \$1.2 Million settlement.

The requested fee of one-third of the WARN recovery is also supported by the percentage awards in other types of common fund cases. As the court pointed out in *Ikon*, 194 F.R.D. at 194, attorneys' fee awards based upon a percentage of a common fund mostly "fall in the range of nineteen to forty-five percent." *See also In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494

(D.D.C. 1981) (45% of \$7.3 million settlement fund awarded); *Beech Cinema, Inc. v. Twentieth Century - Fox Film Corp.*, 480 F. Supp. 1195 (S.D.N.Y. 1979) (approximately 53% of settlement fund awarded); *Greene v. Emersons, Ltd.*, [19871] Fed. Sec. L. Rep. (CCH) 196, 623 (S.D.N.Y. May 20, 1987) (46.2% of common fund awarded); *In re Franklin National Bank Securities Litigation*, [1980 Transfer Binder] Fed. Sec. L. Rep. (CCH) 797, 571 (E.D.N.Y. 1980) (fee award of 34% of the common fund); *Levit v. Filmways, Inc.*, 620 F. Supp. 421 (D. Del. 1985) (33% of the common fund minus expenses); *Fickinger v. C.I. Planning Corp.*, 646 F. Supp. 622, 636-37 (E.D. Pa. 1986) (33% of the fund); *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1375 (N.D. Cal. 1989) (“almost always the [fee award] hovers around 30% of the fund created by the settlement”).

In short, Class Counsel believes that the fees of one-third of the total expected Class recovery on the WARN claims should be approved under the multi-factor test applicable in this Circuit to fee awards from common fund recoveries.

In the Third Circuit, the Court can “cross check” the percentage award against the lodestar to ensure a “windfall” does not occur. *In re Cendant*, 264 F.3d at 285. In the present case, the requested fee does not result in a “windfall” as it results in a fee virtually equal to its lodestar value. *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 151 (E.D. Pa. 2000) (finding a multiplier of 2.04 is reasonable); *Dewey v. Volkswagen of Am.*, 728 F. Supp. 2d 546, 609 (D.N.J. 2010), *rev’d on other grounds Dewey v. Aktiengesellschaft*, 681 F.3d 170 (3d Cir. 2012) (lodestar multiplier of 2.0 is within the range the Circuit has approved).

Class counsel submits that an award of a fee of one-third of the common fund is fully warranted. As to fees in similar cases, Class Counsel has consistently been awarded fees of one-third of the class recovery in WARN cases by courts throughout the country, including in

Delaware. See *Rasheed v. American Home Mortgage Corp.*, Case No. 07-51688 (Bankr. D. Del. 2007) (awarding undersigned co-class counsel a fee of 33⅓% of the settlement fund of \$6.5 million); *Mochmal v. EOS Airlines, Inc.*, Case No. 08-08279 (Bankr. S.D.N.Y. 2008) (awarding attorneys' fees of 33⅓ % of settlement of approximately \$1.7 million); *Binford, et al. v. First Magnus Capital, Inc.*, 08-01494 (Bankr. D. Ariz. 2010) (despite Ninth Circuit attorneys' fees benchmark of 25%, awarding attorneys' fees of 33⅓% of settlement of \$2.6 million case and \$2.9 million contingent proceeds); *Updike v. Kitty Hawk Cargo, Inc.*, Case No. 07-04179 (Bankr. N.D. Tex. 2007) (awarding attorneys' fees of 33⅓% of \$1.4 million); *Bridges v. Continental AFA Dispensing Co.*, Case No. 08-45921 (Bankr. E.D. Mo. 2008) (awarding attorneys' fees of 33⅓% of \$1.5 million); *Johnson v. First NLC Financial Services, LLC*, Case No. 08-01130 (Bankr. S.D. Fla. 2008) (awarding attorneys' fees of 33⅓% of \$400,000); *Aguilar v. Quaker Fabric Corporation*, Case No. 07-51716 (Bankr. D. Del. 2007) (awarding attorneys' fees of 33⅓ % of \$1 million). Also, in more than 30 other WARN actions, class counsel was awarded a one-third fee.²

² See, e.g., *In re Inacom Corp.*, Case No. 00-2426 (PJW) (Bankr. D. Del.); *In re CTC Communications Group, Inc.*, Case No. 02-12873 (PJW) (Bankr. D. Del.); *In re Consolidated Freightways Corporation*, Case No. 02-24284-MG (Bankr. C.D. Cal.); *Powell v. Creighton Incorporated*, Case No. 1:01CV779 (M.D.N.C.); *Madley v. Florida Cypress Gardens, Inc.*, Case No. 8:03-CV-00795-T-17TBM (M.D. Fla.); *In re Dollar Land, Inc.*, Case - No. 02-14547 (Bankr. E.D.Pa.); *Johnson v. GMAC Mortgage Group, Inc.*, Case No. C04-2004-LRR (N.D. Iowa); *Morris v. Greenwood Mills, Inc.*, Civil Action No. 8:02-221-24, (D. S.C.); *Teligent, Inc.*, Case No.: 01-12974 (SMB) (S.D.N.Y.); *Bandel v. L.F. Brands Marketing, Inc.*, Civil Action No. 04 CV 1672 (CSH) (S.D.N.Y.); *Baker v. The National Machinery Company*, Case No. 3:02CV7444 (N.D. Ohio); *Deninno v. PennAmerican Coal Company, L.P.*, Civil Action No. 03-0320 (W.D. Pa.); *In re Pliant Systems, Inc.*, Case No. 01-01264-5 ATS (Bankr. E.D.N.C.); *Adkins v. Pritchard- Brown*, Case No. 5:03CV129-OC 10 GRJ (M.D. Fla.); *Gibson v. Sonic Foundry, Incorporated*, Case No. CV-03-4062 SVW (C.D. Cal.); *In re Thomaston Mills, Inc.*, Case No. 01-52544 (RFH) (Bankr. M.D. Ga); *Ballentine v. Triad International Maintenance Corporation*, Case No. 0 1-1 0357 (E.D. Miss.); *Trout v. Transcom USA*, Case No. 1 :03-cv-0537-LJM-WTL (S.D. Ind.); *Padgett v. Wireless Retail, Inc.*, Case No. CV04-1170 PHX-SR (D. Ariz.).

Plaintiffs' counsel assumed a very real risk in taking on this case because they took this case on a contingency basis, and invested, over a four year period, time, effort, and money with no guarantee of any recovery. In cases where the recovery is far from certain, as here, an award of 33⅓% or more of the common fund as attorneys' fees is appropriate. *Alba Conte, Attorney fee awards* §2:14 at 169 (Third Edition 2004) (citing report of the *Third Circuit Task Force, Court Awarded Attorney Fees*, 108 F.R.D. 237, 248 (1985)).

Large-scale WARN Act cases of this type are, by their very nature, complicated and time-consuming. Any lawyer undertaking representation of large numbers of affected employees inevitably must be prepared to make a tremendous investment of time, energy and resources. Due also to the contingent nature of the customary fee arrangement, lawyers must be prepared to make this investment with the very real possibility of an unsuccessful outcome and no fee of any kind. Given the fact that Premium had filed for bankruptcy (and was discharged therefrom without paying any WARN Act damages) and, to obtain a recovery from the Defendants Plaintiffs would have had to have proven, at the least, that the Defendants were a single employer with Premium, there has always been an overarching and very real possibility that Class Counsel would prevail on liability but be awarded a damages that would be uncollectible. The demands and risks of this type of litigation overwhelm the resources and deter participation of many traditional claimants' firms.

Further, the risk of non-payment at the outset was very substantial as it was not known at that time whether a class would be certified and whether there would be sufficient funds available to pay these claims. In addition, the risk of non-payment was increased by the defenses that the Defendants asserted. Class Counsel stood to gain nothing in the event the case

was unsuccessful. Because the attendant risk has always been on Class Counsel, the Court should grant the requested attorneys' fees.

Moreover, Class Counsel proceeded knowing there was a chance that the Defendants would prevail and that, even if Plaintiffs prevailed, there was a chance that the case would take years to bring to trial and would not be resolved without an appeal. The risk of no recovery in complex class actions of this type is substantial. From the outset of the case, the Defendants have denied adamantly any liability and continue to do so today. (Exhibit A, Ercole Decl. at ¶ 17(a)).

Plaintiffs' counsel obtained an excellent result for the Class. With a common fund of \$1.2 Million, Class members will receive significant distributions. Based on payroll data received from Defendants, Class Counsel estimates that, had Plaintiffs prevailed on all claims at trial, the maximum recovery for WARN Class Members would have been approximately between \$2.0 Million. The Settlement Agreement will provide Class Members with significant compensation in the near future – many of whom have struggled or been unable to find sufficient employment since their terminations from Premium/Defendants – and will negate the chance that the case might take years to bring to trial and resolve any potential appeals. (Exhibit A, Ercole Decl. at ¶ 17(b)).

Class Counsel vigorously prosecuted this litigation throughout a somewhat complicated procedural history. By way of background, Premium, a meat-packing business, owned and operated two plants in Hastings and Lincoln, Nebraska (defined herein as the "Facilities") that, during pertinent times hereto, employed over 400 people. Plaintiffs allege that some or all of the Defendants operated as a "single employer" with Premium and were directly responsible for Premium's business decisions, which allegations Defendants have always denied. On or about

June 10, 2009, the Premium Facilities were closed and the employees (including Plaintiffs) were furloughed as a result, without having been given 60-days notice of said furlough as required under the WARN Act. In addition, on November 10, 2009, Premium filed a Chapter 11 Bankruptcy Petition in the United States Bankruptcy Court for the District of Nebraska, Docket Nos. 09-43291 and 09-4392 (the “Premium Bankruptcy”), and, as a result, Premiums’ employees (including Plaintiffs) were terminated permanently, again without having been given 60-days notice of said permanent closing as required under the WARN Act.

In the Premium Bankruptcy, several former employees, Erin McDermott, Linda Jarvis, and Sara Villanueva, commenced an adversary action (and filed a proof of claim seeking class status) against Premium (the “Adversary Action”), which adversary action was dismissed voluntarily. The Premium Bankruptcy was closed and Premium was discharged after Premium sold its assets at auction, without making any payment to the Class Representatives or any of Premium’s former employees on their WARN Act “class action proof of claims.”

On September 23, 2011, Ms. Jarvis and Ms. Villanueva filed a Class Action Complaint in the Federal District Court for the District of Delaware (the “Court”), captioned as *Jarvis, et al. v. MatlinPatterson Global Advisers, LLC*, Civil Action No. 1:11-cv-00864-LPS. The Court dismissed that complaint on *res judicata* grounds based on the voluntary dismissal of the Adversary Action. Ms. Jarvis and Ms. Villanueva appealed to the Federal Court of Appeals for the Third Circuit and their appeal is still pending (the “First Action”).

Class Representatives filed another Complaint against some of the Defendants on June 8, 2012, and a First Amended Complaint against all of the Defendants on August 15, 2012 (the “Second Action”). The First Action and the Second Action shall hereinafter be referred to

collectively as “the Litigation.” Defendants filed a Motion to Dismiss the First Amended Complaint, which the Court denied on April 23, 2013.

Moreover, on the claims in the First Action and Second Action, the Parties engaged in mediation at the Third Circuit before Penny Conly Ellison, Esquire, on October 10, 2012, and February 6, 2013, respectively. Although a settlement was not reached in those discussions, the Parties had an opportunity to explore the strengths and weaknesses of each sides’ case before a neutral third party, Ms. Ellison. Ultimately, as discovery was continuing, the Parties reengaged in discussions in early August 2013 and, after several weeks of negotiations, agreed on the terms set forth in the Settlement Agreement.

Class Counsel has served voluminous discovery requests on Defendants’ counsel, reviewed thousands of pages of documents, and interviewed former employees/potential witnesses. Class Counsel also engaged in numerous communications with Defendants’ counsel during the course of the litigation, including negotiating an appropriate settlement. Class Counsel was on the verge of serving Notices of Depositions for several of the Defendants’ executives, including Doug Yakola, Peter Schoels, Michael Watzky, Larry Teitelbaum, Marc Chodock, and Raph Posner to be taken in September 2013.

Class Counsel believes that the discovery conducted in this case, including the review and analysis of the Defendants’ documents, employment records, and payroll data has been sufficient to reliably assess the merits of the respective parties’ positions, including the potential value of Class Members’ claims, and has afforded the parties the ability to compromise the issues on a fair and equitable basis. The Settlement was reached after two days of mediation at the Third Circuit Court of Appeals and additional lengthy and contentious negotiations with Defendants’ counsel, all of which were conducted at arm’s length. Class Counsel have

considered numerous risks associated with the litigation, including the possibility that the Defendants may prevail in whole or in part on one of the defenses they asserted. The risk of no recovery in complex class actions in general, and this case in particular, is very real.

A fee award of one-third of the common fund is consistent with Class Counsel's contractual agreement with the Class Representatives. Plaintiffs' counsel agreed with the Class Representatives, as is customary for contingent-fee agreements in cases such as this, that Plaintiffs' counsel could seek up to one-third of any monetary recovery achieved. Plaintiffs' counsel are nationally recognized leaders in employment class actions - with particular expertise/experience in employment class action litigation - and put the full use of their skill and experience to work in the service of Plaintiffs and the Class in this case.

During the period since this matter has been pending, through October 31, 2013, Class Counsel, who has regularly maintained detailed daily time records including a description of the services rendered,³ has spent over 1,000 hours on this matter, resulting in total time value at the firms' customary rates of approximately \$400,000. Class Counsel will continue to spend a significant amount of time responding to Class members' inquiries regarding the settlement and distributions; to attend Court for the final hearing on the Unopposed Motion; and to administer the settlement. Accordingly, the fee requested is less than 1 times the lodestar value of the time expended by Plaintiffs' counsel in prosecuting this case. (Exhibit A, Ercole Decl. at ¶¶ 16, 26, 32).

In addition to an attorney fee of one-third of the common fund, Class Counsel is seeking reimbursement for out-of-pocket costs incurred in the litigation not to exceed \$50,000. To date, Class Counsel has incurred nearly \$40,000 in out-of-pocket expenses prosecuting these actions,

³ If requested, Class Counsel will submit to the Court a print-out of their time and disbursement records.

and expects to expend an additional \$15,000 using a third-party administrator to distribute the payments and do tax reporting. Class Counsel requests \$50,000 for partial reimbursement of those expenses.

D. The Court Should Approve the Requested Service Payments to the Class Representatives

Class Representatives, Linda Jarvis, Sara Villanueva, Monte J. Woolery, Tysha Marie Smith, Jacque S. Wood, Kurt Glen, Craig L. Moore, Wayne E. Brown, Shawn A. Mixon, Stephen R. Porter, Stephanie Linn Seawall, Roxanna Kipp, Javier Enriquez, Ivette Riojas, Rick Ost diek, Laverne D. Loeffelholz, Simona Smaranda Vaipan, Matt Wilson, and Roxana Najera provided valuable assistance in the prosecution of this litigation and acted for the benefit of the class. Each Representative was instrumental in the initial investigation and agreed to participate, as needed, in the litigation. In addition to their incurring the risks inherent in serving as named plaintiffs, they collectively provided information during interviews regarding the structure of the company, the jobs and compensation of themselves and others, the physical locations they worked at and other locations they were aware of, the Defendants' presence at Premium, and the events surrounding their termination and demise of the company. Collectively, they worked with Plaintiffs' counsel throughout the case. Accordingly, the service payments of \$ 1,500 - \$ 2,500 are appropriate and justified as part of the overall Settlement in light of their services to and risks taken on behalf of the Class.⁴ See *Jones v. Alliance Bancorp*, Case No. 07-51799 (Bankr. D. Del. 2007) (\$15,000 service payment to class representative on behalf of a certified WARN class of 196 for \$1 million); *Aguilar v. Quaker Fabric Corp.*, Case No. 07-51716 (Bankr. D. Del. 2007) (\$15,000 service payment to class representative on behalf of a certified WARN class of 900 for

⁴ In addition to their service payments, the Class Representatives will be authorized to participate in the settlement as Class Members.

\$1 million); *Dewey v. Volkswagon of Am.*, 909 F. Supp.2d 373, 395 (D.N.J. 2012) (approving service payment to class representatives of \$10,000). Moreover, the Defendants do not oppose this proposed award of service payments to the Class Representatives.

For all these reasons, we respectfully request that a service fee of \$ 1,500 - \$ 2,500 for each Class Representative is appropriate.

Conclusion

Class Counsel respectfully requests that the Court enter an Order (i) certifying the Class for settlement purposes only; (ii) appointing undersigned counsel as Class Counsel; (iii) approving the Settlement of the WARN Act and the Class Action; and (iv) approving attorneys' fees, costs, and service payments to the Class Representatives.

Dated: December 11, 2013

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By

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EXHIBIT I

**IN THE U.S. DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: USF RED STAR, INC. : MDL DOCKET NO. 1655
WORKER NOTIFICATION :
LITIGATION : ALL CASES
:

**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF THE
WARN ACT CLASS REPRESENTATIVES FOR ORDER
(1) APPROVING SETTLEMENT OF WARN ACT CLASS CLAIMS; (2) GRANTING
COUNSEL'S APPLICATION FOR ATTORNEY'S FEES AND EXPENSES; AND (3)
ESTABLISHING DISTRIBUTION PROCEDURES IN CONNECTION WITH THE
PROPOSED SETTLEMENT**

Dated: August 26, 2005

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The Named Plaintiffs in this Class Action for damages under the WARN Act (the “Class Representatives”), by and through the undersigned counsel (“Class Counsel”), in support of their Motion for an Order Approving Settlement of WARN Act Class Claims, Granting Counsel’s Application For Attorney’s Fees and Expenses and Establishing Distribution Procedures in Connection with the Proposed Settlement, state as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Introduction

This proceeding, *In Re: USF Red Star, Inc., MDL # 1655* (PBT), is a consolidated class action¹ brought under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 *et seq.* (hereinafter the “WARN Act”) as a result of layoffs carried out by USF Red Star Inc. in May 2004. In relevant part, the tentative Settlement Agreement (the “Settlement Agreement”) provides for a payment of approximately \$6,775,000² to resolve, on a class-wide basis, all WARN Act claims of former employees of the Defendants.

The Class Representatives and the absent Class Members (collectively, the “Class Members”), as defined in the complaints, worked in terminals in Albany, Allentown, Baltimore, Boston, Buffalo, Cumberland, Hartford, Harrisburg, Long Island, Newark, Newburgh,

¹ The consolidated cases include the following: *Paul Anderson et. al. v. USF Corporation, et al.*, Case No. 2:04-CV-0382-PBT (E.D. Pa. 2004); *Edwin Taylor et. al. v. USF Corporation, et al.*, Case No. 2:04-CV-03971-JD (E.D. Pa. 2004); *Shaun B. Cashman et. al. v. USF Corporation*, Case No. 3:04-CV-1437-RNC (D. Conn. 2004); *Herr et. al. v. USF Red Star Inc., et. al.*, Case No. 1:05-00051-RJA (W.D.N.Y. 2005); and *Teamsters National Freight Industry Negotiating Committee, on behalf of its affiliated Local Unions and Their Members v. USF Corp., et. al.*, Case No. 2:04-CV-05434 -PBT (E.D. Pa. 2004).

² The amount of the lump sum payment to settle the WARN Act Class Action is an estimate based on a global settlement Defendants have made with the Class and the Teamsters for a total payment of \$7,000,000 (Seven million and 00/100 dollars). Former employees of Red Star who were represented by the Teamsters at the time of the facility closings may be entitled to \$1,000.00 (or a pro-rata share thereof) if they are not eligible members of the WARN Act Class. The exact amount for the lump sum payment in this WARN Act litigation will be calculated once the individuals entitled to a \$1,000 payment have been identified, the total amounts payable to them have been calculated, and that amount is subtracted from the \$7,000,000 total. The lump sum payment is inclusive and covers: Distribution to class members; Costs of administering the distribution; and All attorney’s fees and costs approved by the court.

Philadelphia, Pittsburgh, Syracuse and Wilkes-Barre.³ The schedule of known potential Class Members is attached hereto as Exhibit “A”

Plaintiffs assert that Defendants violated the WARN Act by failing to give the Class Members at least 60 days prior notice of the termination of their employment as required by the WARN Act, 29 U.S.C. § 2102(a)(1); 20 C.F.R. §§ 639.5, 639.9. Defendants have denied, and continue to deny, Plaintiffs’ assertions.

Although the terms of the Settlement are more particularly summarized *infra*, the Settlement provides that all employees with potential WARN Act claims – who did not previously receive severance and sign waivers – will be compensated. The common fund created by the proposed settlement for all Class Members having WARN Act claims (before taxes), including attorney’s fees and expenses proposed by Class Counsel, is approximately \$6.775 million. Such funds shall be distributed on a *pro rata* basis.

B. Class Definition

Pursuant to the Order of this Court, dated August 15, 2005, the Class Members in this action consist of:

All individuals who have not waived their rights under the WARN Act who were employed by USF Red Star, Inc. at any facility where more than 50 employees (excluding part-time employees as defined by the WARN Act) suffered an employment loss (as defined by the WARN Act) on May 23, 2004 or within 30 days of that date as a result of the decision to shut down Red Star’s operations, divided into two subclasses:

- (a) All individuals in the above-defined class who, at the time of their employment loss from USF Red Star, Inc., were members of one of the unions affiliated with the International Brotherhood of Teamsters;
- (b) All remaining individuals in the above-defined class who, at the time of their employment loss from USF Red Star, Inc., were not

³ In some cases, the terminals are commonly referred to by the name of the nearest large city even though the actual postal address of the facility may be a lesser-known, nearby community.

members of one of the unions affiliated with the International Brotherhood of Teamsters.

II. SUMMARY OF THE SETTLEMENT BENEFITS - - BENEFITS TO ALL CLASS MEMBERS HAVING WARN CLAIMS - - RULE 23 CONSIDERATIONS

The Class Settlement provides benefits to the Class in the nature of compensation for lost wages and benefits resulting from the alleged violation of the WARN Act rights of the Class Members. Under the terms of the Settlement Agreement, the following relief will be provided to all Class Members:

- 1) The amount of each Class Member's potential WARN Act claim will be calculated based upon a formula – as set forth in the statute – which includes the final regular rate of compensation earned by individual Class Members during calendar years 2003 and 2004 (or the average regular rate received in the prior three calendar years, whichever is higher) while working for USF Red Star Inc.
- 2) Distribution on account of each Class Member's WARN Act damages will be recognized, proposed and paid on a *pro rata* basis. That is, the potential claim under the preceding paragraph will be accorded a percentage value of the overall recovery. On average, each Class Member's share (before deduction for attorney's fees and costs) will be approximately \$4,050.00.
- 3) The parties have established reasonable procedures to ensure fairness and an opportunity for Class Members to be heard respecting the settlement. Any Class Member who disagrees with the calculation of the amount of his or her WARN Act claim will be given notice of the amount of that claim as determined by the above-referenced formula and has the right to contact the claims administrator for clarification.

III. THE SETTLEMENT SHOULD BE APPROVED AS FAIR, REASONABLE AND ADEQUATE TO THE CLASS

Rule 23(e) requires court approval of any class action settlement. Fed.R.Civ.P. 23(e).

Court approval is to be granted after a hearing and a finding that the settlement is “fair, reasonable and adequate.” Fed.R.Civ.P. 23(e)(1)(C). In making this determination, the court must “independently and objectively analyze the evidence and circumstances” to determine whether settlement is in the best interest of the class members. *In re: Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995) “The decision of whether to approve a proposed settlement of a class action is left to the sound discretion of the district court.” *Girsh v. Jepsen*, 521 F.2d 153, 156 (3d Cir. 1975).

There is, however, an overriding public interest in settling class action litigation. *In re Gen. Motors*, 55 F.3d at 784 (“the law favors settlement particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation”). *See also*, 4 Herbert Newberg & Alba Conte, *Newberg on Class Actions* §11.41 (4th. Ed. 2002) (class action suits lend themselves readily to settlement because of the uncertainties of outcome, difficulties of proof, and length of litigation).

The fact that both Plaintiffs and Defendants were represented by independent, skilled counsel of their own choosing; that negotiations took place intermittently over nine months, including two lengthy face-to-face meetings in Chicago and Philadelphia, respectively, during the final month of negotiations; and that each party made reasonable concessions also evidences the fairness and reasonableness of the settlement.⁴

⁴ There is an initial presumption of fairness when a class settlement, negotiated at arm’s length, is presented for court approval. *See* 4 Herbert Newberg & Alba Conte, *Newberg on Class Actions* §11.41 (4th. Ed. 2002); *In re Gen. Motors*, 55 F.3d at 784. The Third Circuit has held that an initial **presumption** of fairness is created when the court finds that, as in this case: “(1) the settlement negotiations occurred at arms-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.” *Id.*

A. The Test Defined By The Third Circuit

The Third Circuit has defined the considerations that the court should take into account when evaluating a proposed class action settlement:

(1) the complexity, expense and likely duration of the litigation . . . ; (2) the reaction of the class to the settlement . . . ; (3) the stage of the proceedings and the amount of discovery completed . . . ; (4) the risks of establishing liability . . . ; (5) the risks of establishing damages . . . ; (6) the risks of maintaining the class action through trial . . . ; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery . . . ; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation

In re Prudential Ins. Co. of Am. Sales Practices Litig., 148 F.3d 283, 317 (3d Cir. 1998) (quoting *Girsh*, 521 F.2d at 157). *See also*, *Perry v. FleetBoston Fin. Corp.*, 229 F.R.D. 105, 114 (E.D. Pa. June 28, 2005).⁵ These enumerated considerations serve as guideposts for the court's analysis but "the absence of one or more does not automatically render the settlement unfair." *In re Orthopedic Bone Screw Prods. Liab. Litig.*, 176 F.R.D. 158, 184 (E.D. Pa. 1997); *Pozzi v. Smith*, 952 F.Supp. 218 (E.D. Pa.1997). Instead, the court must weigh the totality of the circumstances and "determine whether the settlement is within the range of reasonableness." *Id.*

⁵ The three other Circuits where Class Members in this action reside, the First, Second and Fourth Circuits, have adopted similar tests. *See In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 216 F.R.D. 197, 206 (D. Me. 2003); *Wal-Mart Stores, Inc., v. Visa U.S.A., Inc.*, 396 F.3d 96, 114 (2d Cir. 2005) (citing *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 454 (2d Cir.1974)); *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 159 (4th Cir. 1991).

Analyzing the proposed Settlement using these factors, this Court, as the fiduciary charged with protecting the interests of the Class Members, should approve this fair, reasonable and adequate Settlement.

B. The Relevant Factors Weigh in Favor of the Fairness, Reasonableness and Adequacy of the Settlement

1. The Complexity, Expense and Likely Duration of the Litigation

The purpose of this factor is to capture the probable costs of continued litigation and to measure the benefit achieved by settlement. *See Perry*, 229 F.R.D. at 114; *In re Linerboard Antitrust Litig.*, 321 F. Supp.2d 619, 629 (E.D. Pa. 2004). Further litigation in this action would be complex, expensive and protracted. Trial preparations would have required extensive discovery, including numerous depositions and would likely have generated substantial motion practice. In addition, the primary issues of compliance with the WARN Act, the amount of damages due under the WARN Act, whether the defenses⁶ articulated by Defendants are valid, and whether Defendants provided adequate notice of employment termination to the Class Members are highly complex because they involve the termination of over one thousand six hundred (1600) employees at fifteen (15) separate facilities.

Also of particular significance, considering the complexity of this litigation, is the potential defense, arising primarily out of the decision by the International Brotherhood of

⁶The claimed defenses, the “unforeseeable business circumstances” defense and the “good faith” defense, are defined in the statute:

Specifically; the WARN Act, 29 U.S.C. §2102 (b)(2)(A), defines the so called “unforeseeable business circumstances” defense as follows:

An employer may order a plant closing or mass layoff before the conclusion of the 60-day period if the closing or mass layoff is caused by business circumstances that were not reasonably foreseeable as of the time that notice would have been required.

The WARN Act, 29 U.S.C. §2104 (a)(4), defines the “good faith” defense as follows:

If an employer which has violated this chapter proves to the satisfaction of the court that the act or omission that violated this chapter was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this chapter the court may, in its discretion, reduce the amount of the liability or penalty provided for in this section.

Teamsters (the “IBT”) to hold a one-day work stoppage on Friday, May 21, 2004. Under very similar circumstances, the Eighth Circuit held that an employer was not liable under the WARN Act. *See Teamsters Nat'l Freight Indus. Negotiating Comm. v. Churchill Truck Lines, Inc.*, 935 F. Supp. 1021, 1025-27 (W.D. Mo. 1996), *aff'd Teamsters Nat'l Freight Indus. Negotiating Comm. v. Churchill Truck Lines, Inc.*, 121 F.3d 447 (8th Cir. 1997). The court in *Churchill* denied relief based primarily on 20 CFR §§ 639.5 and 639.9 which provides that, in addition to the fact that a work stoppage or layoff arising out of a labor dispute is not subject to the WARN Act, such a dispute can also give rise to the “unforeseen business circumstances” defense set forth in the WARN Act.⁷ In light of this issue of law, which has not yet been addressed in the Third Circuit, it is certain that this case would be heavily litigated, at least to the level of the Court of Appeals.

Additionally, the cost involved in zealously litigating this matter would be significant. All parties would incur substantial additional expenses, including many hundreds or even thousands of hours of attorney time and potentially hundreds of thousands of dollars in fees and costs.

In short, the monetary costs and time involved in pursuing the foreseeable complex litigation of this proceeding and the substantial value added to the administration of settlement funds to the class now, rather than at some later point (most likely years from now)⁸ weighs heavily in favor of settlement.

⁷ The court in the *Churchill* case specifically held that “the ‘business circumstance exception’ . . . does not impose upon an employer a requirement to provide sixty days notice or continue in business to its detriment for the sixty-day notice period, simply because it is economically feasible or possible to do so.” *Teamsters Nat'l Freight Indus. Negotiating Comm.*, 935 F. Supp. at 1026.

⁸ This time value of money argument compliments the purpose of the WARN Act, to provide a monetary cushion to those who have lost their job and income with inadequate notice.

2. The Reaction of the Class to the Settlement

The Class Representatives and Class Counsel believe that the Settlement is extremely favorable and that the reaction of the Class to the Settlement should be extremely positive. Without the efforts of the Class Representatives and Class Counsel, it is likely there would have been no recovery by the Class Members – or certainly not as favorable a recovery. Moreover, evaluation of the amounts the individuals will receive as compared to what other plaintiffs have received in similar cases that have been court-approved, discussed in more detail *infra*, confirms that the proposed Settlement is extremely generous to the Class Members.

Further, silence from the class is presumed to indicate agreement with the settlement terms. *See In re: Gen. Motors*, 55 F.3d at 812. Generally, the overwhelming response from the Class Members has been positive, including numerous phone calls to Class Counsel thanking them for the successful result. (*See also*, the Certifications from the Class Representatives attached hereto as Exhibit "B"). Moreover, counsel for the parties to the litigation – USF Red Star, Inc., the IBT, the State of Connecticut, and Adrian Herr et. al. – have all indicated support for the Settlement.

3. The Stage of the Proceedings and the Amount of Discovery Completed

The purpose of this factor is to determine the degree of case development accomplished prior to settlement and to measure “whether counsel had an adequate appreciation of the merits of the case before negotiating.” *In re Gen. Motors*, 55 F.3d at 813. The current stage of proceedings and frequency of negotiations in this case have resulted in a thorough understanding by counsel for all parties of the strengths and weaknesses of their respective cases.

Class Counsel interviewed nearly five hundred former employees prior to instituting the lawsuit. Throughout the litigation they continued to gather information: from the employees; through numerous conversations and informal responses to discovery from defense counsel;

from information obtained in parallel proceedings before the National Labor Relations Board; by monitoring discussions between former Red Star employees and others on internet websites; and from news sources. All of this information allowed Class Counsel to appropriately evaluate the potential for success – or lack thereof – of the WARN Act litigation and to make an appropriate decision regarding this settlement.

In short, there has been substantial pretrial activity in this proceeding and, therefore, the Court should give considerable weight to the reasoned judgment of well-informed, experienced counsel.

4. The Risks of Establishing Liability

When examining the risks of establishing liability, it is unnecessary for the court to examine the intricacies of the merits of the case. *See Perry*, 229 F.R.D. at 115; *O'Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D. 266, 300 (E.D. Pa. 2003) (admonishing the court to refrain from conducting a mini-trial on the merits of the case). Rather, the court may “give credence to the estimation of the probability of success proffered by Class Counsel, who are experienced with the underlying case, and the possible defenses which may be raised to their causes of action.” *Lachance v. Harrington*, 965 F. Supp. 630, 638 (E.D. Pa. 1997).

From the viewpoint of the Class Representatives, there was a risk that one or more of the several defenses that Defendants might assert could have been successful. As discussed above, the IBT's one-day work stoppage created a significant issue as to whether the “unforeseen business circumstances” defense might apply. If so, it may have permitted Defendants to escape liability entirely, reduce the notice period, and/or significantly reduce their damages. Even if that defense failed, Defendants may have been able to escape liability, in whole or in part, using the “good faith” basis defense.

Given the risks faced by the Class Members, this factor weighs in favor of settlement.

5. The Risks of Establishing Damages

The purpose of evaluating the risks of establishing damages is to measure the expected value of litigating by comparing the settlement amount to the likely recovery from a favorable verdict. *See In re Gen. Motors*, 55 F.3d at 816. Assuming liability could be established, there was a material risk to the Class Representatives and all Class Members that the full amount of the damages could not be established in the WARN Act litigation due to the defenses that would have been offered, including those referenced above.⁹

Likewise, the quantum of wage damages was uncertain because of the conflict between the Third Circuit's decision in *United Steelworkers of Am. v. N. Star Steel Co., Inc.*, 5 F.3d 39 (3d Cir. 1993), holding that "affected employees" under the WARN Act are entitled to 60 working days' pay, and the decisions in other Circuits, namely the Fifth, Sixth, Eighth, Ninth, and Tenth Circuits, which have held that affected employees are entitled only to the pay that they would have received in 60 calendar days. *See Carpenters Dist. Council v. Dillard Dept. Stores*, 15 F.3d 1275 (5th Cir. 1994); *Frymire v. Ampex Corp.*, 61 F.3d 757 (10th Cir. 1995); *Saxion v. Titan-C-Mfg.*, 86 F.3d 553 (6th Cir. 1996); *Breedlove v. Earthgrains Baking Cos., Inc.*, 140 F.3d 797 (8th Cir. 1998); *Burns v. Store Forrest Indus.*, 147 F.3d 1182 (9th Cir. 1998). In light of this authority, the most likely maximum possible recovery for the majority of the class members would have been limited to the lesser time period, approximately 42 working days, plus 2 holidays.¹⁰

⁹ Within approximately 4 months after the USF Red Star closing, USF offered a large number of Red Star employees, particularly drivers and dockmen employment at another USF trucking corporation known as USF Holland. A significant number of former USF Red Star employees are now employed at USF Holland. *Compare* 29 U.S.C. § 2101(b)(2).

¹⁰ At best, Plaintiffs expected that the Court might follow the minority position, allowing recovery for a sixty (60) day time period, for those class members who resided in the Third Circuit. Regardless, this issue would have presented a prime basis for appeal.

Even after the appropriate time period for the calculation of damages had been defined, the appropriate manner of calculating earnings for that time period is also unsettled in the applicable case law. *See Ciarlante v. Brown & Williamson Tobacco Corp.*, 143 F.3d 139, 152 (3d Cir. 1998) (engaging in a tortured analysis of the proper rate of pay for hourly and salaried employees and highlighting the lack of guidance on this issue from previous Third Circuit decisions); *United Mine Workers v. Martinka Coal Co.*, 45 F. Supp.2d 521, 527 (N.D. W.Va. 1999), *aff'd* 202 F.3d 717 (4th Cir. 2000) (finding that the inclusion of overtime in the back pay calculation for a WARN Act violation is appropriate); *United Mine Workers v. Midwest Coal Co.*, No. TH 99-O-141-C-T/H, 2001 WL 1385893, at *7 (S.D. Ind. 2001) (finding that aggrieved employees are entitled to be paid for non-ERISA contractual days under the WARN Act).¹¹

The difficulty and complexity of establishing damages is illustrated by the very fact that, in settlement discussions, the Parties have identified and offered supporting authority for numerous methods¹² of calculating WARN Act damages. These methods yielded a wide range of total damage calculations, based upon the inclusion or exclusion of overtime, vacation or holidays and fringe benefits. Indeed, while the WARN Act is clear in requiring that eligible employees receive compensation for the sixty (60) day notice period, the split among the Circuits, combined with the particularities of this case, results in countless permutations of WARN Act damages.

¹¹ In addition, an employer's gross WARN Act liability amount may be reduced by: (1) wages paid to the employee during the period of the violation; (2) voluntary and unconditional payments to the employee that are not required by any legal obligation (i.e., severance benefits not required by contract); and (3) payments by the employer to a third party or trustee (such as premiums for health benefits or payments to a defined contribution pension plan) on behalf of the employee for the period of the violation and, with respect to a defined benefit pension plan, by crediting the employee with service for all plan purposes for the period of the violation. *See 29 U.S.C. § 2104(a)(2); Carpenters Dist. Council, v. Dillard Dep't Stores, Inc.*, 15 F.3d 1275 (5th Cir. 1994).

¹² For example, the Plaintiffs have explored scenarios in which days of wages may be used in various circuits, various methods of calculating daily wages under the WARN Act, various methods of calculating benefits due under the WARN Act and countless combinations of the foregoing.

Clearly, Plaintiffs face a difficult task of factually and legally establishing damages. On the other hand, Defendants face exposure to a large verdict if Plaintiffs successfully overcame the legal complexities of the case. Thus, both sides have sufficient motivation for settlement and analysis of this factor weighs in favor of approving the proposed Settlement.

6. The Risks of Maintaining the Class Action Proceeding through Trial

Proceeding as a class action is a procedural right that may be waived, modified or taken away completely at any time during the litigation. *In re Linerboard Antitrust Litig.*, 321 F. Supp.2d at 631. At present, there is no apparent basis for challenging class status. Nevertheless, the Court possesses the authority to decertify or modify a class that proves to be unmanageable. *In re Prudential Ins. Co.*, 148 F.3d at 321.

Beyond the risk of decertification, the financial well being of all parties is subject to change in a relatively short period of time. Class Counsel was and has been willing to take the substantial financial risk of maintaining the class action through trial. However, matters could easily have gone well beyond trial and would have likely involved appeals that could have taken years. The diversity of Circuit court decisions on WARN Act issues suggests that the risks of such a delay caused by a protracted battle on the merits would be substantial and the obstacles of litigation, including costs, would be considerable.

7. The Ability of the Defendants to Withstand a Greater Judgment

This factor is neutral for purposes of analyzing the proposed Settlement because Defendants' cash flow at the present time is sufficient to pay the amount due pursuant to the proposed Settlement. A defendant's ability to withstand greater judgment is relevant only when the likely greater judgment would force the defendant toward a critical financial threshold, *i.e.* a bankruptcy filing. *See In re Gen. Motors*, 55 F.3d at 818 (attributing no significance to this factor in similar circumstances).

8. The Range of Reasonableness of the Settlement in Light of Best Possible Recovery

The Third Circuit has held that settlement should represent a discount from the best possible judgment because the class is avoiding the inherent risks associated with litigation. *In re Prudential Ins. Co.*, 148 F.3d at 322. The settlement achieved in this matter is reasonable, in that both the Class Members and Defendants have each exchanged in material give-and-take. The best possible recovery for the Class Members is approximately \$12.1 million. The settlement amount, approximately \$6,775,000.00, represents approximately fifty-six percent (56%) of the best possible recovery.¹³

Based on significant experience in similar litigation, Class Counsel has concluded that the settlement recovery is highly favorable in light of the best possible recovery. The expense and delay of the litigation, absent settlement, also demonstrate the advantageous economics¹⁴ of the settlement in the view of the Class Representatives.

An independent review of cases related to settlement of other WARN Act cases confirms that this Settlement, which provides a recovery that was certainly not guaranteed, even after a favorable verdict, is more than fair and adequate and is, in fact, extremely favorable. *See In re Charter Behavioral Health Sys., LLC*, Case No. 00-989, Adv. Proc. No. 00-562 (Bkr. D. Del.) (Docket Entries #2625 and 2626, Orders dated March 18, 2002 – approving settlement recovering approximately 56% of best possible recovery); *In re Oakwood Homes Corp.*, Case

¹³This calculation is based on the following formula. There were forty-two work days and two paid holidays (Memorial Day and Fourth of July) in the sixty days following Red Star's May 23, 2004 closing. Based on the average regular hourly rate of \$20.77, the average daily rate is approximately \$166.00 and the most likely potential maximum recovery is \$7,300.00 per person. The 1,669 potential class members will receive an average of \$4,050.00 which nearly 56% of the \$7,300.00 potential maximum.

¹⁴Beyond the time value of money argument set forth above, which can be partially remedied by awarding interest, the timing of this settlement will likely result in administration of the funds prior to the holiday season. At a minimum, this distribution will replenish bank accounts that have been diminished, if not emptied, during the unemployment period. More importantly, the timely administration of funds may prevent related economic distress caused by life events, e.g., illness, birth of a child, car problems, or even mortgage foreclosure, all of which are circumstances that would not be considered or remedied through the ordinary course of the litigation process.

No. 02-13396, Adv. Proc. No. 03-52178 (Bkr. E.D. Pa.) (Docket Entry #39, dated December 15, 2003 – approving settlement recovering approximately 43% of best possible recovery); *In re Classic Kitchens, LLC*, Case No. 01-20393 (Bkr. E.D. Pa.) (approving settlement recovering approximately 8% of best possible recovery); *In re Consolidated Freightways Corp.*, Case No. 02-24284 MG (Bkr. C.D. Cal) (approving settlement recovering approximately 17% of best possible recovery).

9. The Range of Reasonableness of the Settlement in Light of the Risks of Litigation

This factor weighs the reasonableness of the Settlement amount in light of all attendant risks of litigation. *See In re Gen. Motors*, 55 F.3d at 806. As was previously discussed in relation to part 5 of the test, this WARN Act proceeding faced very serious litigation risks for Defendants and the Class Members alike. Class Members would face the possibility that the Defendants would be found not liable, thereby eliminating the possibility of any recovery. Likewise, the Defendants faced the uncertainty of the applicable calculation under the WARN Act if the Plaintiffs established liability.

Under the circumstances, there is a high probability that the difference between the Settlement amount and the amount of damages awarded by a favorable verdict would be *de minimus*. The attendant risk of successful defenses, decertification of the class, uncertain damages calculations and lengthy appeals all weigh in favor of settlement. Not only is the Settlement within the range of reasonableness, but is highly favorable to the class.

IV. THE CLASS REPRESENTATIVES SUBMIT THAT COUNSEL'S FEE SHOULD BE APPROVED

Rule 23(h) authorizes the Court to award reasonable attorney's fees and non-taxable costs in an action certified as a class action. Fed.R.Civ.P. 23(h). Class Counsel's request for attorney's fees must be reviewed by the Court to protect 1) the interest of the Class Members; 2)

the public interest; and 3) the integrity of the judicial system. See *In re Gen. Motors*, 55 F.3d at 819-20; *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 307 (3d Cir. 2005).

It is well established that the district court has a wide range of discretion when selecting which method to employ when calculating an award of attorney's fees. See *Brytus v. Spang & Co.*, 203 F.3d 238, 248 (3d Cir. 2000); *Stop & Shop Supermarkets Co. v. SmithKline Beechum Corp.*, No. Civ. A. 03-4578, 2005 WL 1213926, at *15 (E.D. Pa. May 19, 2005); *Perry*, 229 F.R.D. at 119; *Lake v. First Nationwide Bank*, 900 F. Supp. 726 (E.D. Pa. 1995).

In the Third Circuit, the percentage fee methodology has essentially supplanted the lodestar methodology in class action counsel fee jurisprudence. *In re Cendent Corp. Litig.*, 264 F.3d 201, 283 (3d Cir. 2001); *O'Keefe*, 214 F.R.D. at 304 (citing the demise of the pure lodestar method because it encouraged inefficient behavior, turned judges into bean counters and created antagonistic interests between the class and class counsel); *Local 56 v. Campbell Soup Co.*, 954 F. Supp. 1000, 1005 (D.N.J. 1997); *Perry*, 229 F.R.D. at 119 (finding the percentage of recovery method is preferred when a fee is to be paid from a common fund). This is true even in cases where a fee-shifting statute exists, *Perry*, 229 F.R.D. at 119. The district court maintains its discretion regarding the proper method for calculating attorney's fees "[i]n hybrid cases which share the attributes of both a statutory fee case and a common fund case." *Perry*, 229 F.R.D. at 119 (quoting *Brytus*, 203 F.3d at 248¹⁵).

¹⁵ Several other courts have held that even in cases arising under fee-shifting statutes, where otherwise appropriate, fees should ordinarily be determined according to common fund doctrine. See *Stanton v. Boeing Company*, 327 F.3d 938 (9th Cir. 2003); *Florin v. Nationsbank*, 34 F.3d 560, 564 (7th Cir. 1994); *Bowen v. Southtrust Bank of Alabama*, 760 F. Supp. 889, 894 (M.D. Ala.1991) (citing *Eaves v. Penn*, 587 F.2d 453, 464 (10th Cir. 1978)); *County of Suffolk v. Long Island Lighting Co.*, 907 F.2d 1295, 1327 (2nd Cir. 1990) ("fee-shifting statutes are generally not intended to circumscribe the operation of the equitable fund doctrine"); *Skelton v. General Motors Corp.*, 860 F.2d 250, 254-55 (7th Cir. 1988); *Parker v. Anderson*, 667 F.2d 1204, 1213-14 (5th Cir. 1982). See also, Report of the Third Circuit Task Force, *Court Awarded Attorney Fees*, 108 F.R.D. 237, 255 (1985) (recommending similar treatment of "traditional common-fund [cases] and those statutory fee cases that ... result in a settlement fund from which adequate counsel fees can be paid").

Likewise, the Supreme Court has held that a “litigant who recovers a common fund for the benefit of persons other than himself or his client is *entitled* to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S. Ct. 745, 749 (1980) (emphasis added). *See also, Stop & Shop Supermarkets Co.*, 2005 W.L. 1213926, at *6; *In re TSO Financial Litigation*, Nos. 87-7903, 87-7961, 87-8142 and 87-8302, 1989 WL 80316 (E.D. Pa. 1989).

Pursuant to this authority, Counsel seeks an attorney fee of 33 1/3% from the fund as a whole.

A. The Fees Requested Are Appropriate Under The Test Articulated To Evaluate Fee Awards Using The Percentage of Recovery Method In Common Fund Class Actions

A district court should consider at least seven factors in evaluating attorney fee petitions seeking recovery using the percentage of recovery method in common fund class actions: (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 non-payment; (6) the amount of time devoted to the case by Plaintiffs’ counsel; and (7) the awards in similar cases. *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 (3d Cir. 2000) (citing *In re: Prudential Ins. Co.*, 148 F.3d at 336-40; *In re Gen. Motors*, 55 F.3d at 819-22; *In re Cendant Corp. Lit.*, 264 F.3d at 283; *In re Cendant Corp. Prides Lit.*, 243 F.3d 722, 733 (3d Cir. 2001); *O’Keefe*, 214 F.R.D. at 308. The purpose of this test is to formulate a reasonable and fair fee award based upon the circumstances present in the case. *O’Keefe*, 214 F.R.D. at 308.

1. The Size of the Fund and the Number of Persons Benefited.

The Third Circuit has recognized that, generally, the percentage of recovery for attorney's fees decreases as the size of the award increases. *See In re Prudential*, 148 F.3d at 339; *O'Keefe*, 214 F.R.D. at 308. The reasoning behind this inverse relationship is grounded in the belief that at a certain point the increase in recovery is a factor of the size of the class and not a result of the efforts of counsel. *Id.* In cases where a "mega-fund" is created, the percentage awarded may be smaller than what might otherwise be awarded. *Id.*

In this case, neither the size of the fund created nor the number of persons benefited equate with the traditional "mega-fund range." *See O'Keefe*, 214 F.R.D. at 308 (a \$32,645,220 fund and a class consisting of 630,000 members was not a "mega-fund"); *Local 56 v. Campbell Soup Co.*, 954 F. Supp. at 1005; *Cf., Unisys Corp. Retiree Med. Benefits ERISA Litig.*, 886 F. Supp. 445, 460 (E.D. Pa. 1995) (finding generally that attorney's fees awards range from 4-10% when the fund created is greater than \$100 million).

The particulars of this case fall squarely within the size and type of WARN Act class action cases where the court has approved attorney's fees at the rate of thirty-three and one-third percent (33 1/3%). *See In re Oakwood Homes Corp.*, Case No. 02-13396, Adv. Pro. No. 03-52178, (approving attorney's fees in the amount of 33% of the fund); *In re Classic Kitchens*, Case No. 01-20393, (awarding attorney's fees in the amount of 33 1/3% of the fund); *Ballentine v. Triad Int'l Maintenance Corp.*, Case No. 01-10357-BC, (awarding attorney's fees in the amount of 33 1/3% of the fund); *In re Charter Behavioral Health Sys., LLC*, Case No. 00-989, Adv. Pro. No. 00-562, (approving attorney's fees in the amount of 33 1/3% of the common fund).¹⁶ In this case, the fund created is approximately \$6.775 million,¹⁷ which will be

¹⁶ Other attorney fee awards in WARN Act class action cases include: *In re Global Shopping Network*, Case No. 97 B44268, U.S. (Bkr. S.D. N.Y. 1997) (33 1/3%); *In re Preston Trucking*, Case. No. 99-59994, (Bkr. D. Md. 1999) (33 1/3%); *In re Matchlogic*, Case No. 01-32495-TC, (Bkr. N.D. Cal. 2001) (33 1/3%); *In re Living.com*, Case No.

distributed to approximately one thousand six hundred (1,600) Class Members. Even after subtraction of proposed attorney's fees, the Class Representatives estimate that the average pre-tax disbursement to each class member will be in a range of \$2,800. This is a very good result, as the percentage of recovery is approximately 38% of the maximum available recovery (without any consideration for attorney's fees). Comparing the size of the fund to the number of Class Members benefited reveals that the average Class Member will receive a direct and meaningful disbursement, which is commensurate with the purpose of the WARN Act – to provide a financial cushion for terminated employees.

2. The Presence or Absence of Substantial Objections by Members of the Class to the Settlement Terms and/or Fees Requested by Counsel.

This factor is inapplicable until objections to the proposed fee application, if any, are filed and an alternative fee proposal presented. *See O'Keefe*, 214 F.R.D. at 308. However, as discussed above, Plaintiffs do not expect significant objections to the settlement terms.

Assuming, *arguendo*, that the IBT and/or some small percentage of the Class Members object on the basis that the requested fees are unreasonable in light of the settlement fund, these objections must fail. Class Counsel is unaware of, nor has counsel for any other interested party

00-12523 (Bkr. W.D. Tex. 2000) (33 1/3%); *In re Value America*, Case No. 00-02269-WA3 (Bkr. W.D. Va. 2000) (33 1/3%); *In re HomePlace*, Case No. 01-0181 (Bkr. D. Del. 2001) (33 1/3%); *In re Consolidated Freightways Corp.*, Case No. 02-24284 MG (Bkr. C. D. Cal. 2002) (33 1/3%). *See also*, *In re InaCom*, Case No. 00-2426(PJW), (Bkr. D. Del. 2000) (30%).

¹⁷ In a development that is a classic example of the old adage "no good deed goes unpunished," co-lead counsel agreed to allow the IBT to participate in the final settlement negotiating session -- which was at the insistence of both the Defendants and the IBT. Prior to that session, Defendants had offered \$6.5 million to resolve the WARN Act litigation. Toward the end of the final negotiating session, Defendants indicated that they had a total of \$7 million to resolve all issues arising out of the closing of USF Red Star Inc. Plaintiffs' counsel agreed to apportion money to be paid to employees that would not be class members in order to facilitate the WARN Act Settlement. Additionally, Plaintiffs' counsel agreed to waive any claim it might have for attorneys' fees regarding the portion for non class members and the IBT agreed to not oppose the fee petition. Subsequently, the IBT advised Class Counsel that it was going to oppose the application for fees and costs. Nonetheless, counsel agrees not to seek fees on a portion of the approximately \$225,000.00 to be paid to non class members. However, arguably the court's analysis could consider that the overall recovery achieved is \$7 million -- in significant part because of the WARN Act litigation (thereby reducing the fee request to 32%).

produced, any legal authority involving a similar WARN Act class action that would support a significant reduction in the requested fee award.

Equally important, Klehr, Harrison, co-lead counsel, has formal engagement agreements from approximately 170 members of the class, which provide for attorney's fees in the amount of thirty three and one-third percent (33 1/3%) of any recovery.¹⁸ Thus, nearly fifteen percent of the Class Members have already agreed that the requested fees are reasonable. Objections from the remaining class members would be without merit in light of the time and effort set forth by counsel on behalf of the Class, including the recovery of a sizeable common fund.

3. The Skill and Efficiency of the Attorneys Involved.

With respect to the third relevant factor, the Class Representatives submit that the expertise of Class Counsel is well-established. Class Counsel consists of a group of attorneys practicing in the Northeastern United States who possess extensive WARN Act and class action experience. This Court may examine the Curricula Vitae of the Class Counsel being submitted with the accompanying Certification of Charles A. Ercole, which describes their capabilities in more detail.

As to the efficiency of Class Counsel, this litigation and its proposed Settlement have been conducted in an expeditious and cost-effective manner. Counsel has submitted well-argued and well-researched briefs and motions throughout the matter. Additionally, Class Counsel is keenly aware of the costs associated with prosecuting a class action under the WARN Act through judgment and supports approval of the proposed Settlement because it is the most efficient and low-risk resolution. Accordingly, the Class Representatives contend that the third relevant factor weighs in favor of approving the proposed fee arrangement.

¹⁸ O'Brien, Belland & Bushinsky has similar engagement agreements with approximately 70 members of the class that provide for attorney's fees in the amount of thirty percent (30%) of any recovery. See Exhibit C for examples of the fee agreements.

4. The Complexity and Duration of the Litigation.

As discussed above, see Section B *supra*, this case is very complicated from a legal standpoint. The issues in this case range from the eligibility of individual class members for WARN Act damages¹⁹ and the potential of no liability because of the IBT one-day strike, to the applicable law and method of calculating the WARN Act damages. Each issue has required thorough research and professional assessment. The Defendants have also articulated a number of colorable defenses, which required significant examination. There is limited case law interpreting the provisions of the WARN Act, hence, counsel has been required to make more uncharted decisions than might be necessary in other types of cases.

In this particular case, the only similar case was decided favorably for the Defendants' position. Specifically, the Eighth Circuit suggests that because of the decision by the IBT to hold a one-day work stoppage on Friday, May 21, 2004, Defendants may have a complete defense. *See, Teamsters Nat'l Freight Indus. Negotiating Comm. v. Churchill Truck Lines, Inc.*, 935 F. Supp. 1021, 1025-27 (W.D. Mo. 1996), *aff'd Teamsters Nat'l Freight Indus. Negotiating Comm. v. Churchill Truck Lines, Inc.*, 121 F.3d 447 (8th Cir. 1997). In order to undertake the current representation, Plaintiffs' counsel had to believe that litigation would provide factual distinctions from the *Churchill* case and/or be prepared to argue that courts in the First, Second, or Third Circuit²⁰ should not follow the reasoning of *Churchill*.

Additionally, counsel has performed a monumental amount of work in the one year of litigation and has obtained a thorough understanding of the intricacies of its case. Counsel has conducted hundreds of client interviews, successfully argued for consolidation of the case in this

¹⁹ Numerous terminals had barely 50 employees and significant document review and legal research was required to determine their eligibility. Ultimately, over 150 employees were added to the Class.

²⁰ Although Plaintiffs' counsel filed in the Eastern District of Pennsylvania, they realized that because USF Red Star Inc.'s operations were located throughout the Northeast they might ultimately be required to litigate the action in the First or Second Circuit.

Court, the most convenient forum for the Class as a whole, and engaged in months of negotiations and informal discovery that resulted in this Settlement. These efforts weigh in favor of a higher award.

5. The Risk of Non Payment.

Importantly, counsel accepted this case with knowledge that there was a possibility of extensive and prolonged litigation and a conceivable risk that the eventual recovery – if any – would be insufficient to cover the legal fees and costs incurred. This is the precise point of contingency fee arrangements – counsel accepts the risk that it might recover little or no legal fees in exchange for increased fees in the event of successful litigation or settlement. Courts in this Circuit have recognized that this risk is heightened in a case involving a defendant with financial difficulties. For example, in *Gunter*, 223 F.3d 190 the court explained that a law firm faced a high risk of nonpayment where “the defendants were close to insolvency.” *See Gunter*, 223 F.3d at 199. Nevertheless, the recovery of a percentage that is “several times greater than an hourly fee” is proper even where the risk of insolvency is not present. *O’Keefe*, 214 F.R.D. at 309.

6. The Amount of Time Devoted to the Case by Plaintiffs’ Counsel.

Class Counsel has expended hundreds of hours on the litigation to date and in achieving this settlement. Raymond M. Pfeiffer, Esquire, also spent significant time instituting the *Adrian Herr, et. al.* case. The total fees and costs incurred by all counsel aggregates to approximately \$416,000 to date and it is expected that another \$50,000 will be expended before the Settlement is fully administered. True and correct copies of the billing detail setting forth the fees and expenses incurred are attached to the Certifications and Affidavits of Charles A. Ercole, Esq., Robert F. O’Brien, Esq., and Raymond M. Pfeiffer, Esq., submitted herewith as Exhibits D,E,

and F, respectively.²¹ This level of activity was necessary to protect the interest of the class and to convince the Defendants to settle.²²

Up to the very end of negotiations, the Defendants denied liability and questioned the amount of potential damages based on differing interpretations of the WARN Act and the divergent interpretations among the Circuits. Class Counsel has been involved in this case since shortly after the cause of action first accrued. Class Counsel is not attempting to collect legal fees based on little involvement; in reality, Class Counsel has interviewed close to 500 former employees and was directly engaged by more than 200 of them. Each client completed a questionnaire regarding his or her position and compensation as an employee of USF Red Star Inc. Counsel served discovery in early fall 2004 shortly after filing the Complaint and litigated before the Judicial Panel on Multi District Litigation.

Throughout the fall and winter, counsel continued to gather information to prosecute their case. This included repeated interviews with clients; telephone conversations with Defendants' counsel; parallel NLRB proceedings; monitoring of relevant websites and news reports. Once being appointed Class Counsel in mid-April, Mr. Ercole and Mr. O'Brien pressed forward immediately engaging Defendants' counsel to expedite the class certification process and prepare for formal discovery throughout the summer including providing a list of USF executives they sought to depose throughout August and September 2005. Ultimately, counsel for Defendants

²¹ The thirty-three and one-third (33 1/3%) percent fee request is the total amount requested for all counsel. Class Counsel is not aware of any other fee requests. The State of Connecticut and the IBT have stated that they are not seeking fees and costs.

²² The negotiations in this case were not a traditional give and take, or "meet in the middle" approach. Defendants long held to the position that Plaintiffs were not entitled to any recovery. As such, the recovery of an amount that is substantially greater than a "nuisance value" offer to compromise reflects the skill and efficiency of Class Counsel.

broached the subject of serious settlement discussions in mid-May and the parties reached an agreement on or about July 27, 2005.²³

In sum, Class Counsel has extensive and prolonged involvement in this complicated litigation. The estimated attorney time and out-of-pocket costs of administering and winding up the WARN Act settlement and distribution are expected to add dozens of additional hours of time, and thousands in costs.

7. The Awards In Similar Cases.

The attorney's fees sought in this case fall well within the average fee arrangement for contingency cases. This Court has held that there is no general rule of what percentage of the settlement fund constitutes reasonable attorney's fees. *See Unisys*, 886 F. Supp. at 460. Courts in this Circuit, however, have held that reasonable attorney's fees typically range from 19% to 45% of the settlement fund. *See In re IKON Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000); *Unisys*, 886 F. Supp. at 462 (citing various cases and authorities and positing that "typical" percentages awarded as attorneys' fees include 20-30%, 19-45%, 25%, 15-30%, 30% and 20-35%; *In re SmithKline Beckman Corp. Sec. Litig.*, 751 F. Supp. 525, 553

²³ The IBT has suggested that its leverage with 65,000 members employed by Yellow Roadway Corporation, the successor in interest to USF Corporation, is the primary driving factor in this WARN Act settlement. Although it may be a factor, any attempt to attribute that as the primary factor by either the IBT and/or Yellow/USF Corporation is self-serving and should be looked upon with great skepticism by the Court. Clearly, the IBT and Yellow have an ongoing relationship that is beneficial for each of them to foster by giving credit to the IBT. However, although business circumstances always have an impact on a decision to settle litigation, it is equally plausible that, but for the aggressive pursuit of the WARN Act class action by lead counsel and the continued demonstration that it would aggressively prosecute such litigation, this WARN Act settlement would not have occurred at this time nor been as favorable to the Class.

This is a classic case of bashing the plaintiff's lawyer - - with no real basis for the opposition as even after an attorney fee award of 33 1/3%, the Class members will receive more than the Class members in the *Consolidated Freightways* case, Case No. RS 02-24284 MG, (Bkr. C.D. Cal. 2002) - - a settlement that the IBT recommended and touted on its website. (See Exhibit G, a copy of the IBT website printout). In *Consolidated Freightways*, the IBT obtained a recovery of \$3,000 per member, however, \$1,000 of that went to the IBT's health and welfare funds and the members only received \$2,000 in cash before taxes. Additionally, Class Counsel was awarded attorney's fees in the amount of thirty-three and one-third (33 1/3%) of the common fund.

(E.D. Pa. 1990). Others courts have awarded attorney's fees of more than one-third of the common fund.²⁴

Counsel is aware of numerous cases in the Third Circuit where courts have awarded 33 1/3% of the common fund in WARN Act litigation. *See, e.g., In re Oakwood Homes Corp.*, Case No. 02-13396 (approving attorney's fees in the amount of 33 1/3% of the fund); *In re Classic Kitchens*, Case No. 01-20393T (awarding 33 1/3%).²⁵ *See also*, Footnote 16, *supra*.

When performing this analysis, the Court is, in essence, attempting to mimic the market rate of the services rendered. Indeed, courts have even concluded that when the prevailing method of paying attorney's fees for similar services is by contingency, then "the contingent fee is the 'market rate.'" *In re RJR Nabisco, Inc. Sec. Litig.*, MDL No. 818, No. 88 Civ. 7905, 1992 WL 210138, at *7 (S.D.N.Y. 1992) (emphasis in original).

As previously stated, Class Counsel has a fee arrangement with approximately 15% of the class members that provides for attorney's fees in the amount of thirty three and one-third percent (33 1/3%) of any recovery. Counsel requests that this agreement be extended to all class members and that this Court award attorney's fees in the amount of 33 1/3% of the common fund. This request is consistent with the examples of attorney's fee awards set forth in *SmithKline* and *Unisys*, which identify and discuss fee arrangements ranging from 19% to 45%. Moreover, the breadth of experience and knowledge of the group, combined with the strong

²⁴ *See In re U.S. Bancorp.*, 291 F.3d 1035, 1037 (8th Cir. 2002) (approving fees of 36% of common fund); *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494 (D.D.C. 1981) (45% of \$7.3 million settlement fund awarded); *Beech Cinema, Inc. v. Twentieth Century – Fox Film Corp.*, 480 F. Supp. 1195 (S.D.N.Y. 1979) (approximately 53% of settlement fund awarded); *Greene v. Emersons, Ltd.*, [1987] Fed. Sec. L. Rep. (CCH) ¶96,623 (S.D.N.Y. May 20, 1987) (46.2% of common fund awarded); *Van Gemert v. Boeing Co.*, 516 F. Supp. 412, 419 (S.D.N.Y. 1981) (\$3.2 million fee award, which was 37.3% of the common fund); *In re Franklin National Bank Sec. Lit.* [1980 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶97,571 (E.D.N.Y. 1980) (fee award of 34% of the common fund).

²⁵ Our research revealed one WARN Act Class Action where a district court awarded only 19% of the common fund for attorney's fees. However, that case is distinguishable because it appears class counsel was retained by Teamsters Local No. 604 and paid on an hourly basis - guaranteeing a recovery for class counsel. *See Teamsters Local No. 604 v. Inter-Rail Transport, Inc.*, No. 02-CV-1109-DRH, 2004 WL 768658 (S.D. Ill. 2004). The court held that

opposition by Defendants' counsel in the litigation, militates in favor of this Court's accepting the proposed fee arrangement.

B. A Cross-Check with the Lodestar Method Supports the Award of a One Third Fee to Class Counsel

Although not required, courts often employ the lodestar methodology²⁶ as a cross-check for the percentage fee awards "to assure that the precise percentage awarded is not unreasonable." *In re Gen. Motors*, 55 F.3d at 822; *In re Rite Aid*, 396 F.3d at 305; *Gunter*, 223 F.3d at 199; *O'Keefe*, 214 F.R.D. at 309 (finding the lodestar cross-check is not required). The lodestar method is calculated by multiplying the current billing rates of counsel by the hours worked in the case. *Stop & Shop Supermarkets Co.*, 2005 WL 1213926, at *15. This calculation may then be multiplied by the court after considering: 1) the contingent nature of success; 2) the quality of the attorney's work; and 3) the likelihood of encouraging counsel to undertake socially useful litigation. *In re Aetna, Inc. Sec. Litig.*, MDL No. 1219, 2001 WL 20928, at *15 (E.D. Pa. 2000) (citing *In re IKON*, 194 F.R.D. at 195).

The Third Circuit has held that the resulting multiplier need not fall within a certain range. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 306-07. However, the Third Circuit has commonly approved multipliers between four and eight, and has also approved substantially higher multiplier figures. *See In re Rite Aid Sec. Litig.* 362 F. Supp.2d 587, 589 (E.D. Pa. 2005)

although "the market rate for this type of litigation is at least 33 1/3%" class counsel should receive the lesser percentage in that case because of the lesser risk. *Id.* at 1.

²⁶ During the settlement discussions, although not a party to the Settlement Agreement, the IBT has indicated that it will oppose the fee request on behalf of its members arguing, that the Court should not calculate attorney's fees as a percentage of recovery, but instead must utilize the lodestar method for calculating fees in this case. The IBT has relied upon *Joseph Gorini v. AMP Inc.*, 117 Fed. Appx. 193 (3d Cir. 2004) and *Local 1992, IBEW v. Okonite Company*, 358 F.3d 278 (3d Cir. 2004) for its position. Neither case, however, stands for that proposition. *Gorini* is a case involving an individual plaintiff (hence, no class action common fund was available) who had both ERISA and WARN Act claims and his attorney requested fees based on the lodestar, fee-shifting method (the court ultimately awarded \$78,000 of the approximately \$81,000 requested in fees). Similarly in *Local 1992*, the prevailing party specifically requested a fee based on a lodestar calculation pursuant to the fee-shifting provisions of the WARN Act. There is no evidence that a common fund was established in *Local 1992*. Nor is there any

(approving a lodestar multiplier of 4.07); *Stop & Shop Supermarkets Co.*, 2005 WL 1213926, at *16-17 (approving lodestar multiplier of 15.6); *O'Keefe*, 214 F.R.D. at 311 (finding a 6.08 lodestar multiplier to be reasonable); *In re RJR Nabisco, Inc. Sec. Litig.*, MDL No. 818, No. 88 Civ. 7905, 1992 WL 210138, at *16 (approving lodestar multiplier of 6); *Cosgrove v. Sullivan*, 759 F. Supp. 166 (S.D.N.Y. 1991) (approving lodestar multiplier of 8.75); *Muchnick v. First Fed. Sav. and Loan Assoc.*, Case No. 86-1104, 1986 WL 10791, at *1 (E.D. Pa. 1986) (approving lodestar multiplier of 8).

In the current case to date, Counsel has invested \$416,000 and through the administration of the settlement will have invested \$465,000 in fees. A fee calculated as thirty three and one-third (33 $\frac{1}{3}$ %) of the common fund will amount to approximately 4.85 times those fees. This amount is reasonable under the law.

Counsel's research did not reveal, and, in discussions, the IBT has failed to cite, any WARN Act class action case where a common fund was recovered, a percent of the common fund was sought, and a court awarded a fee based solely on the lodestar fee-shifting method.²⁷

evidence in either case that there were any fee agreements referencing a percentage of the fund as the basis for their recovery or that counsel sought to recover fees based upon a percentage of the fund.

²⁷ Many of the objections it is anticipated that the IBT may make fall under the heading of sour grapes. James A. McCall, Esquire has repeatedly stated that the IBT should have priority under the WARN Act and the Federal Rules of Civil Procedure to represent its members. (See Certification of Charles A. Ercole at ¶ 22). Indeed, at the final negotiating session on July 27, 2005, Mr. McCall stated "[y]ou [Mr. O'Brien/Mr. Ercole] were appointed lead counsel. The court has its opinion and we [the Teamsters] have ours [about who is lead counsel]". (See Certification of Charles A. Ercole at ¶ 23). Conversely, lead counsel argued to the court that the Teamsters had multitude of potential conflicts that preclude them from zealously advocating on behalf of the class to maximize the WARN Act recovery. For example, in the present case, the IBT initially indicated that - - similar to the *Consolidated Freightways* settlement - - that if any monies were recovered for benefits, that money went to the Health and Welfare Funds and not to the individual members. The Teamsters had numerous other conflicts in this case that would have prevented it from zealously advocating for the maximum WARN Act settlement on behalf of the entire class. There were numerous grievances and lawsuits filed for and against the IBT as a result of its one day strike on May 21, 2004 and the subsequent closure of Red Star. Any or all of these issues created obvious potential conflicts for the IBT to act as lead counsel.

V. THE CLASS REPRESENTATIVES ARE ENTITLED TO AN INCENTIVE AWARD

Class Representatives whose actions have resulted in a significant benefit for the class are entitled to receive an incentive award greater than their pro rata recovery as part of the class. *See Nichols v. SmithKline Beecham Corp.*, No. 00-6222, 2005 WL 950616, at *24 (E.D. Pa. April 22, 2005); *In re Residential Doors Antitrust Litig.*, No. 94-3744, Civ.A. 96-2125, MDL 1039, 1998 WL 15804, at *11 (E.D. Pa. April 2, 1998); *In re Southern Ohio Correctional Facility*, 175 F.R.D. 270, 272 (S.D. Ohio 1997). Courts “routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of litigation.” *Id.* In this action, lead Plaintiffs have provided information to Class Counsel, participated in numerous telephone conversations, cooperated in producing documents, and agreed to provide deposition testimony. Their actions have been highly valuable to Class Counsel and as such have resulted in a significant benefit to the class. As such, the Class Representatives request an incentive award payment in the amount of two thousand dollars (\$2,000) each to Paul Anderson, Thomas F. Brown, Richard Correa, Dan Getz, Orlin Haynes, Antonio Lucarelli, Sr., John Roncinske, Edwin Taylor, Michael Nugent, Frank Evans and Adrian Herr.

VI. CONCLUSION

Plaintiffs submit that the proposed Settlement is fair, reasonable and adequate to the Class and that the requested attorney’s fees and costs are also fair and reasonable. Accordingly, Plaintiffs respectfully urge the Court to grant their motion to approve the Settlement as proposed and to grant the requested attorney’s fee award for all the reasons set forth herein.

Dated: August 26, 2005

Respectfully submitted,

By: /s/ Charles A. Ercole

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CERTIFICATE OF SERVICE

I, Charles A. Ercole, hereby certify that on August 26, 2005, I (1) electronically filed the Motion of the WARN Act Class Representatives For An Order (1) Approving Settlement Of Warn Act Class Claims; (2) Granting Counsel's Application For Attorney's Fees And Expenses; And (3) Establishing Distribution Procedures In Connection With The Proposed Settlement; Proposed Order; and Memorandum of Law in support thereof together with the referenced exhibits and it is available for viewing and downloading from the Court's ECF system; and (2) caused said documents to be served via first class mail upon the following:

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Washington, DC 20001-2198

Raymond M. Pfeiffer, Esquire
Pfeiffer & Pfeiffer, P.C.
70 Niagara Street, Suite 500
Buffalo, NY 14202

Richard T. Sponzo, Esquire
Office of the Attorney General
State of Connecticut
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

/s/ Charles A. Ercole

EXHIBIT J

Raisner Roupinian Settlements Reported on Website (<https://raisnerroupinian.com/settled-cases/>)

Number	Case	Amount
1	Qimonda	\$35 Million Settlement
2	Taylor, Bean & Whitaker	\$15 Million Settlement
3	ITT Educational Services, Inc.	\$10 Million Settlement
4	Monaco Coach	\$10 Million Settlement
5	American Home Mortgage	\$6.5 Million Settlement
6	MF Global	\$5 Million Settlement
7	Dewey & LeBoeuf	\$4.5 Million Settlement
8	Archway Cookies/Catterton Partners	\$4 Million Settlement
9	First Magnus	\$3.725 Million Settlement
10	Solyndra LLC	\$3.5 Million Settlement
11	Xceligent	\$3.1 Million Settlement
12	Shopko	\$3 Million Settlement
13	General Dynamics Information Technology, Inc.	\$2.988 Million Settlement
14	Caritas Healthcare	\$2.65 Million Settlement
15	Product Quest Manufacturing	\$2.65 Million Settlement
16	Gymboree	\$2.6 Million Settlement
17	FirstMed EMS	\$2.6 Million Settlement
18	Delta Financial Mortgage	\$2.525 Million Settlement
19	US Investigations Services, LLC	\$2.523 Million Settlement
20	Dowling College	\$2.4 Million Settlement
21	LenderLive Networks, Inc.	\$2.4 Million Settlement
22	Worley & Obetz	\$2.2 Million Settlement
23	Toys 'R Us	\$2 Million Settlement
24	Fisker Automotive	\$1.88 Million Settlement
25	Peregrine Financial Group, Inc.	\$1.85 Million Settlement
26	First Guaranty Mortgage Corp.	\$1.75 Million Settlement
27	EOS Airlines	\$1.7 Million Settlement
28	AFA Foods, Inc.	\$1.65 Million Settlement
29	Lamar Construction	\$1.5 Million Settlement
30	Continental AFA Dispensing Co.	\$1.5 Million Settlement
31	Virgin Orbit	\$1.455 Million Settlement
32	Klausner Lumber One	\$1.411 Million Settlement
33	Kitty Hawk	\$1.4 Million Settlement
34	GDC Technics	\$1.375 Million Settlement
35	ClearEdge Power	\$1.3 Million Settlement
36	Evergreen Recreational Vehicles	\$1.2 Million Settlement
37	Anna's Linens, Inc.	\$1.2 Million Settlement
38	C.S. Mining	\$1.1 Million Settlement
39	DGI Services	\$1.1 Million Settlement
40	Live Well	\$1.1 Million Settlement
41	Metadigm Services/Navigation Capital Partners	\$1 Million Settlement

42	Quaker Fabric	\$1 Million Settlement
43	Alliance Bancorp	\$1 Million Settlement
44	Rhythm & Hues	\$1 Million Settlement
45	FNX Mining	\$975,000 Settlement
46	Zacky Farms Poultry, LLC	\$900,000 Settlement
47	WL Homes, LLC	\$938,250 Settlement
48	Crowne Architectural Systems, Inc.	\$900,000 Settlement
49	Corinthian Colleges, Inc.	\$900,000 Settlement
50	Louisiana Heart Hospital	\$825,000 Settlement
51	The Connaught Group	\$675,000 Settlement
52	TWL Corporation	\$650,000 Settlement
53	CQMS Razer	\$650,000 Settlement
54	New England Motor Freight	\$625,000 Settlement
55	Excel Storage Products	\$622,000 Settlement
56	Charming Charlie	\$575,000 Settlement
57	Continental Promotions Group	\$575,000 Settlement
58	Klausner Lumber Two	\$540,000 Settlement
59	ANKA Behavioral Health, Inc.	\$525,000 Settlement
60	Colortree Group, Inc.	\$500,000 Settlement
61	Corwood Laboratories	\$500,000 Settlement
62	Aquion Energy	\$475,000 Settlement
63	Munchery, Inc.	\$475,000 Settlement
64	CODA Automotive, Inc.	\$430,000 Settlement
65	DC Solar/Double Jump	\$400,000 Settlement
66	Level Solar	\$400,000 Settlement
67	First NLC	\$400,000 Settlement
68	Sacred Heart Hospital	\$360,000 Settlement
69	Fortunoff	\$340,000 Settlement
70	Mazer/ABMD	\$303,000 Settlement
71	Lend America/Ideal Mortgage	\$300,500 Settlement
72	PEMCO World Services, Inc.	\$275,000 Settlement
73	Data Listing	\$250,000 Settlement
74	Convergys Customer Management Group	\$250,000 Settlement
75	Rivet Software, Inc.	\$200,000 Settlement

Lankenau & Miller Settlements from Website (<https://www.lankmill.com/cases/>)

Number	Charter Behavioral Health Systems, LLC	\$ 12,000,000.00
1	Akorn Pharmaceutacals	\$ 8,700,000.00
2	American Home Mortgage	\$ 6,500,000.00
3	Consolidated Freightways, Corporation	\$ 6,200,000.00
4	MF Global	\$ 5,000,000.00
5	Inacom Corporation	\$ 4,000,000.00
6	Solyndra, LLC	\$ 3,500,000.00
7	ImagePoint, LLC	\$ 3,500,000.00
8	Axium International, Inc.	\$ 3,450,000.00
9	MPC Pro, LLC	\$ 3,250,000.00
10	Mervyns, LLC.	\$ 3,000,000.00
11	Tultex Corporation	\$ 3,000,000.00
12	Pillowtex Corporation	\$ 2,602,900.00
13	New Century TRS Holdings, Inc.	\$ 2,600,000.00
14	Hertz Corporation	\$ 2,500,000.00
15	Rosen Hotels	\$ 2,300,000.00
16	Carrier Corporation	\$ 2,100,000.00
17	Accredited Home Lenders	\$ 2,024,000.00
18	People's Choice Home Loan, Inc.	\$ 1,825,000.00
19	Bill Heard Enterprises, Inc.	\$ 1,532,000.00
20	Pan American Hospital Corporation	\$ 1,500,000.00
21	Fortress Investment Group, LLC	\$ 1,500,000.00
22	US Fidelis, Inc.	\$ 1,450,000.00
23	Berkline/BenchCraft Holdings, LLC	\$ 1,360,000.00
24	Preston Trucking	\$ 1,300,000.00
25	Oasis Corporation	\$ 1,300,000.00
26	Passages Hospice, LLC	\$ 1,200,000.00
27	Trainor Glass Company	\$ 1,200,000.00
28	Value City Holdings, Inc.	\$ 1,183,000.00
29	Tweeter Opco, LLC	\$ 1,150,000.00
30	Affiliated Foods	\$ 1,100,000.00
31	Microfibers	\$ 1,000,000.00
32	Aegis Mortgage Corporation, et al.	\$ 1,095,400.00
33	Hoboken Wood Floorings, LLC, et al.	\$ 1,050,000.00
34	Mount Sinai	\$ 1,000,000.00
35	Rhythm and Hues, Inc.	\$ 1,000,000.00
36	Thomaston Mills, Inc.	\$ 1,000,000.00
37	Delta Development & Investments, LLC	\$ 999,000.00
38	National R.V. Holdings, Inc.	\$ 995,000.00
39	Barber & Ross Company	\$ 995,000.00
40	FNX Mining Co. USA Inc., et al.	\$ 975,000.00
41	Able Laboratories, Inc.	\$ 950,000.00

42	Atherotech/Behrman	\$ 932,000.00
43	Skybus Airlines Inc.	\$ 925,000.00
44	Data Cooling	\$ 904,000.00
45	Goody's, LLC	\$ 889,000.00
46	Valmiera Glass	\$ 887,500.00
47	Dillon Logistics	\$ 887,000.00
48	American Capital Strategies, Inc., et al.	\$ 875,000.00
49	Limited Stores	\$ 810,000.00
50	Primary Health Systems, LLC	\$ 800,000.00
51	Lucky's Market	\$ 750,000.00
52	Capitol Infrastructure/Connexion	\$ 700,000.00
53	Global Power Equipment Group, Inc.	\$ 672,521.10
54	Source Interlink Manufacturing, LLC	\$ 675,000.00
55	Vista Windows/Paradigm	\$ 630,000.00
56	Suniva	\$ 600,000.00
57	DESA, LLC	\$ 567,000.00
58	Allied Aerofoam	\$ 553,000.00
59	Fort Worth Osteopathic Hospital, Inc.	\$ 519,724.00
60	Merit Health Systems, LLC.	\$ 604,898.86
61	DesignLine, Inc.	\$ 495,000.00
62	APA Trucking	\$ 480,000.00
63	Foxtons, Inc.	\$ 475,000.00
64	Infinite Care	\$ 472,000.00
65	Touch America Holdings, Inc.	\$ 459,605.00
66	HMR Foods	\$ 431,000.00
67	American Bedding, Inc.	\$ 415,000.00
68	Hancock Park Associates, LLP, et al.	\$ 428,522.00
69	Rome Cable	\$ 425,000.00
70	Hamilton Scientific	\$ 400,000.00
71	Tango Transport	\$ 400,000.00
72	Sofa Express, et al.	\$ 398,000.00
73	Southern Coal Company, Corporation	\$ 365,000.00
74	SureID	\$ 350,000.00
75	Pernix Therapeutics	\$ 300,000.00
76	Tamco Steel, Inc.	\$ 300,000.00
77	Harden Manufacturing	\$ 290,000.00
78	Three A's Holding, LLC.	\$ 275,000.00
79	Summit Partners, L.P.	\$ 275,000.00
80	CMH Manufacturing, Inc.	\$ 250,000.00
81	ASI, Limited	\$ 250,000.00
82	Lumetra Company, Inc.	\$ 250,000.00
83	World Marketing	\$ 711,000.00
84	Acclaim Entertainment, Inc.	\$ 232,750.00
85	TTC Illinois, Inc.	\$ 224,349.00

86	Deltak, LLC	\$ 224,173.70
87	USA Jet Airlines, Inc. et al.	\$ 200,000.00
88	Oceanside Extended Care	\$ 200,000.00
89	Prentice Capital Management, L.P.	\$ 196,000.00
90	Oceans Casino Cruises, Inc.	\$ 195,973.36
91	Woodinville Lumber, Inc.	\$ 190,000.00
92	Partsearch Technologies, Inc.	\$ 183,000.00
93	Centrix Financial, LLC	\$ 175,000.00
94	One Price Clothing, Inc.	\$ 160,200.00
95	Alorica	\$ 145,761.89
96	Inoveris, LLC d/b/a Zomax, et al.	\$ 130,000.00
97	Platinum Health Care Center, LLC	\$ 130,000.00
98	Badger Technologies, Inc, et al.	\$ 125,000.00
99	Mooney Airplane Company, Inc.	\$ 120,000.00
100	J&R	\$ 115,000.00
101	Durham School Services, L.P.	\$ 100,000.00

The Gardner Firm Reported Settlements from Website (<https://www.warnadvocate.com/index.html>)

Number	American Home Mortgage	up to \$6,500,000
1	Consolidated Freightways, Corporation	\$ 6,200,000.00
2	Solyndra, LLC	\$ 3,500,000.00
3	MPC Pro, LLC	\$ 3,250,000.00
4	Mervyns, LLC.	\$ 3,000,000.00
5	Pillowtex Corporation	\$ 2,602,965.00
6	New Century TRS Holdings, Inc.	\$ 2,600,000.00
7	Carrier Corporation	\$ 2,100,000.00
8	Accredited Home Lenders	\$ 2,024,702.00
9	People's Choice Home Loan, Inc.	\$ 1,825,000.00
10	Bill Heard Enterprises, Inc.	\$ 1,532,200.00
11	Pan American Hospital Corporation	\$ 1,500,000.00
12	US Fidelis, Inc.	\$ 1,450,000.00
13	Berkline/BenchCraft Holdings, LLC	\$ 1,360,000.00
14	Oasis Corporation	\$ 1,300,000.00
15	Value City Holdings, Inc.	\$ 1,183,031.00
16	Tweeter Opco, LLC	\$ 1,150,000.00
17	Aegis Mortgage Corporation, et al.	\$ 1,095,421.00
18	Hoboken Wood Floorings, LLC, et al.	\$ 1,050,000.00
19	Thomaston Mills, Inc.	\$ 1,000,000.00
20	National R.V. Holdings, Inc.	\$ 995,000.00
21	Barber & Ross, Company	\$ 995,000.00
22	FNX Mining Co. USA Inc., et al.	\$ 975,000.00
23	Able	\$ 950,000.00
24	Skybus Airlines Inc.	\$ 925,000.00
25	Goody's, LLC.	\$ 889,000.00
26	American Capital Strategies, Inc., et al.	\$ 875,000.00
27	Global Power Equipment Group, Inc.	\$ 672,521.00
28	Forth Worth Osteopathic Hospital, Inc.	\$ 519,724.00
29	Merit Health Systems, LLC.	\$ 604,898.00
30	Foxtons, Inc.	\$ 475,000.00
31	Touch America Holdings, Inc.	\$ 459,605.00
32	Hancock Park Associates, LLP, et al.	\$ 428,522.00
33	Sofa Express, et al.	\$ 398,000.00
34	Tamco Steel, Inc.	\$ 300,000.00
35	Three A's Holding, LLC.	\$ 275,000.00
36	Summit Partners, L.P.	\$ 275,000.00
37	CMH Manufacturing, Inc.	\$ 250,000.00
38	Lumetra Company, Inc.	\$ 250,000.00
39	Acclaim Entertainment, Inc.	\$ 232,750.00
40	TTC Illinois, Inc.	\$ 224,349.00
41	USA Jet Airlines, Inc. et al.	\$ 200,000.00

42	Prentice Capital Management, L.P.	\$ 196,000.00
43	Woodinville Lumber, Inc.	\$ 190,000.00
44	Oceans Casino Cruises, Inc.	\$ 137,221.00
45	Partsearch Technologies, Inc.	\$ 183,000.00
46	Alorica	\$ 145,761.00
47	Inoveris, LLC d/b/a Zomax, et al.	\$ 130,000.00
48	Mooney Airplane Company, Inc.	\$ 120,000.00
49	Durham School Services, L.P.	\$ 100,000.00
50	Community Choice Health Plan of Westchester	\$ 72,250.00
51	Victory Industrial Products, LLC, et al.	\$ 55,069.00

EXHIBIT K

Michael J. Gearin, WSBA #20982
Brian T. Peterson, WSBA #42088
925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158
Telephone: (206) 623-7580
Email: michael.gearin@klgates.com

Attorneys for Virginia Burdette, Chapter 7 Trustee

Honorable Timothy W. Dore
Chapter 7
Hearing Location: Seattle, Rm. 8106
Hearing Date: June 13, 2025
Hearing Time: 9:30 a.m.
Response Date: June 6, 2025

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re:

WIRELESS ADVOCATES, LLC

Debtor.

Case No. 23-10117-TWD

**DECLARATION OF MICHAEL J.
GEARIN IN SUPPORT OF K&L
GATES LLP FIFTH INTERIM
APPLICATION FOR
COMPENSATION**

I, Michael J. Gearin, declare as follows:

I am a partner in the law firm of K&L Gates LLP ("K&L Gates"), attorneys for Chapter 7 Trustee Virginia Burdette ("Trustee") and am duly authorized to practice law in this Court. I submit this declaration in support of K&L Gates' fourth application for fees of \$210,490.50 and expenses of \$14,855.77 for a total application of \$225,346.27.

1. Employment of K&L Gates

This court entered its Order Authorizing Employment of K&L Gates as Attorneys for Trustee (the "Order") (Dkt. 116) on March 7, 2023.

2. Prior Compensation and Reimbursement of Expenses

On July 28, 2023 K&L Gates submitted an Application for Compensation for the period February 27, 2023 through June 30, 2023. (Dkt. 273) The Court awarded fees and costs in the amount of \$346,372.95 as requested in that application under its Order on K&L Gates LLP First

DECLARATION OF MICHAEL J. GEARIN IN SUPPORT
OF K&L GATES LLP FIFTH INTERIM APPLICATION
FOR COMPENSATION - 1

K&L GATES, LLP
925 FOURTH AVENUE, SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

Interim Application for Compensation dated August 16, 2023 (Dkt. 313). On November 22, 2023 K&L Gates submitted a Second Application for Compensation for the period July 1, 2023 through October 31, 2023. (Dkt. 376) The Court awarded fees and costs in the amount of \$450,320.87 as requested in that application under its Order on K&L Gates LLP Second Interim Application for Compensation dated December 13, 2023 (Dkt. 411). On May 31, 2024 K&L Gates submitted a Third Application for Compensation for the period November 1, 2023 through April 30, 2024. (Dkt. 575) The Court awarded fees and costs in the amount of \$636,477.46 as requested in that application under its Order on K&L Gates LLP Third Interim Application for Compensation dated June 18, 2024 (Dkt. 623). On November 21, 2024 K&L Gates submitted a Fourth Application for Compensation for the period of May 1, 2024 through October 31, 2024. (Dkt. 735) The Court awarded fees and costs in the amount of \$407,530.36 as requested in that application under its Order on K&L Gates LLP Fourth Interim Application for Compensation dated December 11, 2024 (Dkt. 768)

3. Source of Payment and Amount of Unencumbered Funds.

The Trustee's Monthly Operating Report filed on April 15, 2025 [Dkt. 810] reflects that as of March 31, 2025 the estate held \$33,887,269.77 in cash. There are no other known unpaid claims secured by estate cash and there is therefore in excess of \$33 million in unencumbered cash in the estate. K&L Gates requests payment of its approved compensation from these unencumbered funds.

4. Summary of Services

A summary of the categories of services provided to the Trustee is attached hereto as Exhibit A.

5. Itemized Time Record of Services for Which Compensation is Requested

Attached hereto as Exhibit B are K&L Gates' itemized records, by service category, for fees and expenses incurred from November 1, 2024 through April 30, 2025. K&L Gates has expended 184.5 hours representing the Trustee and has incurred fees in the amount of \$210,490.50 and costs in

1 the amount of \$14,855.77 for a total amount of \$225,346.27 during the Fifth Application Period.

2 Attached hereto as Exhibit C is a summary of timekeepers who have provided more than five
3 hours of services during the relevant period, with applicable billing rate. The hourly rates set forth
4 in Exhibit C are commensurate to the hourly rates charged by such persons for nonbankruptcy work.

5 **6. Other Professionals**

6 Elizabeth H. Shea and Hacker & Willig Inc., P.S. have been employed as conflicts counsel to
7 the Trustee. Stapleton Group, Inc. has been employed as a financial consultant to the Trustee. Kent
8 Hansen and Hansen & Cogar, PLLC ("Hansen") have been employed as accountants to the Trustee.
9 Brett M. Amron and Bast Amron LLP have been employed as special counsel for the Trustee.
10 Stretto, Inc. has been employed as noticing agent. Tiger Valuation Services, LLC has been
11 employed as professional appraisers for the Trustee. Refresh Technologies has been employed as
12 professional IT consultants for the Trustee.

13 **7. No Fee Sharing Agreement**

14 K&L Gates has no fee sharing agreement with any party.

15 **8. Conclusion**

16 Based on the foregoing, K&L Gates submits its application for fees of \$210,490.50 and
17 expenses of \$14,855.77 for a total application of \$225,346.27 for the period November 1, 2024
18 through April 30, 2025.

19 I declare under penalty of perjury that the foregoing is true and correct.

20
21 EXECUTED this 23rd day of May, 2025, at Seattle, Washington.

22
23 /s/ Michael J. Gearin
Michael J. Gearin

CERTIFICATE OF SERVICE

The undersigned declares as follows:

That she is a paralegal in the law firm of K&L Gates LLP, and on May 23, 2025, she caused the foregoing document to be filed electronically through the CM/ECF system which caused Registered Participants to be served by electronic means, as fully reflected on the Notice of Electronic Filing.

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Executed on the 23rd day of May, 2025 at Seattle, Washington.

/s/ Denise A. Lentz
Denise A. Lentz

EXHIBIT A

Summary of Services by Category

Description	Hours	Fees
CarToys Dispute Resolution and Litigation	53.50	\$36,502.50
Claims, Administration and Objections	59.10	\$38,020.50
Employee Benefits/Pensions	0.90	\$760.50
Fee/Employment Applications	23.90	\$13,607.50
Litigation	24.80	\$14,004.50
Litigation - eDAT	0.80	\$700.00
Jason Karroll vs. Wireless Advocates LLC	58.00	\$33,542.50
Meetings and Communication and Creditors	1.00	\$647.00
Matter: Avoidance Action Analysis	128.90	\$72,705.50
Cost		\$14,855.77
Total	350.90	\$225,346.27

EXHIBIT B

Matter	Date	Timekeeper Name	Title	Rate	Hours	Amount	Narrative
Matter: CarToys Dispute Resolution and Litigation							
2073945.00002	1/6/2025	72445 Gearin, Michael	Partner	\$725.00	0.40	\$290.00	Review background materials in preparation for resumption of settlement discussions with CT
2073945.00002	1/7/2025	75209 Talevich, Peter	Partner	\$750.00	0.10	\$75.00	Correspond with M. Gearin regarding case status
2073945.00002	1/10/2025	72445 Gearin, Michael	Partner	\$725.00	1.00	\$725.00	Review materials in connection with resumption of CT litigation; prepare for meeting with litigation team
2073945.00002	1/23/2025	72445 Gearin, Michael	Partner	\$725.00	1.10	\$797.50	Revisions to Car Toys complaint
2073945.00002	1/23/2025	75209 Talevich, Peter	Partner	\$750.00	0.50	\$375.00	Provide update to M. Gearin regarding previous status of Car Toys adversary complaint
2073945.00002	1/24/2025	72445 Gearin, Michael	Partner	\$725.00	1.00	\$725.00	Revisions to CT complaint
2073945.00002	2/6/2025	72445 Gearin, Michael	Partner	\$725.00	2.50	\$1,812.50	Draft revisions to Car Toys complaint
2073945.00002	2/7/2025	72445 Gearin, Michael	Partner	\$725.00	0.70	\$507.50	Revisions to complaint; email to Trustee and M. Flahive regarding review and planning for filing
2073945.00002	2/10/2025	72445 Gearin, Michael	Partner	\$725.00	0.70	\$507.50	Communications with M. Flahive and team regarding draft complaint
2073945.00002	2/11/2025	72445 Gearin, Michael	Partner	\$725.00	1.70	\$1,232.50	Revisions to draft complaint and related analysis of lease guaranty and insurance claims related issues; emails with M. Flahive regarding confirmation of factual background
2073945.00002	2/12/2025	72445 Gearin, Michael	Partner	\$725.00	1.70	\$1,232.50	Call with M. Flahive and Trustee regarding complaint (0.5); continued analysis and draft of complaint (1.2)
2073945.00002	2/13/2025	72445 Gearin, Michael	Partner	\$725.00	0.80	\$580.00	Further revisions to Car Toys complaint; analysis of lease guaranty issues
2073945.00002	2/20/2025	72445 Gearin, Michael	Partner	\$725.00	0.40	\$290.00	Analysis of shared service payments in connection with finalization of complaint
2073945.00002	2/24/2025	72445 Gearin, Michael	Partner	\$725.00	1.10	\$797.50	Revisions to complaint; review and analysis of prepayment on IT contracts and insurance related expenses
2073945.00002	2/24/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.90	\$324.00	Revise Car Toys complaint (.2); draft notice of final adjudication (.5); telephone call with M. Gearin regarding complaint (.2)
2073945.00002	2/25/2025	72445 Gearin, Michael	Partner	\$725.00	1.20	\$870.00	Final revisions to Car Toys complaint and exhibits
2073945.00002	2/25/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.60	\$216.00	Prepare exhibits to Car Toys complaint (.3); finalize and file complaint to avoid and recover preferential transfers for Cay Toys (.3)
2073945.00002	2/26/2025	72445 Gearin, Michael	Partner	\$725.00	0.80	\$580.00	Email to B. Balanda regarding filing of complaint and service issues
2073945.00002	2/27/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00	Preparation of summons and complaint for service re Car Toys
2073945.00002	3/4/2025	72445 Gearin, Michael	Partner	\$725.00	0.50	\$362.50	Coordinate service of process; initial assessment of discovery issues

2073945.00002	3/4/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.10	\$36.00 Attention to service issues for summons and complaint for Car Toys summons and complaint
2073945.00002	3/10/2025	72445 Gearin, Michael	Partner	\$725.00	0.20	\$145.00 Communications with counsel regarding acceptance of service
2073945.00002	3/11/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Car Toys: File acceptance of service and notice of final adjudication with USBC
2073945.00002	3/27/2025	72445 Gearin, Michael	Partner	\$725.00	0.60	\$435.00 Review correspondence from B. Balanda regarding indemnity claims and amended Car Toys proof of claim
2073945.00002	3/28/2025	72445 Gearin, Michael	Partner	\$725.00	1.50	\$1,087.50 Review and analysis of letter from counsel to CT and amended proof of claims call with Trustee
2073945.00002	4/1/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00 Car Toys attention to case updates
2073945.00002	4/2/2025	75209 Talevich, Peter	Partner	\$750.00	0.20	\$150.00 Correspond with M. Gearin regarding case strategy
2073945.00002	4/7/2025	72445 Gearin, Michael	Partner	\$725.00	1.50	\$1,087.50 Review and analyze CT claims; case overview call with P. Talevich and H. Ross
2073945.00002	4/7/2025	75209 Talevich, Peter	Partner	\$750.00	1.00	\$750.00 Introductory meeting with H. Ross to provide background and allocate tasks
2073945.00002	4/7/2025	75209 Talevich, Peter	Partner	\$750.00	2.60	\$1,950.00 Draft answer to counterclaims in adversary complaint
2073945.00002	4/7/2025	75209 Talevich, Peter	Partner	\$750.00	0.80	\$600.00 Analyze letters related to destruction and indemnification/undertaking
2073945.00002	4/7/2025	86526 Ross, Henry	Associate	\$585.00	0.40	\$234.00 Review proof of claim and demand letter sent by Car Toys counsel
2073945.00002	4/7/2025	86526 Ross, Henry	Associate	\$585.00	1.30	\$760.50 Call regarding strategy of response to counterclaim and initial case assessment (1); review of pleadings in preparation for call (.3)
2073945.00002	4/8/2025	75209 Talevich, Peter	Partner	\$750.00	1.20	\$900.00 Draft answer to counterclaim
2073945.00002	4/10/2025	75209 Talevich, Peter	Partner	\$750.00	3.20	\$2,400.00 Correspond with H. Ross regarding tasks (.1); draft answer to counterclaim (3.0); circulate same to M. Gearin
2073945.00002	4/10/2025	86526 Ross, Henry	Associate	\$585.00	0.10	\$58.50 Internal correspondence regarding answer to counterclaims
2073945.00002	4/14/2025	75209 Talevich, Peter	Partner	\$750.00	0.80	\$600.00 Review documents to assess potential settlement
2073945.00002	4/15/2025	72445 Gearin, Michael	Partner	\$725.00	1.50	\$1,087.50 Review and propose edits to draft answer to counterclaim and related analysis
2073945.00002	4/15/2025	75209 Talevich, Peter	Partner	\$750.00	0.90	\$675.00 Finalize and file answer to counterclaim
2073945.00002	4/16/2025	72445 Gearin, Michael	Partner	\$725.00	0.50	\$362.50 Meet with P. Talevich regarding analysis of indemnity claims and strategic considerations
2073945.00002	4/16/2025	75209 Talevich, Peter	Partner	\$750.00	2.00	\$1,500.00 Correspond with team regarding case logistics (.2); review previous analysis of Car Toys dispute and claims (1.8)
2073945.00002	4/16/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00 Car Toys finalize and file answer to counterclaim with USBC
2073945.00002	4/17/2025	72445 Gearin, Michael	Partner	\$725.00	0.50	\$362.50 Communications with P. Talevich and H. Ross regarding analysis of claim values and dispute history
2073945.00002	4/17/2025	75209 Talevich, Peter	Partner	\$750.00	0.50	\$375.00 Review documents pertaining to damages calculations
2073945.00002	4/17/2025	86526 Ross, Henry	Associate	\$585.00	0.10	\$58.50 Review and analyze payment tracking spreadsheet and internal correspondence regarding the same
2073945.00002	4/18/2025	75209 Talevich, Peter	Partner	\$750.00	0.70	\$525.00 Draft notes regarding indemnification claims (.4); correspond with H. Ross regarding case strategy (.3)
2073945.00002	4/18/2025	86526 Ross, Henry	Associate	\$585.00	0.40	\$234.00 Internal discussion regarding strategy and evaluation of potential claims

2073945.00002	4/21/2025	86526 Ross, Henry	Associate	\$585.00	2.70	\$1,579.50	Review pleadings (.3) and draft memo outlining claims and counterclaims (2.4)
2073945.00002	4/22/2025	72445 Gearin, Michael	Partner	\$725.00	0.30	\$217.50	Meet with P. Talevich regarding analysis of Car Toys claims and defenses
2073945.00002	4/23/2025	86526 Ross, Henry	Associate	\$585.00	2.40	\$1,404.00	Review, analyze, and work on drafting of internal memo outlining claims and counterclaims
2073945.00002	4/24/2025	75209 Talevich, Peter	Partner	\$750.00	0.70	\$525.00	Attend strategy session with H. Ross regarding all claims and defenses in adversary proceeding (.5); correspond with M. Flahive (.2)
2073945.00002	4/24/2025	86526 Ross, Henry	Associate	\$585.00	1.90	\$1,111.50	Extended review of pleadings, proofs of claims, and related matters to assist in drafting memo related to claims
2073945.00002	4/24/2025	86526 Ross, Henry	Associate	\$585.00	0.70	\$409.50	Call regarding next steps in discovery and litigation of adversary matter
2073945.00002	4/28/2025	75209 Talevich, Peter	Partner	\$750.00	0.10	\$75.00	Correspond with M. Flahive regarding CT reconciliation
2073945.00002	4/30/2025	75209 Talevich, Peter	Partner	\$750.00	1.50	\$1,125.00	Analyze reconciliation (.5); conference with Stapleton regarding reconciliation and claims against CT (1.0)
2073945.00002	4/30/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.40	\$144.00	Car Toys prepare mediation certification
2073945.00002	4/30/2025	86526 Ross, Henry	Associate	\$585.00	1.50	\$877.50	Extended call with Matthew Flahive regarding shared services reconciliation and preparation for the same
				Total .00002	53.50	\$36,502.50	
Matter: Claims, Administration and Objections							
2073945.70050	11/1/2024	86605 Lichter, Tyler	Associate	\$590.00	2.70	\$1,593.00	Review and revise objections to claim nos. 48, 147, 50, 57, and 38 (1); draft notices of objection for claim nos. 48, 147, 50, 57, and 38 (.7); revise motion to approve settlement with Cisco (.3); review rules regarding omnibus claims objections and begin to prepare ex parte motion for leave to file omnibus claim objection (.7)
2073945.70050	11/4/2024	86605 Lichter, Tyler	Associate	\$590.00	2.90	\$1,711.00	Review secured tax claims and draft ex parte motion for leave to file omnibus claims objection (1.9); review priority claims and draft objection to claim no. 176 (1)
2073945.70050	11/7/2024	86605 Lichter, Tyler	Associate	\$590.00	5.30	\$3,127.00	Exchange emails with Trustee regarding objections to certain tax and wage claims and review Trustee's prior communications with creditors (.3); review Monterey County tax claims, draft objection to claims, Trustee declaration in support of objection, notice of objection, and proposed order disallowing claims (1.9); research secured tax liens under Washington law (1.6); review wage claims and draft settlement agreement for WARN Act litigation, and exchange emails with KLG team regarding settlement class and status of settlement agreement (1.5)
2073945.70050	11/8/2024	86605 Lichter, Tyler	Associate	\$590.00	1.30	\$767.00	Draft objection to Oregon Department of Revenue's claim, declaration in support of objection, and proposed order (.7); research secured tax claims (.6)
2073945.70050	11/11/2024	86605 Lichter, Tyler	Associate	\$590.00	0.50	\$295.00	Review notice requirements for claims objections and provide multiple objections and accompanying documents to Trustee for review

2073945.70050	11/12/2024	86605 Lichter, Tyler	Associate	\$590.00	1.30	\$767.00 Finalize Trustee declarations in support of objections to claim nos. 38, 166, 167, and 176 and coordinate signatures (.6); review and finalize motion to approve Cisco settlement and accompanying materials and coordinate filing with KLG team (.7)
2073945.70050	11/13/2024	78991 Lentz, Denise	Paralegal	\$335.00	1.00	\$335.00 Finalize objection to claims and corresponding documents for filing with USBC (.4); file objections and corresponding documents with USBC (.4); submit objections to claims agent for service (.2)
2073945.70050	11/13/2024	78991 Lentz, Denise	Paralegal	\$335.00	0.70	\$234.50 Finalize pleadings for motion to approve settlement with Cisco Capital Systems for filing with USBC (.3); file motion and corresponding documents with USBC (.3); submit filed documents to claims agent for service of documents (.1)
2073945.70050	11/13/2024	86605 Lichter, Tyler	Associate	\$590.00	0.70	\$413.00 Finalize objections to claim nos. 38, 166, and 167 for filing (.6); review Oregon tax return and exchange email with Trustee regarding the same (.1)
2073945.70050	11/26/2024	86605 Lichter, Tyler	Associate	\$590.00	0.10	\$59.00 Review San Diego County's notice of withdrawal of claim and exchange email with trustee regarding the same (.1)
2073945.70050	12/2/2024	78991 Lentz, Denise	Paralegal	\$335.00	0.30	\$100.50 File declaration of no objection and upload order approving Cisco Settlement for entry with the Court
2073945.70050	12/2/2024	86605 Lichter, Tyler	Associate	\$590.00	0.40	\$236.00 Coordinate filing of declaration of no objection to motion to approve Cisco settlement (.2); review claim filed by Talentwise, Inc. (.2)
2073945.70050	12/4/2024	82545 Romero, Monica	Associate	\$515.00	1.00	\$515.00 Review C. Alvarez proof of claim (1.0)
2073945.70050	12/4/2024	86605 Lichter, Tyler	Associate	\$590.00	0.20	\$118.00 Exchange emails with Stapleton team regarding Cisco equipment liquidation (.1); exchange emails with KLG team regarding review of Alvarez claim (.1)
2073945.70050	12/5/2024	82545 Romero, Monica	Associate	\$515.00	1.70	\$875.50 Review C. Alvarez proof of claim (1.7)
2073945.70050	12/6/2024	86605 Lichter, Tyler	Associate	\$590.00	1.40	\$826.00 Research rules regarding service of claims objections and exchange emails with KLG team regarding the same (.7); review claims filed by Miami Dade tax collector and Talentwise (.6)
2073945.70050	12/9/2024	78991 Lentz, Denise	Paralegal	\$335.00	0.30	\$100.50 File declaration of no objections regarding claim objections and upload orders for entry with USBC
2073945.70050	12/9/2024	86605 Lichter, Tyler	Associate	\$590.00	0.10	\$59.00 Review declaration of no objections for claims objections
2073945.70050	1/13/2025	72445 Gearin, Michael	Partner	\$725.00	0.70	\$507.50 Review claims registry and assess priority claims; email with T. Lichter re priority claims allowance and payment motion
2073945.70050	1/13/2025	86605 Lichter, Tyler	Associate	\$690.00	1.50	\$1,035.00 Review tax and wage claims and prepare chart of potential objections (1.4); exchange emails with KLG team regarding the same (.1)
2073945.70050	1/14/2025	72445 Gearin, Michael	Partner	\$725.00	0.60	\$435.00 Teams meeting with T. Lichter re analysis of priority and secured claims and planning for allowance and distribution
2073945.70050	1/14/2025	86605 Lichter, Tyler	Associate	\$690.00	1.10	\$759.00 Conference with KLG team (.5); review priority claims (.5); exchange email with Trustee regarding priority claims (.1)
2073945.70050	1/23/2025	86605 Lichter, Tyler	Associate	\$690.00	0.30	\$207.00 Review claims tracker and motion to pay priority creditors

2073945.70050	2/4/2025	72445 Gearin, Michael	Partner	\$725.00	0.50	\$362.50 Review priority claims summary; call with T. Lichter re allowance motion
2073945.70050	2/4/2025	86605 Lichter, Tyler	Associate	\$690.00	0.30	\$207.00 Conference with KLG team regarding priority claims (.3)
2073945.70050	2/6/2025	86605 Lichter, Tyler	Associate	\$690.00	0.90	\$621.00 Review priority claims and exchange emails with KLG team regarding claims status (.9)
2073945.70050	2/10/2025	72445 Gearin, Michael	Partner	\$725.00	0.60	\$435.00 Prepare for and meet with T. Lichter re priority claims analysis
2073945.70050	2/10/2025	72445 Gearin, Michael	Partner	\$725.00	0.50	\$362.50 Review background materials and analyze CNA insurance claims
2073945.70050	2/10/2025	86605 Lichter, Tyler	Associate	\$690.00	0.90	\$621.00 Conference with KLG team regarding priority claims (.5); prepare appendix of priority claims (.4)
2073945.70050	2/11/2025	86605 Lichter, Tyler	Associate	\$690.00	5.90	\$4,071.00 Review priority claims (3); draft exhibit of priority claims for motion for priority distribution and second omnibus objection to certain claims (2.6); review secured claim of CNS and emails regarding the same (.3)
2073945.70050	2/12/2025	86605 Lichter, Tyler	Associate	\$690.00	0.60	\$414.00 Review priority claims and revise exhibit to motion for priority distribution (.6)
2073945.70050	2/13/2025	86605 Lichter, Tyler	Associate	\$690.00	0.20	\$138.00 Revise summary of priority claims and provide to trustee for review (.2)
2073945.70050	2/14/2025	86605 Lichter, Tyler	Associate	\$690.00	0.20	\$138.00 Exchange emails with trustee regarding priority claims (.1); review Talentwise claim (.1)
2073945.70050	2/17/2025	72445 Gearin, Michael	Partner	\$725.00	0.60	\$435.00 Analysis of CNA insurance claim; communications to counsel for CNA re same
2073945.70050	2/17/2025	86605 Lichter, Tyler	Associate	\$690.00	0.30	\$207.00 Exchange emails with Trustee and KLG team (.1); review research on defenses to preference claims (.2)
2073945.70050	2/18/2025	72445 Gearin, Michael	Partner	\$725.00	1.70	\$1,232.50 Prepare for and participate in call with Trustee and T. Lichter regarding claims analysis including review and analysis of multiple claims
2073945.70050	2/18/2025	86605 Lichter, Tyler	Associate	\$690.00	0.80	\$552.00 Conference with KLG team and trustee (.8)
2073945.70050	2/19/2025	86605 Lichter, Tyler	Associate	\$690.00	4.70	\$3,243.00 Review priority tax claims (1.5); draft second omnibus objection, declaration in support of objection, and proposed order granting objection (3.2)
2073945.70050	2/20/2025	72445 Gearin, Michael	Partner	\$725.00	0.40	\$290.00 Communications with counsel for CNA; analysis of priority claims
2073945.70050	2/20/2025	86605 Lichter, Tyler	Associate	\$690.00	4.10	\$2,829.00 Review priority tax claims (1.2); revise second omnibus objection, declaration in support of objection, and proposed order granting objection, and draft ex parte motion and order for leave to file second omnibus objection (2.7); review CNA claim (.2)
2073945.70050	2/21/2025	86605 Lichter, Tyler	Associate	\$690.00	1.00	\$690.00 Revise second omnibus objection to tax and wage claims and exchange emails with KLG team regarding the same (1)
2073945.70050	2/24/2025	72445 Gearin, Michael	Partner	\$725.00	0.70	\$507.50 Call with counsel to CNA insurance and Trustee re claims issues and related analysis
2073945.70050	2/24/2025	86605 Lichter, Tyler	Associate	\$690.00	0.40	\$276.00 Conference with counsel for CNA Insurance (.4)
2073945.70050	2/25/2025	86605 Lichter, Tyler	Associate	\$690.00	0.70	\$483.00 Review tax claims and revise second omnibus objection (.7)
2073945.70050	2/26/2025	86605 Lichter, Tyler	Associate	\$690.00	0.90	\$621.00 Revise second omnibus objection and exchange emails with Trustee regarding priority claims (.9)

2073945.70050	2/27/2025	86605 Lichter, Tyler	Associate	\$690.00	0.10	\$69.00 Review emails from taxing entities regarding secured claims (.1)
2073945.70050	2/28/2025	86605 Lichter, Tyler	Associate	\$690.00	0.10	\$69.00 Exchange emails with Yapavi County regarding secured claim (.1)
2073945.70050	3/1/2025	86605 Lichter, Tyler	Associate	\$690.00	0.20	\$138.00 Revise second omnibus claims objection (.2)
2073945.70050	3/10/2025	86605 Lichter, Tyler	Associate	\$690.00	1.60	\$1,104.00 Review correspondence with taxing entities (.4); revise second omnibus objection and related filings (1.2)
2073945.70050	3/12/2025	86605 Lichter, Tyler	Associate	\$690.00	0.20	\$138.00 Exchange emails with Trustee and Pima County, AZ regarding priority claim (.2)
2073945.70050	3/14/2025	86605 Lichter, Tyler	Associate	\$690.00	0.90	\$621.00 Review materials provided by Pima County (.3); conference with Pima County (.4); draft email to Pima County (.2)
2073945.70050	3/21/2025	86605 Lichter, Tyler	Associate	\$690.00	0.20	\$138.00 Exchange emails with Pima County and conference with KLG team regarding priority claims (.2)
2073945.70050	3/24/2025	86605 Lichter, Tyler	Associate	\$690.00	0.60	\$414.00 Revise second omnibus objection and related filings (.6)
2073945.70050	3/25/2025	86605 Lichter, Tyler	Associate	\$690.00	0.10	\$69.00 Exchange emails with Pima County (.1)
2073945.70050	3/28/2025	86605 Lichter, Tyler	Associate	\$690.00	0.20	\$138.00 Revise second omnibus objection (.2)
2073945.70050	4/1/2025	86605 Lichter, Tyler	Associate	\$690.00	0.30	\$207.00 Review amended Pima County claims (.1); exchange emails with Trustee and counsel regarding liquidation of networking equipment (.2)
2073945.70050	4/2/2025	86605 Lichter, Tyler	Associate	\$690.00	0.10	\$69.00 Exchange emails with Trustee re claims issues
2073945.70050	4/11/2025	86605 Lichter, Tyler	Associate	\$690.00	1.00	\$690.00 Draft third omnibus objection to claim no. 70 and related requests for payment of administrative expense and related documents (1)
2073945.70050	4/13/2025	86605 Lichter, Tyler	Associate	\$690.00	0.20	\$138.00 Review claim no. 177 (.2)
2073945.70050	4/20/2025	86605 Lichter, Tyler	Associate	\$690.00	0.10	\$69.00 Review and revise second omnibus claims objection (.1)
2073945.70050	4/21/2025	86605 Lichter, Tyler	Associate	\$690.00	0.20	\$138.00 Exchange emails with trustee and KLG team regarding claims objections (.2)
				Total .70050	59.10	\$38,020.50

Matter: Employee Benefits/Pension

2073945.70060	1/28/2025	72494 Diaz, Karrie	Partner	\$845.00	0.90	\$760.50 Email V. Burdette regarding 401k plan; telephone conference with 401k plan trustee and V. Burdette regarding same
				Total .70060	0.90	\$760.50

Matter: Fee/Employment Applications

2073945.70070	11/5/2024	72445 Gearin, Michael	Partner	\$725.00	1.50	\$1,087.50 Commence draft of K&L fee application
2073945.70070	11/7/2024	78991 Lentz, Denise	Paralegal	\$335.00	0.60	\$201.00 Attention to draft of fee application
2073945.70070	11/11/2024	78991 Lentz, Denise	Paralegal	\$335.00	0.20	\$67.00 Attention to application for compensation fees and costs for KLG
2073945.70070	11/12/2024	72445 Gearin, Michael	Partner	\$725.00	0.60	\$435.00 Draft K&L fee application
2073945.70070	11/14/2024	72445 Gearin, Michael	Partner	\$725.00	0.90	\$652.50 Draft K&L fee application
2073945.70070	11/14/2024	78991 Lentz, Denise	Paralegal	\$335.00	0.40	\$134.00 Attention to calculation of KLG fees and costs
2073945.70070	11/15/2024	72445 Gearin, Michael	Partner	\$725.00	0.70	\$507.50 Commence draft of Refreshtech fee application
2073945.70070	11/15/2024	72445 Gearin, Michael	Partner	\$725.00	2.10	\$1,522.50 Draft K&L Fee application

2073945.70070	11/16/2024	78991 Lentz, Denise	Paralegal	\$335.00	2.40	\$804.00 Draft Gearin declaration ISO Fourth application (.4); draft notice of hearing on fee applications (.3); review and revise fourth application of Stapleton Group and corresponding declaration (.3); draft orders approving fourth applications of Stapleton and KLG (.2); attention to Exhibits to KLG Gearin Declaration (.2); draft fee application, declaration in support of and proposed order for Refresh Technologies (1.0)
2073945.70070	11/18/2024	72445 Gearin, Michael	Partner	\$725.00	2.40	\$1,740.00 Draft fourth K&L fee application
2073945.70070	11/18/2024	72445 Gearin, Michael	Partner	\$725.00	0.70	\$507.50 Review and provide comment to Refreshtech fee application; related email communications
2073945.70070	11/18/2024	76949 Peterson, Brian	Partner	\$605.00	0.10	\$60.50 Draft email correspondence regarding preparation of fee applications
2073945.70070	11/18/2024	78991 Lentz, Denise	Paralegal	\$335.00	0.70	\$234.50 Meeting with M. Gearin regarding Refresh Tech fee application (.2); draft email to Refresh Tech with additional questions (.2); email exchanges with M. Gearin regarding KLG fee application (.2); review and respond to email from client (.1)
2073945.70070	11/19/2024	72445 Gearin, Michael	Partner	\$725.00	0.60	\$435.00 Review and provide comments to Stapleton fee application
2073945.70070	11/19/2024	72445 Gearin, Michael	Partner	\$725.00	0.60	\$435.00 Revisions to K&L fee application
2073945.70070	11/19/2024	72445 Gearin, Michael	Partner	\$725.00	0.50	\$362.50 Communications re draft Refreshtech fee application
2073945.70070	11/20/2024	72445 Gearin, Michael	Partner	\$725.00	1.00	\$725.00 Finalize K&L fee application
2073945.70070	11/20/2024	72445 Gearin, Michael	Partner	\$725.00	2.00	\$1,450.00 Draft Refreshtech fee application and related communications re billing
2073945.70070	11/20/2024	78991 Lentz, Denise	Paralegal	\$335.00	1.30	\$435.50 Meeting with Refresh Tech (.3); meeting with M. Gearin regarding status of fee applications and follow up email re same (.2); communications with Refresh Tech and review of invoices (.4) revisions to Refresh Tech application for compensation pleadings (.4)
2073945.70070	11/21/2024	78991 Lentz, Denise	Paralegal	\$335.00	1.90	\$636.50 Review and finalize KLG pleadings and exhibits for fourth application for compensation (1.0); finalize and file Stapleton application for compensation and declaration with USBC (.3); finalize and file Refresh Tech application for compensation and declaration with USBC (.3); file KLG pleadings with USBC (.2); email communications with Stretto regarding service of notice (.1)
2073945.70070	11/21/2024	87220 Edwards, Anna	Paralegal	\$295.00	0.20	\$59.00 Revise Fourth Application for Compensation to include hours and monetary amounts due for legal work performed
2073945.70070	11/22/2024	72445 Gearin, Michael	Partner	\$725.00	0.30	\$217.50 Review and revise draft notice of fee applications
2073945.70070	11/22/2024	78991 Lentz, Denise	Paralegal	\$335.00	0.30	\$100.50 Finalize and file notice of hearing on fee applications and send to Stretto for service on all parties
2073945.70070	12/9/2024	72445 Gearin, Michael	Partner	\$725.00	0.40	\$290.00 Draft supplemental declaration in support of K&L fee application; coordinate presentation of orders awarding compensation to K&L, Stapleton and Refreshtech

2073945.70070	12/9/2024	78991 Lentz, Denise	Paralegal	\$335.00	1.20	\$402.00	Communications with Trustee's office, M. Gearin and Stapleton Group regarding fee applications (.3); file declarations of no objection for K&L Gates, Stapleton and Refresh Tech (.2); finalize orders for compensation for K&L Gates, Stapleton and Refresh Tech and upload for entry with the Court (.3); draft supplemental declaration of M. Gearin (.3); file supplemental declaration of M. Gearin with USBC (.1)
2073945.70070	12/29/2024	78991 Lentz, Denise	Paralegal	\$335.00	0.10	\$33.50	File supplemental certificate of service with USBC
2073945.70070	4/30/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00	Attention to emails regarding upcoming fee application
				Total .70070	23.90	\$13,607.50	
Matter: Litigation							
2073945.70100	11/4/2024	76949 Peterson, Brian	Partner	\$605.00	0.30	\$181.50	Preparation for mediation of Tytl dispute
2073945.70100	11/5/2024	76949 Peterson, Brian	Partner	\$605.00	9.30	\$5,626.50	Prepare for and participate in mediation regarding Tytl claim (8.8); edit and revise settlement CR2 agreement (.5)
2073945.70100	11/5/2024	81713 Nagamine, Ruby	Associate	\$590.00	0.20	\$118.00	Exchange emails regarding Tytl litigation
2073945.70100	11/11/2024	78991 Lentz, Denise	Paralegal	\$335.00	0.40	\$134.00	Prepare stipulation and order to extend Tytl removal deadline
2073945.70100	11/12/2024	76949 Peterson, Brian	Partner	\$605.00	0.10	\$60.50	Review email correspondence regarding CR2 agreement from opposing counsel
2073945.70100	11/13/2024	76949 Peterson, Brian	Partner	\$605.00	0.30	\$181.50	Draft and edit stipulation extending removal deadline
2073945.70100	11/13/2024	78991 Lentz, Denise	Paralegal	\$335.00	0.50	\$167.50	Finalize and file stipulation to extend Tytl removal date with USBC and upload order for entry
2073945.70100	11/17/2024	76949 Peterson, Brian	Partner	\$605.00	1.00	\$605.00	Draft settlement agreement resolving Tytl claims and counterclaims
2073945.70100	11/22/2024	76949 Peterson, Brian	Partner	\$605.00	1.70	\$1,028.50	Draft settlement agreement for Tytl litigation
2073945.70100	11/29/2024	76949 Peterson, Brian	Partner	\$605.00	0.20	\$121.00	Review email correspondence and draft email to Debtor's counsel in Marks state court litigation case
2073945.70100	12/7/2024	76949 Peterson, Brian	Partner	\$605.00	0.20	\$121.00	Draft email to client regarding Tytl's proposed edits to settlement agreement
2073945.70100	12/9/2024	76949 Peterson, Brian	Partner	\$605.00	0.10	\$60.50	Circulate signed settlement agreement for Tytl dispute
2073945.70100	12/29/2024	78991 Lentz, Denise	Paralegal	\$335.00	1.00	\$335.00	Draft motion and declaration for approval of Tytl settlement agreement
2073945.70100	12/31/2024	78991 Lentz, Denise	Paralegal	\$335.00	0.40	\$134.00	Attention draft of notice of hearing and proposed order regarding Tytl settlement
2073945.70100	12/31/2024	81713 Nagamine, Ruby	Associate	\$590.00	0.20	\$118.00	Update pending state court litigation tracker
2073945.70100	1/8/2025	76949 Peterson, Brian	Partner	\$650.00	2.00	\$1,300.00	Draft Tytl settlement agreement and pleadings seeking approval of settlement agreement
2073945.70100	1/9/2025	76949 Peterson, Brian	Partner	\$650.00	0.40	\$260.00	Draft stipulation and order extending removal deadline (.3); draft email correspondence regarding Tytl settlement (.1)
2073945.70100	1/17/2025	76949 Peterson, Brian	Partner	\$650.00	0.80	\$520.00	Finalize pleadings in support of request for approval of Tytl settlement (.7); draft correspondence regarding Tytl settlement (.1)
2073945.70100	1/17/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00	Attention to status of motion to approve Tytl settlement and related documents

2073945.70100	1/22/2025	76949 Peterson, Brian	Partner	\$650.00	0.40	\$260.00	Finalize Tylt settlement motion
2073945.70100	1/22/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.60	\$216.00	Review and update pleadings for Tylt settlement motion (.4); revise notice of hearing regarding same (.2)
2073945.70100	1/23/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.80	\$288.00	Finalize Tylt settlement motion and corresponding documents for filing with USBC (.4); file motion and corresponding documents with USBC (.3); send notice of motion for service (.1)
2073945.70100	1/30/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00	Attention to filing of proof of service of motion to approve Tylt settlement
2073945.70100	1/31/2025	76949 Peterson, Brian	Partner	\$650.00	0.20	\$130.00	Call with counsel for creditor Marks regarding insurance funds
2073945.70100	2/12/2025	75209 Talevich, Peter	Partner	\$750.00	0.40	\$300.00	Provide analysis of preference payment for B. Peterson
2073945.70100	2/14/2025	72086 Miller, Warner	Librarian	\$350.00	0.30	\$105.00	Conduct party-name searches for cases filed in Washington Courts (State and Federal) since 1/1/2023 involving Car Toys as a party/participant (.2); prepare memorandum to D. Lentz, summarizing results of research (.1)
2073945.70100	2/17/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00	Email correspondence with M. Gearin regarding Car Toys complaint
2073945.70100	2/20/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00	Attention to Car Toys complaint
2073945.70100	2/25/2025	75209 Talevich, Peter	Partner	\$750.00	0.60	\$450.00	Analyze Marsh policies for avoidance case
2073945.70100	3/19/2025	76949 Peterson, Brian	Partner	\$650.00	0.40	\$260.00	Analyze issues related to Plaintiff Marks' request for relief from stay to effectuate settlement from insurance proceeds
2073945.70100	3/24/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.50	\$180.00	Review and provide case updates with respect to service of multiple summons and complaints in preference actions
2073945.70100	4/25/2025	76949 Peterson, Brian	Partner	\$650.00	0.70	\$455.00	Draft stipulation and order on relief from stay for Cheryl Marks settlement
				Total .70100	24.80	\$14,004.50	

Matter: Jason Karroll vs. Wireless Advocates LLC

2073945.70101	11/8/2024	76949 Peterson, Brian	Partner	\$605.00	0.10	\$60.50	Draft email correspondence to counsel for Car Toys regarding WARN Act settlement agreement
2073945.70101	11/15/2024	76949 Peterson, Brian	Partner	\$605.00	0.60	\$363.00	Review Car Toys' proposed edits to settlement agreement (.4); draft email communication to client regarding Car Toys' edits (.2)
2073945.70101	11/21/2024	76949 Peterson, Brian	Partner	\$605.00	0.30	\$181.50	Phone call with M. Romero regarding edits to WARN Act settlement agreement
2073945.70101	11/27/2024	82545 Romero, Monica	Associate	\$515.00	2.30	\$1,184.50	Revise settlement agreement
2073945.70101	12/7/2024	76949 Peterson, Brian	Partner	\$605.00	0.70	\$423.50	Review edits to settlement agreement proposed by opposing counsel (.2); draft detailed email related to edits and proposed recommendations to client (.5)
2073945.70101	12/11/2024	75209 Talevich, Peter	Partner	\$670.00	0.20	\$134.00	Review and comment on WARN settlement
2073945.70101	12/11/2024	76949 Peterson, Brian	Partner	\$605.00	0.10	\$60.50	Draft email correspondence regarding proposed settlement agreement modifications
2073945.70101	12/18/2024	76949 Peterson, Brian	Partner	\$605.00	0.10	\$60.50	Draft email correspondence regarding edits to settlement motion
2073945.70101	12/18/2024	82545 Romero, Monica	Associate	\$515.00	0.90	\$463.50	Revise settlement agreement

2073945.70101	12/19/2024	72445 Gearin, Michael	Partner	\$725.00	0.30	\$217.50 Review draft WARN settlement agreement and comment on same
2073945.70101	12/19/2024	76949 Peterson, Brian	Partner	\$605.00	0.40	\$242.00 Finalize edits to settlement agreement
2073945.70101	12/23/2024	82545 Romero, Monica	Associate	\$515.00	0.20	\$103.00 Revise settlement agreement
2073945.70101	1/22/2025	72445 Gearin, Michael	Partner	\$725.00	0.30	\$217.50 Call with B. Peterson regarding Car Toys aspects of settlement
2073945.70101	1/22/2025	76949 Peterson, Brian	Partner	\$650.00	0.40	\$260.00 Draft email correspondence regarding preparation of WARN Act settlement
2073945.70101	1/28/2025	76949 Peterson, Brian	Partner	\$650.00	0.20	\$130.00 Draft email correspondence regarding settlement agreement edits
2073945.70101	1/28/2025	82545 Romero, Monica	Associate	\$560.00	1.10	\$616.00 Review Motion for Preliminary Approval and Class Notice (0.3); review Car Toys redlines to settlement agreement (0.8)
2073945.70101	1/29/2025	76949 Peterson, Brian	Partner	\$650.00	0.10	\$65.00 Draft email to M. Romero regarding WARN settlement agreement
2073945.70101	1/29/2025	82545 Romero, Monica	Associate	\$560.00	0.50	\$280.00 Revise settlement agreement
2073945.70101	1/31/2025	76949 Peterson, Brian	Partner	\$650.00	0.10	\$65.00 Review edits to settlement agreement
2073945.70101	2/3/2025	76949 Peterson, Brian	Partner	\$650.00	0.20	\$130.00 Review correspondence related to settlement agreement
2073945.70101	2/5/2025	76949 Peterson, Brian	Partner	\$650.00	1.60	\$1,040.00 Analysis of ruling in South Carolina District Court (.7); discussion with M. Romero regarding District Court ruling (.6); phone call with client regarding next steps related to approval of settlement agreement (.3)
2073945.70101	2/5/2025	82545 Romero, Monica	Associate	\$560.00	1.40	\$784.00 Review Car Toys order of dismissal and assess effect
2073945.70101	2/6/2025	76949 Peterson, Brian	Partner	\$650.00	0.10	\$65.00 Review edits to settlement agreement
2073945.70101	2/12/2025	82545 Romero, Monica	Associate	\$560.00	0.40	\$224.00 Revise settlement agreement
2073945.70101	2/13/2025	82545 Romero, Monica	Associate	\$560.00	0.10	\$56.00 Email settlement agreement to parties
2073945.70101	2/19/2025	82545 Romero, Monica	Associate	\$560.00	0.30	\$168.00 Revise settlement agreement formatting
2073945.70101	2/20/2025	76949 Peterson, Brian	Partner	\$650.00	0.10	\$65.00 Draft email correspondence regarding settlement agreement
2073945.70101	2/20/2025	82545 Romero, Monica	Associate	\$560.00	0.50	\$280.00 Prepare complete settlement agreement with all signed parts
2073945.70101	2/24/2025	82545 Romero, Monica	Associate	\$560.00	0.20	\$112.00 Consolidate fully executed class settlement agreement
2073945.70101	2/26/2025	82545 Romero, Monica	Associate	\$560.00	4.00	\$2,240.00 Revise motion for preliminary approval of settlement agreement (3.9); revise settlement notice to class (0.1)
2073945.70101	2/27/2025	82545 Romero, Monica	Associate	\$560.00	0.70	\$392.00 Revise settlement notice to class
2073945.70101	2/28/2025	82545 Romero, Monica	Associate	\$560.00	1.60	\$896.00 Revise declaration of J. Simpson in support of motion for preliminary approval of settlement agreement (1.1); revise V. Burdette declaration in support of settlement (0.2); email proposed class administrator (0.3)
2073945.70101	3/1/2025	76949 Peterson, Brian	Partner	\$650.00	0.40	\$260.00 Draft edits to declaration in support of motion to approve settlement
2073945.70101	3/2/2025	76949 Peterson, Brian	Partner	\$650.00	1.00	\$650.00 Draft and revise declaration in support of approval of WARN adversary proceeding
2073945.70101	3/2/2025	82545 Romero, Monica	Associate	\$560.00	0.60	\$336.00 Revise Burdette declaration in support of settlement agreement
2073945.70101	3/3/2025	76949 Peterson, Brian	Partner	\$650.00	3.00	\$1,950.00 Edit and revise pleadings in support of settlement of WARN Act adversary case
2073945.70101	3/3/2025	82545 Romero, Monica	Associate	\$560.00	1.20	\$672.00 Revise Burdette declaration in support of settlement
2073945.70101	3/6/2025	76949 Peterson, Brian	Partner	\$650.00	0.50	\$325.00 Revise and edit motion to approve settlement agreement

2073945.70101	3/7/2025	82545 Romero, Monica	Associate	\$560.00	1.10	\$616.00	Revise notice of class settlement
2073945.70101	3/13/2025	82545 Romero, Monica	Associate	\$560.00	0.20	\$112.00	Email Trustee regarding motion for preliminary approval and declaration redlines
2073945.70101	3/25/2025	76949 Peterson, Brian	Partner	\$650.00	0.70	\$455.00	Edit and revise Trustee's declaration in support of motion to approve settlement agreement (.2); review and revise proposed order granting preliminary approval of settlement agreement (.5)
2073945.70101	3/26/2025	76949 Peterson, Brian	Partner	\$650.00	1.20	\$780.00	Edit and revise proposed order on motion to approve settlement agreement
2073945.70101	3/27/2025	76949 Peterson, Brian	Partner	\$650.00	0.10	\$65.00	Draft email correspondence related to revisions to proposed order approving WARN settlement agreement on a preliminary basis
2073945.70101	3/27/2025	82545 Romero, Monica	Associate	\$560.00	0.50	\$280.00	Revise Burdette declaration in support of motion for preliminary approval (0.2); revise proposed order granting motion for preliminary approval (0.3)
2073945.70101	3/28/2025	76949 Peterson, Brian	Partner	\$650.00	0.40	\$260.00	Finalize edits to proposed order and declaration on motion to approve settlement approving WARN Act litigation
2073945.70101	4/3/2025	76949 Peterson, Brian	Partner	\$650.00	0.40	\$260.00	Finalize pleadings in support of motion to approve settlement agreement on preliminary basis
2073945.70101	4/3/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00	Draft notice of hearing on motion for preliminary approval of WARN Act settlement agreement
2073945.70101	4/4/2025	76949 Peterson, Brian	Partner	\$650.00	0.60	\$390.00	Draft and revise notice of hearing on motion for preliminary approval of settlement agreement
2073945.70101	4/4/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00	Revise notice of hearing on motion requesting preliminary approval of WARN Act adversary proceeding
2073945.70101	4/4/2025	82545 Romero, Monica	Associate	\$560.00	3.30	\$1,848.00	Compile class list in anticipation of preliminary approval of WARN Act adversary proceeding
2073945.70101	4/5/2025	76949 Peterson, Brian	Partner	\$650.00	0.20	\$130.00	Edit and revise notice of hearing for joint motion to approve settlement agreement on preliminary basis
2073945.70101	4/6/2025	76949 Peterson, Brian	Partner	\$650.00	0.10	\$65.00	Draft email correspondence regarding notice of hearing on motion for preliminary approval of settlement
2073945.70101	4/7/2025	82545 Romero, Monica	Associate	\$560.00	5.20	\$2,912.00	Draft class list
2073945.70101	4/8/2025	82545 Romero, Monica	Associate	\$560.00	3.40	\$1,904.00	Draft class list
2073945.70101	4/12/2025	76949 Peterson, Brian	Partner	\$650.00	0.30	\$195.00	Finalize proposed order and notice of hearing on joint motion for approval of settlement agreement
2073945.70101	4/15/2025	76949 Peterson, Brian	Partner	\$650.00	0.20	\$130.00	Draft email correspondence regarding finalizing preliminary approval motion documents
2073945.70101	4/15/2025	82545 Romero, Monica	Associate	\$560.00	2.30	\$1,288.00	Compile class list
2073945.70101	4/16/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.60	\$216.00	Attention to revisions to motion to approve settlement and related documents
2073945.70101	4/16/2025	82545 Romero, Monica	Associate	\$560.00	4.30	\$2,408.00	Compile class list
2073945.70101	4/17/2025	76949 Peterson, Brian	Partner	\$650.00	1.40	\$910.00	Draft pleadings in support of joint motion for preliminary approval of settlement agreement
2073945.70101	4/17/2025	82545 Romero, Monica	Associate	\$560.00	0.50	\$280.00	Revise class settlement filings
2073945.70101	4/18/2025	76949 Peterson, Brian	Partner	\$650.00	1.80	\$1,170.00	Edit and revise pleadings in support of joint motion for preliminary approval of settlement

2073945.70101	4/18/2025	78991 Lentz, Denise	Paralegal	\$360.00	1.10	\$396.00	Attention to finalizing and filing ex parte motion to enlarge page limit with USBC (.2); attention to finalizing motion to approve settlement and all related documents (.5); file motion to approve settlement and corresponding documents with USBC and send for service (.4)
2073945.70101	4/21/2025	76949 Peterson, Brian	Partner	\$650.00	0.50	\$325.00	Analyze impact of settlement on other creditor claims (.4) and discussion with client regarding the same (.1)
2073945.70101	4/25/2025	76949 Peterson, Brian	Partner	\$650.00	0.30	\$195.00	Draft email correspondence regarding estate exposure related to WARN Act litigation
				Total .70101	58.00	\$33,542.50	
Matter: Meetings and Communications with Creditors							
2073945.70110	12/4/2024	78991 Lentz, Denise	Paralegal	\$335.00	0.20	\$67.00	Return phone calls from creditors regarding fee applications
2073945.70110	3/14/2025	72445 Gearin, Michael	Partner	\$725.00	0.50	\$362.50	Calls with B. Burdette and A. Willig regarding updated claims distribution projections; related analysis
2073945.70110	4/25/2025	72445 Gearin, Michael	Partner	\$725.00	0.30	\$217.50	Communications with A. Willig regarding Costco information requests
				Total .70110	1.00	\$647.00	
Matter: Avoidance Action Analysis							
2073945.70160	11/1/2024	81713 Nagamine, Ruby	Associate	\$590.00	0.60	\$354.00	Call with Stapleton to discuss avoidance analysis spreadsheet and additional materials
2073945.70160	11/6/2024	82691 Meredith, Michael	Associate	\$580.00	5.90	\$3,422.00	Review all documents, claims, and invoices regarding preferential transfer claims; prepare chart and analysis regarding the same
2073945.70160	11/14/2024	81713 Nagamine, Ruby	Associate	\$590.00	0.70	\$413.00	Analyze spreadsheet of avoidance transfers
2073945.70160	12/6/2024	81713 Nagamine, Ruby	Associate	\$590.00	0.20	\$118.00	Analyze status of avoidance analysis and deadlines
2073945.70160	12/9/2024	81713 Nagamine, Ruby	Associate	\$590.00	0.20	\$118.00	Exchange emails regarding avoidance analysis status
2073945.70160	12/18/2024	76949 Peterson, Brian	Partner	\$605.00	0.10	\$60.50	Draft email correspondence to M. Meredith regarding preference action analysis
2073945.70160	12/20/2024	82691 Meredith, Michael	Associate	\$580.00	0.30	\$174.00	Prepare revised avoidance action analysis (0.2); prepare correspondence regarding the same (0.1)
2073945.70160	12/27/2024	76949 Peterson, Brian	Partner	\$605.00	0.50	\$302.50	Analyze whether potential preference targets have defenses
2073945.70160	12/30/2024	81713 Nagamine, Ruby	Associate	\$590.00	0.10	\$59.00	Exchange emails regarding avoidance action analysis
2073945.70160	1/13/2025	82691 Meredith, Michael	Associate	\$625.00	0.90	\$562.50	Draft demand letters; research in support of same
2073945.70160	1/14/2025	72445 Gearin, Michael	Partner	\$725.00	0.50	\$362.50	Communications regarding avoidance action demand letters
2073945.70160	1/14/2025	82691 Meredith, Michael	Associate	\$625.00	4.10	\$2,562.50	Draft and revise demand letters; research in support of same
2073945.70160	1/16/2025	76949 Peterson, Brian	Partner	\$650.00	0.40	\$260.00	Edit and revise preference demand letter (.3); draft correspondence related to preference claims (.1)
2073945.70160	1/16/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50	Prepare correspondence to client regarding amended complaint
2073945.70160	1/16/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50	Prepare correspondence to B. Peterson regarding demand letters
2073945.70160	1/16/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50	Prepare correspondence regarding proposed demand letters

2073945.70160	1/16/2025	82691 Meredith, Michael	Associate	\$625.00	0.90	\$562.50 Revise demand letters; prepare correspondence regarding the same
2073945.70160	1/16/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to B. Peterson regarding demand letters
2073945.70160	1/17/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to B. Peterson regarding demand letters
2073945.70160	1/21/2025	76949 Peterson, Brian	Partner	\$650.00	0.30	\$195.00 Draft email correspondence regarding preference action demands
2073945.70160	1/21/2025	76949 Peterson, Brian	Partner	\$650.00	0.10	\$65.00 Draft email correspondence regarding preference action litigation
2073945.70160	1/21/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to B. Peterson regarding demand letters
2073945.70160	1/22/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to V. Burdette regarding demand letters
2073945.70160	1/22/2025	82691 Meredith, Michael	Associate	\$625.00	3.90	\$2,437.50 Prepare and manage demand letters to avoidance action targets
2073945.70160	1/22/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to M. Gearin regarding demand letters
2073945.70160	1/22/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to B. Peterson regarding demand letters
2073945.70160	1/23/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to AAEFS regarding demand letter
2073945.70160	1/23/2025	82691 Meredith, Michael	Associate	\$625.00	0.50	\$312.50 Prepare correspondence regarding demand letters.
2073945.70160	1/23/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to B. Peterson regarding response to demand letters
2073945.70160	1/23/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to iQMetrix regarding demand letter
2073945.70160	1/23/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to Brightpoint regarding demand letter
2073945.70160	1/24/2025	76949 Peterson, Brian	Partner	\$650.00	0.20	\$130.00 Review response from avoidance action defendant on preference demand (.1); draft email communication to client regarding response from preference demand recipient (.1)
2073945.70160	1/24/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence regarding Avalara response to demand letter
2073945.70160	1/24/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review correspondence from counsel for Avalara in response to demand letter
2073945.70160	1/24/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review response to demand letter from AAFES
2073945.70160	1/27/2025	76949 Peterson, Brian	Partner	\$650.00	0.20	\$130.00 Review correspondence from avoidance action target
2073945.70160	1/27/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review correspondence regarding demand letter and update tracking regarding the same
2073945.70160	1/27/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review correspondence regarding demand letter and update tracking regarding the same
2073945.70160	1/27/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review correspondence regarding demand letter and update tracking regarding the same
2073945.70160	1/27/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review correspondence regarding demand letter and update tracking regarding the same
2073945.70160	1/27/2025	82691 Meredith, Michael	Associate	\$625.00	0.20	\$125.00 Review correspondence regarding demand letter and update tracking regarding the same
2073945.70160	1/28/2025	76949 Peterson, Brian	Partner	\$650.00	0.40	\$260.00 Review avoidance action demand correspondence

2073945.70160	1/28/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review and prepare correspondence regarding response to demand letters
2073945.70160	1/28/2025	82691 Meredith, Michael	Associate	\$625.00	0.20	\$125.00 Review response to demand letter from QBSI-Xerox (.1); prepare correspondence regarding the same (.1)
2073945.70160	1/28/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review and prepare correspondence regarding response to demand letters
2073945.70160	1/28/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review and prepare correspondence regarding response to demand letters
2073945.70160	1/28/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to B. Peterson regarding response to demand letter from Smith Bunday Berman Britton, P.S.
2073945.70160	1/29/2025	72255 Noreus, Robertson	e-DAT Sr Atty	\$455.00	1.00	\$455.00 Analyze client material to identify relevant Xerox/QBSI documents for attorney review and analysis
2073945.70160	1/29/2025	76949 Peterson, Brian	Partner	\$650.00	0.40	\$260.00 Draft email correspondence regarding investigation of avoidance action claims
2073945.70160	1/29/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review correspondence regarding delivery of demand letters
2073945.70160	1/29/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review correspondence regarding delivery of demand letters
2073945.70160	1/29/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review correspondence regarding delivery of demand letters
2073945.70160	1/30/2025	72255 Noreus, Robertson	e-DAT Sr Atty	\$455.00	1.50	\$682.50 Analyze client material to identify relevant Xerox/QBSI documents for attorney review and analysis
2073945.70160	1/30/2025	76949 Peterson, Brian	Partner	\$650.00	0.80	\$520.00 Draft detailed summary of avoidance action claim for client
2073945.70160	1/30/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review correspondence regarding response to demand letters
2073945.70160	1/30/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to iQmetrix regarding demand letter
2073945.70160	1/30/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to B. Peterson regarding pending iQmetrix demand letter
2073945.70160	1/31/2025	72255 Noreus, Robertson	e-DAT Sr Atty	\$455.00	0.50	\$227.50 Analyze client material to identify relevant Xerox/QBSI documents for attorney review and analysis
2073945.70160	1/31/2025	72445 Gearin, Michael	Partner	\$725.00	0.50	\$362.50 Communications with B. Peterson and M. Meredith regarding avoidance action issues (.2); review Smith Bunday correspondence (.3)
2073945.70160	1/31/2025	76949 Peterson, Brian	Partner	\$650.00	0.70	\$455.00 Analyze status and merits of avoidance action claims
2073945.70160	2/1/2025	76949 Peterson, Brian	Partner	\$650.00	2.80	\$1,820.00 Draft preference action complaint template for use in avoidance action cases
2073945.70160	2/3/2025	76949 Peterson, Brian	Partner	\$650.00	0.70	\$455.00 Review relevant document related to Xerox preference action claim
2073945.70160	2/3/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence regarding request for additional information following issuance of demand letter
2073945.70160	2/3/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence regarding request for additional information following issuance of demand letter
2073945.70160	2/3/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence regarding request for additional information following issuance of demand letter
2073945.70160	2/3/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review and draft correspondence regarding response to demand letter
2073945.70160	2/4/2025	72445 Gearin, Michael	Partner	\$725.00	0.10	\$72.50 Discuss preference prosecution and claims with B. Peterson
2073945.70160	2/4/2025	76949 Peterson, Brian	Partner	\$650.00	0.10	\$65.00 Discuss avoidance action protocols with M. Gearin
2073945.70160	2/5/2025	76949 Peterson, Brian	Partner	\$650.00	0.30	\$195.00 Analysis of issues related to avoidance action cases

2073945.70160	2/6/2025	72445 Gearin, Michael	Partner	\$725.00	0.60	\$435.00	Meet with B. Peterson and M. Meredith regarding avoidance action process and case issues
2073945.70160	2/6/2025	76949 Peterson, Brian	Partner	\$650.00	0.60	\$390.00	Meeting with M. Meredith and M. Gearin regarding preference claim status and strategy
2073945.70160	2/6/2025	82691 Meredith, Michael	Associate	\$625.00	1.00	\$625.00	Review correspondence from AAFES (.4); confer with litigation team regarding the same (.6)
2073945.70160	2/7/2025	76949 Peterson, Brian	Partner	\$650.00	1.10	\$715.00	Draft template preference action complaint against Xerox Corporation
2073945.70160	2/8/2025	76949 Peterson, Brian	Partner	\$650.00	0.10	\$65.00	Draft correspondence related to preference action demand letter
2073945.70160	2/11/2025	76949 Peterson, Brian	Partner	\$650.00	0.20	\$130.00	Review email correspondence related to preference action complaints
2073945.70160	2/11/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50	Prepare correspondence to B. Peterson regarding response to demand letter received from Brightpoint North America
2073945.70160	2/12/2025	76949 Peterson, Brian	Partner	\$650.00	1.60	\$1,040.00	Draft preference action complaints against avoidance action targets (1.3); draft email correspondence regarding the same (.3)
2073945.70160	2/12/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50	Review records and prepare correspondence to B. Peterson regarding demand letter issued to Brightpoint North America and proposed next steps regarding the same
2073945.70160	2/12/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50	Review records and prepare correspondence to B. Peterson regarding demand letter issued to Littler and proposed next steps regarding the same
2073945.70160	2/12/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50	Review records and prepare correspondence to T. Cobb regarding demand letter issued to Brightpoint North America and proposed next steps regarding the same
2073945.70160	2/12/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50	Prepare correspondence to B. Peterson regarding demand letter issued to Littler and proposed next steps regarding the same
2073945.70160	2/12/2025	82691 Meredith, Michael	Associate	\$625.00	0.40	\$250.00	Review records and prepare correspondence to B. Peterson regarding demand letter issued to Ingram Micro, Inc. and proposed next steps regarding the same
2073945.70160	2/12/2025	82691 Meredith, Michael	Associate	\$625.00	0.70	\$437.50	Update status tracking chart for avoidance action cases (.4) and prepare correspondence to client regarding the same (.3)
2073945.70160	2/14/2025	76949 Peterson, Brian	Partner	\$650.00	0.30	\$195.00	Draft email correspondence regarding preference action analysis
2073945.70160	2/14/2025	82691 Meredith, Michael	Associate	\$625.00	0.20	\$125.00	Confer regarding demand letter issued to Brightpoint North America
2073945.70160	2/14/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50	Prepare correspondence regarding demand letter issued to Brightpoint North America
2073945.70160	2/14/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50	Prepare correspondence regarding demand letter issued to Marsh
2073945.70160	2/14/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50	Review and prepare correspondence relating to iQMetrix avoidance action
2073945.70160	2/15/2025	76949 Peterson, Brian	Partner	\$650.00	0.40	\$260.00	Review documents related to preference action analysis
2073945.70160	2/15/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50	Prepare correspondence regarding iQmetrix's response to previously-issued demand letter

2073945.70160	2/15/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence regarding iQmetrix's response to previously-issued demand letter
2073945.70160	2/16/2025	76949 Peterson, Brian	Partner	\$650.00	0.70	\$455.00 Review documents related to potential avoidance action claim against insurance company
2073945.70160	2/16/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence regarding response to demand letter issued to iQmetrix
2073945.70160	2/17/2025	76949 Peterson, Brian	Partner	\$650.00	0.60	\$390.00 Review documents related to potential avoidance action claims
2073945.70160	2/17/2025	82691 Meredith, Michael	Associate	\$625.00	0.50	\$312.50 Prepare for and attend settlement conference with opposing counsel
2073945.70160	2/19/2025	82691 Meredith, Michael	Associate	\$625.00	1.10	\$687.50 Draft complaints enforcing demand letters
2073945.70160	2/20/2025	76949 Peterson, Brian	Partner	\$650.00	5.30	\$3,445.00 Draft avoidance action complaints
2073945.70160	2/20/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review and prepare correspondence regarding Enterprise's response to demand letter
2073945.70160	2/20/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Telephone conference with target of demand letter
2073945.70160	2/20/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review and prepare correspondence regarding response to demand letter to Squire Patton Boggs
2073945.70160	2/20/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Telephone conference with target of demand letter
2073945.70160	2/21/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence regarding all outstanding demand letters and response
2073945.70160	2/21/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Telephone conference with target of demand letter
2073945.70160	2/21/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review correspondence from iQmetrix regarding demand letter
2073945.70160	2/21/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Telephone conference with target of demand letter
2073945.70160	2/21/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review correspondence from Karr Tuttle Campbell regarding demand letter and prepare correspondence regarding the same
2073945.70160	2/22/2025	76949 Peterson, Brian	Partner	\$650.00	0.70	\$455.00 Draft and revise avoidance action complaints
2073945.70160	2/22/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review correspondence from Brightpoint NA regarding demand letter; update tracking chart and prepare correspondence regarding the same
2073945.70160	2/22/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review correspondence from Marsh regarding demand letter; update tracking chart and prepare correspondence regarding the same
2073945.70160	2/22/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review correspondence from Littler regarding demand letter; update tracking chart and prepare correspondence regarding the same
2073945.70160	2/22/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review correspondence from Karr Tuttle Campbell regarding demand letter; update tracking chart and prepare correspondence regarding the same
2073945.70160	2/22/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review correspondence from iQmetrix regarding demand letter; update tracking chart and prepare correspondence regarding the same
2073945.70160	2/22/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review correspondence from Enterprise regarding demand letter; update tracking chart and prepare correspondence regarding the same

2073945.70160	2/22/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review correspondence from AAEFS regarding demand letter and prepare correspondence regarding the same
2073945.70160	2/22/2025	82691 Meredith, Michael	Associate	\$625.00	0.60	\$375.00 Prepare correspondence regarding all outstanding demand letter correspondence in advance of filing avoidance actions
2073945.70160	2/22/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review correspondence from Xerox regarding demand letter
2073945.70160	2/24/2025	76949 Peterson, Brian	Partner	\$650.00	2.90	\$1,885.00 Analyze issues related to avoidance action complaints
2073945.70160	2/24/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Finalize and file complaint to avoid and recover preferential transfers for Office Depot
2073945.70160	2/24/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Finalize and file complaint to avoid and recover preferential transfers for RR Donnelly
2073945.70160	2/24/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Finalize and file complaint to avoid and recover preferential transfers for QBSI, A Xerox Corporation
2073945.70160	2/24/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Finalize and file complaint to avoid and recover preferential transfers for Enterprise Rent A Car
2073945.70160	2/24/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Finalize and file complaint to avoid and recover preferential transfers for Legacy Support Services
2073945.70160	2/24/2025	82691 Meredith, Michael	Associate	\$625.00	0.40	\$250.00 Revise complaint against Xerox in advance of filing
2073945.70160	2/24/2025	82691 Meredith, Michael	Associate	\$625.00	0.90	\$562.50 Proof and revise complaint against QBSI-Xerox
2073945.70160	2/24/2025	82691 Meredith, Michael	Associate	\$625.00	0.30	\$187.50 Prepare correspondence regarding status of all avoidance actions
2073945.70160	2/24/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence regarding iQmetrix demand letter
2073945.70160	2/24/2025	82691 Meredith, Michael	Associate	\$625.00	0.20	\$125.00 Prepare revisions to complaint against Legacy Support Services in advance of filing of the same
2073945.70160	2/24/2025	82691 Meredith, Michael	Associate	\$625.00	0.30	\$187.50 Revise complaint against Threshold Communications in advance of filing
2073945.70160	2/24/2025	82691 Meredith, Michael	Associate	\$625.00	0.30	\$187.50 Revise complaint against Smith Bunday in advance of filing
2073945.70160	2/24/2025	82691 Meredith, Michael	Associate	\$625.00	0.30	\$187.50 Revise complaint against RR Donnelley & Sons in advance of filing
2073945.70160	2/25/2025	72445 Gearin, Michael	Partner	\$725.00	0.70	\$507.50 Consult with B. Peterson regarding analysis of avoidance action issues in connection with draft complaints
2073945.70160	2/25/2025	76949 Peterson, Brian	Partner	\$650.00	2.30	\$1,495.00 Draft and finalize avoidance action complaints
2073945.70160	2/25/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Finalize and file complaint to avoid and recover preferential transfers for Smith Bunday Berman Britton
2073945.70160	2/25/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Finalize and file complaint to avoid and recover preferential transfers for Littler Mendelson
2073945.70160	2/25/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Finalize and file complaint to avoid and recover preferential transfers for JML Law
2073945.70160	2/25/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Finalize and file complaint to avoid and recover preferential transfers for IQMetrix USA
2073945.70160	2/25/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Finalize and file complaint to avoid and recover preferential transfers for Brightpoint North America
2073945.70160	2/25/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Finalize and file complaint to avoid and recover preferential transfers for Army & Air Force Exchange Service
2073945.70160	2/25/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Finalize and file complaint to avoid and recover preferential transfers for Apple, Inc.
2073945.70160	2/25/2025	82691 Meredith, Michael	Associate	\$625.00	0.20	\$125.00 Review and revise complaints for Threshold and Marsh (.1); prepare correspondence regarding the same (.1)

2073945.70160	2/25/2025	82691 Meredith, Michael	Associate	\$625.00	0.40	\$250.00 Review and revise complaint against JML Law in advance of deadline for filing the same
2073945.70160	2/25/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence regarding status of revisions to Littler Mendelson complaint in advance of deadline for the same
2073945.70160	2/25/2025	82691 Meredith, Michael	Associate	\$625.00	0.30	\$187.50 Review and revise complaint against iQmetrix in advance of deadline for filing the same (.2); prepare correspondence regarding the same (.1)
2073945.70160	2/25/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Revise complaint against Apple Inc. in advance of deadline for filing the same
2073945.70160	2/25/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence regarding status of revisions to Brightpoint complaint in advance of deadline for the same
2073945.70160	2/25/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence regarding status of all complaints prepared in advance of deadline for filing of the same
2073945.70160	2/25/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to AAFES regarding potential settlement of avoidance action claims
2073945.70160	2/25/2025	82691 Meredith, Michael	Associate	\$625.00	0.30	\$187.50 Review and revise complaint against Brightpoint in advance of deadline for filing the same
2073945.70160	2/25/2025	82691 Meredith, Michael	Associate	\$625.00	0.30	\$187.50 Review and revise complaint against Littler Mendelson in advance of deadline for filing the same
2073945.70160	2/25/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to Enterprise regarding settlement of preference claims
2073945.70160	2/25/2025	82691 Meredith, Michael	Associate	\$625.00	0.30	\$187.50 Review and revise complaint against AAFES in advance of deadline for filing the same (.2); prepare correspondence regarding the same (.1)
2073945.70160	2/25/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to Xerox regarding potential settlement of preference claims
2073945.70160	2/25/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to SBBB regarding potential settlement of preference claims
2073945.70160	2/25/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to Littler Mendelson regarding potential settlement of avoidance action claims
2073945.70160	2/25/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to Brightpoint North America regarding potential settlement of preference claims
2073945.70160	2/25/2025	82691 Meredith, Michael	Associate	\$625.00	0.40	\$250.00 Review and revise complaint against AAFES in advance of deadline for filing the same (.3); prepare correspondence regarding the same (.1)
2073945.70160	2/25/2025	82691 Meredith, Michael	Associate	\$625.00	0.50	\$312.50 Review and revise complaint against Apple Inc. in advance of deadline for filing the same
2073945.70160	2/26/2025	72445 Gearin, Michael	Partner	\$725.00	0.80	\$580.00 Consult with B. Peterson regarding multiple avoidance action issues
2073945.70160	2/26/2025	76949 Peterson, Brian	Partner	\$650.00	2.90	\$1,885.00 Draft and finalize avoidance action complaints (2.0); analyze issues related to Threshold Communications Inc. fraudulent transfer claim (.5); review bank records related to Brightpoint avoidance action claim (.4)
2073945.70160	2/26/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Finalize and file complaint to avoid and recover preferential transfers for Threshold Communications

2073945.70160	2/26/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.50	\$180.00	Attention to review of issuance of summons for adversary cases (.4); attention to research of registered agents for preference action defendants (.1)
2073945.70160	2/26/2025	82691 Meredith, Michael	Associate	\$625.00	0.30	\$187.50	Revise complaint against Threshold Communications in advance of filing (.2); prepare correspondence regarding the same (.1)
2073945.70160	2/26/2025	84555 Sundin, Ashley	Librarian	\$350.00	1.90	\$665.00	Research locating registered agents and contact information for list of avoidance action defendants for D. Lentz
2073945.70160	2/27/2025	76949 Peterson, Brian	Partner	\$650.00	0.90	\$585.00	Analyze documentation provided by counsel for Threshold Communications Inc. (.3) and draft email correspondence regarding the same (.2); draft email correspondence to counsel for iQmetrix (.1); review settlement correspondence from counsel for Littler Mendelson (.3)
2073945.70160	2/27/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00	Preparation of summons and complaint for service regarding Apple, Inc.
2073945.70160	2/27/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00	Preparation of summons and complaint for service regarding Smith Bunday Berman Britton
2073945.70160	2/27/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00	Preparation of summons and complaint for service regarding RR Donnelley & Sons
2073945.70160	2/27/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00	Preparation of summons and complaint for service regarding QBSI
2073945.70160	2/27/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00	Preparation of summons and complaint for service regarding Office Depot
2073945.70160	2/27/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00	Preparation of summons and complaint for service regarding Littler Mendelson
2073945.70160	2/27/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00	Preparation of summons and complaint for service regarding JML Law
2073945.70160	2/27/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00	Preparation of summons and complaint for service regarding IQMetrix USA Inc.
2073945.70160	2/27/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00	Preparation of summons and complaint for service regarding Enterprise Rent A Car
2073945.70160	2/27/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00	Preparation of summons and complaint for service regarding Brightpoint North America
2073945.70160	2/27/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00	Preparation of summons and complaint for service regarding Threshold Communications
2073945.70160	2/27/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50	Assist in service of complaint and research and prepare correspondence regarding the same
2073945.70160	2/27/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50	Assist in service of complaint and research and prepare correspondence regarding the same
2073945.70160	2/27/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50	Assist in service of complaint and research and prepare correspondence regarding the same
2073945.70160	2/27/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50	Assist in service of complaint and research and prepare correspondence regarding the same
2073945.70160	2/27/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50	Prepare correspondence regarding Littler Mendelson settlement offer and response to demand letter
2073945.70160	2/28/2025	76949 Peterson, Brian	Partner	\$650.00	0.40	\$260.00	Analyze issues related to service of avoidance action complaints

2073945.70160	2/28/2025	78991 Lentz, Denise	Paralegal	\$360.00	1.20	\$432.00	Attention to service of summons and complaints for 11 adversary proceedings (1.0); address issues with service of Army & Navy Exchange and Legacy Support Services (.2)
2073945.70160	2/28/2025	82691 Meredith, Michael	Associate	\$625.00	0.60	\$375.00	Assist in service of complaints (.4); prepare correspondence regarding the same (.2)
2073945.70160	2/28/2025	84555 Sundin, Ashley	Librarian	\$350.00	0.10	\$35.00	Follow up research locating registered agents and contact information for list of preference action defendants for D. Lentz
2073945.70160	3/1/2025	76949 Peterson, Brian	Partner	\$650.00	0.40	\$260.00	Draft and revise statements regarding consent to jurisdiction in multiple avoidance action cases
2073945.70160	3/2/2025	76949 Peterson, Brian	Partner	\$650.00	0.70	\$455.00	Analyze correspondence from Smith Bunday (.4) and draft email correspondence to client regarding strategy with respect to claims (.3)
2073945.70160	3/3/2025	76949 Peterson, Brian	Partner	\$650.00	1.40	\$910.00	Analysis of issues related to service of multiple preference action complaints
2073945.70160	3/3/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.40	\$144.00	Draft acceptance of service for Smith Bunday complaint and summons
2073945.70160	3/3/2025	78991 Lentz, Denise	Paralegal	\$360.00	1.90	\$684.00	Attention to tracking and updating status of all preference action adversary proceedings
2073945.70160	3/3/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.90	\$324.00	Draft stipulation to continue answer deadline and order regarding same
2073945.70160	3/4/2025	76949 Peterson, Brian	Partner	\$650.00	0.60	\$390.00	Edit and revise stipulation and order extending answer deadline for complaint against Littler (.4); review and edit acceptance of service document for Smith Bunday adversary proceeding (.2)
2073945.70160	3/4/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.10	\$36.00	Attention to service issues for summons and complaint for JML Law summons and complaint
2073945.70160	3/4/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00	Make edits to acceptance of service for Smith Bunday Berman preference complaint
2073945.70160	3/4/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.10	\$36.00	Attention to service issues for summons and complaint for Legacy Support Services summons and complaint
2073945.70160	3/4/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00	Attention to service issues for summons and complaint for Air Force and Army Exchange
2073945.70160	3/5/2025	76949 Peterson, Brian	Partner	\$650.00	0.40	\$260.00	Draft email correspondence to opposing counsel for Army Air Force Exchange
2073945.70160	3/5/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00	Attention to service issues regarding avoidance action complaint
2073945.70160	3/5/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.40	\$144.00	Draft acceptance of service for Car Toys summons and complaint
2073945.70160	3/6/2025	76949 Peterson, Brian	Partner	\$650.00	0.10	\$65.00	Edit stipulation extending answer deadline for Littler Mendelson in preference action
2073945.70160	3/6/2025	76949 Peterson, Brian	Partner	\$650.00	0.10	\$65.00	Review email regarding ordinary course defense from counsel for Army Air Force Exchange Service
2073945.70160	3/6/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.10	\$36.00	File acceptance of service regarding Smith Bunday Berman with Bankruptcy Court
2073945.70160	3/6/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00	Attention to Littler Mendelson stipulation to extend response date and corresponding order

2073945.70160	3/7/2025	76949 Peterson, Brian	Partner	\$650.00	0.30	\$195.00 Review ordinary course analysis provided by preference defendant Army Air Force Exchange Service
2073945.70160	3/7/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00 File Smith Bunday Berman Britton Stipulation to Extend Answer Deadline with Bankruptcy Court
2073945.70160	3/10/2025	76949 Peterson, Brian	Partner	\$650.00	0.60	\$390.00 Analyze claim against Army & Air Force Exchange Service and draft email to Trustee regarding ordinary course defense
2073945.70160	3/10/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Attention to preference analysis for Army & Air Force Exchange
2073945.70160	3/11/2025	76949 Peterson, Brian	Partner	\$650.00	0.40	\$260.00 Review and revise statements regarding consent to adjudication for preference adversary complaints
2073945.70160	3/11/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00 Draft notice of final adjudication for RR Donnelley & Sons preference action
2073945.70160	3/11/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00 Draft notice of final adjudication for Legacy Support Services preference action
2073945.70160	3/11/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00 Draft notice of final adjudication for JML Law preference action
2073945.70160	3/11/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Prepare process service declaration of service for filing with Bankruptcy Court (.1); draft notice of final adjudication for Threshold Communications preference action (.2)
2073945.70160	3/11/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00 Draft notice of final adjudication for Littler Mendelson preference action
2073945.70160	3/11/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00 Draft notice of final adjudication for Enterprise Rent A Car preference action
2073945.70160	3/11/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Prepare declaration of service (.1); draft notice of final adjudication for QBSI preference action (.2)
2073945.70160	3/11/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Prepare declaration of service (.1); draft notice of final adjudication for Office Depot preference action (.2)
2073945.70160	3/11/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Prepare process service declaration of service for filing (.1); draft notice of final adjudication for Brightpoint North America preference action (.2)
2073945.70160	3/11/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Prepare declaration of service (.1); draft notice of final adjudication for iQMetrix preference action (.2)
2073945.70160	3/11/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00 Draft notice of final adjudication for Army & Air Force Exchange preference action
2073945.70160	3/12/2025	76949 Peterson, Brian	Partner	\$650.00	0.20	\$130.00 Draft correspondence regarding dismissal of adversary proceeding against Army & Air Force Exchange Service
2073945.70160	3/13/2025	76949 Peterson, Brian	Partner	\$650.00	0.60	\$390.00 Analyze claims against JML Group (.3); phone conversation with counsel for JM Law Group (.3)
2073945.70160	3/13/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.10	\$36.00 File notice regarding final adjudication and consent for Office Depot preference action
2073945.70160	3/13/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.10	\$36.00 File notice regarding final adjudication and consent for JML Law preference action
2073945.70160	3/13/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.10	\$36.00 File notice regarding final adjudication and consent for iQmetrix USA preference action
2073945.70160	3/13/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.10	\$36.00 File notice regarding final adjudication and consent for Enterprise Rent a Car preference action

2073945.70160	3/13/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.10	\$36.00 File notice regarding final adjudication and consent for Littler Mendelson preference action
2073945.70160	3/13/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.10	\$36.00 File notice regarding final adjudication and consent for Legacy Support Services preference action
2073945.70160	3/13/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.10	\$36.00 File notice regarding final adjudication and consent for Threshold Communications preference action
2073945.70160	3/13/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.10	\$36.00 File notice regarding final adjudication and consent for Apple, Inc. preference action
2073945.70160	3/13/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.10	\$36.00 File notice regarding final adjudication and consent for Smith Bunday Berman Britton preference action
2073945.70160	3/13/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.10	\$36.00 File notice regarding final adjudication and consent for RR Donnelley & Sons preference action
2073945.70160	3/13/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.10	\$36.00 File notice regarding final adjudication and consent for Brightpoint North America preference action
2073945.70160	3/13/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.10	\$36.00 File notice regarding final adjudication and consent for QBSI preference action
2073945.70160	3/14/2025	76949 Peterson, Brian	Partner	\$650.00	0.10	\$65.00 Draft email correspondence regarding preference actions
2073945.70160	3/14/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.50	\$180.00 Draft notice of voluntary dismissal of Army & Air Force Exchange complaint (.4); file notice of dismissal with Bankruptcy Court (.1)
2073945.70160	3/15/2025	76949 Peterson, Brian	Partner	\$650.00	0.20	\$130.00 Review email correspondence related to preference actions
2073945.70160	3/18/2025	76949 Peterson, Brian	Partner	\$650.00	0.10	\$65.00 Draft email correspondence regarding stipulation continuing answering deadline
2073945.70160	3/18/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Draft stipulation to extend answer deadline and proposed order for Threshold Communications adversary proceeding
2073945.70160	3/18/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Draft stipulation to extend answer deadline and proposed order for iQMetrix preference action
2073945.70160	3/18/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review correspondence from iQmetrix regarding upcoming filing deadlines, extensions, and new value calculations
2073945.70160	3/19/2025	76949 Peterson, Brian	Partner	\$650.00	0.90	\$585.00 Analyze new value defense of iQmetrix (.7) and draft email response to opposing counsel regarding the same (.2)
2073945.70160	3/19/2025	82691 Meredith, Michael	Associate	\$625.00	0.20	\$125.00 Review and prepare correspondence regarding new value analysis
2073945.70160	3/20/2025	76949 Peterson, Brian	Partner	\$650.00	0.20	\$130.00 Draft email correspondence regarding outstanding avoidance actions
2073945.70160	3/20/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Draft stipulation to extend answer deadline and proposed order for Enterprise Rent a Car preference action
2073945.70160	3/21/2025	76949 Peterson, Brian	Partner	\$650.00	0.10	\$65.00 Draft email correspondence to client regarding dismissal of JML preference action
2073945.70160	3/21/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.10	\$36.00 Attention to status of Burdette vs. Car Toys matter
2073945.70160	3/22/2025	76949 Peterson, Brian	Partner	\$650.00	0.10	\$65.00 Draft email correspondence regarding dismissal of JML preference action
2073945.70160	3/24/2025	76949 Peterson, Brian	Partner	\$650.00	0.70	\$455.00 Phone call with counsel for Apple regarding preference action (.2); draft email correspondence regarding outstanding avoidance actions (.5)
2073945.70160	3/24/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Review case status and issues related to service for Littler Mendelson preference action

2073945.70160	3/24/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Threshold Communications, Inc. review and update case regarding status of service of summons and complaint
2073945.70160	3/24/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Review and update case regarding status of service of summons and complaint in preference action
2073945.70160	3/24/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.50	\$180.00 Prepare proof of service for summons and complaint for QBSI preference action
2073945.70160	3/24/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.50	\$180.00 Review status of service of summons and complaint (.3) and review of email regarding stipulation to extend answer deadline for iQmetrix adversary proceeding (.2)
2073945.70160	3/24/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Brightpoint North America L.P. review and update case regarding status of service of summons and complaint
2073945.70160	3/24/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.80	\$288.00 Draft Stipulation to Extend Time to Respond to Complaint and Proposed Order regarding same for Office Depot (.3) and prepare proof of service for summons and complaint (.5)
2073945.70160	3/24/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00 Review email correspondence regarding voluntary dismissal of case against JML Law
2073945.70160	3/24/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00 Review status of service of summons and complaint in preference action
2073945.70160	3/24/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Apple, Inc. review and update case regarding status of service of summons and complaint
2073945.70160	3/24/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review correspondence from Apple, Inc. regarding extension for answer deadline
2073945.70160	3/25/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.50	\$180.00 Finalize stipulation and order to extend time to answer for Enterprise Rent A Car (.3) and file stipulation and order with Bankruptcy Court (.2)
2073945.70160	3/25/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence regarding stipulated extension of answer deadline
2073945.70160	3/26/2025	76949 Peterson, Brian	Partner	\$650.00	0.20	\$130.00 Draft correspondence regarding dismissal of JML preference action (.1); draft correspondence regarding continuance of answer deadlines (.1)
2073945.70160	3/26/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.40	\$144.00 Finalize and file stipulation to extend deadline and proposed order for Threshold Communications (.2) and file stipulation with Bankruptcy Court and upload order (.2)
2073945.70160	3/26/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.40	\$144.00 Draft voluntary dismissal of complaint against JML Law (.3) and file same with the Bankruptcy Court (.1)
2073945.70160	3/26/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence regarding request for extension of answer deadline
2073945.70160	3/27/2025	76949 Peterson, Brian	Partner	\$650.00	0.70	\$455.00 Analyze settlement communication from counsel for Littler Mendelson
2073945.70160	3/27/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence regarding complaint answer deadline for avoidance action defendant in Brightpoint adversary proceeding
2073945.70160	3/27/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence regarding stipulated extension of answer deadline
2073945.70160	3/27/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to opposing counsel regarding stipulated extension of answer deadline

2073945.70160	3/28/2025	76949 Peterson, Brian	Partner	\$650.00	0.10	\$65.00 Draft email correspondence regarding preference actions
2073945.70160	3/28/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.50	\$180.00 Draft proof of service for Threshold Communications preference action (.3) and finalize and file proof of service (.2)
2073945.70160	3/28/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00 Finalize and file proof of service for Office Depot preference action
2073945.70160	3/28/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00 Finalize and file proof of service in Legacy Support Services preference action
2073945.70160	3/28/2025	82691 Meredith, Michael	Associate	\$625.00	0.20	\$125.00 Prepare revisions to stipulation (.1); correspondence with opposing counsel regarding the same (.1)
2073945.70160	3/31/2025	76949 Peterson, Brian	Partner	\$650.00	0.30	\$195.00 Discuss service issues with respect to preference actions with D. Lentz
2073945.70160	3/31/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00 Telephone call with B. Peterson regarding service issues related to preference actions
2073945.70160	3/31/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Draft proof of service for Brightpoint North America preference action (.2) and file proof of service with Bankruptcy Court (.1)
2073945.70160	3/31/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Draft proof of service for Apple, Inc. preference action (.2) and file proof of service with Bankruptcy Court (.1)
2073945.70160	3/31/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.10	\$36.00 Review of Threshold Communications order granting stipulation to extend answer deadline and update records
2073945.70160	3/31/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Draft proof of service for Littler Mendelson preference action (.2) and file proof of service with USBC (.1)
2073945.70160	3/31/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Draft proof of service for RR Donnelley & Sons preference action (.2) and file proof of service with USBC (.1)
2073945.70160	3/31/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.40	\$144.00 Draft proof of service for iQMetrix preference action (.2); file proof of service with Bankruptcy Court (.1) and file stipulation to extend time to answer with Bankruptcy Court (.1)
2073945.70160	4/1/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00 Attention to case management issues regarding multiple preference actions
2073945.70160	4/2/2025	76949 Peterson, Brian	Partner	\$650.00	0.10	\$65.00 Review correspondence from preference action defendant
2073945.70160	4/2/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Review correspondence with Legacy Support Services and prepare correspondence regarding the same
2073945.70160	4/3/2025	76949 Peterson, Brian	Partner	\$650.00	0.40	\$260.00 Communication with Legacy Support Services regarding potential settlement
2073945.70160	4/3/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.60	\$216.00 Draft stipulation to extend answer deadline for QBSI preference action (.4) and draft proposed order (.2)
2073945.70160	4/4/2025	76949 Peterson, Brian	Partner	\$650.00	0.30	\$195.00 Draft email correspondence regarding settlement offer made by Legacy Support
2073945.70160	4/4/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Analyze background information related to defense asserted by Legacy Support Services to preference claim
2073945.70160	4/4/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence regarding new value and demand letter related to Legacy Support Services
2073945.70160	4/5/2025	76949 Peterson, Brian	Partner	\$650.00	0.30	\$195.00 Draft email correspondence to counsel for QBSI regarding extension of answer deadline and acceptance of service

2073945.70160	4/6/2025	76949 Peterson, Brian	Partner	\$650.00	0.30	\$195.00 Review and draft email correspondence regarding stipulation extending answer deadline for avoidance action defendant
2073945.70160	4/7/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.20	\$72.00 Finalize and file stipulation in QBSI preference action to extend time and acceptance of service of complaint
2073945.70160	4/9/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.40	\$144.00 Draft second stipulation to continue answer deadline for Office Depot
2073945.70160	4/11/2025	76949 Peterson, Brian	Partner	\$650.00	0.20	\$130.00 Draft email correspondence to opposing counsel in Office Depot preference action
2073945.70160	4/11/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Finalize and file Office Depot stipulation to extend answer deadline with Bankruptcy Court
2073945.70160	4/13/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to J. Blough regarding text message collection
2073945.70160	4/13/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to R. Richards regarding text message collection
2073945.70160	4/13/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence regarding objections to complaint from opposing counsel
2073945.70160	4/14/2025	76949 Peterson, Brian	Partner	\$650.00	0.40	\$260.00 Draft correspondence related to preference action claim against Legacy Support Services
2073945.70160	4/16/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to counsel for Brightpoint regarding avoidance action
2073945.70160	4/17/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to counsel for Brightpoint regarding avoidance action
2073945.70160	4/18/2025	82691 Meredith, Michael	Associate	\$625.00	0.60	\$375.00 Confer with opposing counsel regarding proposed amended complaint and ongoing document discovery
2073945.70160	4/20/2025	82691 Meredith, Michael	Associate	\$625.00	0.20	\$125.00 Research and prepare correspondence regarding proposed amended complaint
2073945.70160	4/21/2025	76949 Peterson, Brian	Partner	\$650.00	1.10	\$715.00 Analyze issues related to claims against Brightpoint North America
2073945.70160	4/23/2025	76949 Peterson, Brian	Partner	\$650.00	1.00	\$650.00 Analyze QBSI settlement offer and analyze defenses (.7); draft email to client regarding QBSI settlement offer (.1); draft counteroffer to counsel for QBSI (.2)
2073945.70160	4/24/2025	76949 Peterson, Brian	Partner	\$650.00	0.20	\$130.00 Review correspondence regarding preference action against Brightpoint North America
2073945.70160	4/24/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.30	\$108.00 Draft second stipulation and order extending answer deadline for Enterprise Rent A Car
2073945.70160	4/24/2025	82691 Meredith, Michael	Associate	\$625.00	0.30	\$187.50 Research and revise complaint against Brightpoint North America LP (.2); prepare correspondence regarding the same (.1)
2073945.70160	4/25/2025	76949 Peterson, Brian	Partner	\$650.00	0.20	\$130.00 Draft email correspondence regarding Brightpoint North America preference action
2073945.70160	4/25/2025	82691 Meredith, Michael	Associate	\$625.00	0.10	\$62.50 Prepare correspondence to Brightpoint LP
2073945.70160	4/26/2025	76949 Peterson, Brian	Partner	\$650.00	1.30	\$845.00 Review Threshold Communications document production and fraudulent transfer defenses
2073945.70160	4/26/2025	76949 Peterson, Brian	Partner	\$650.00	1.40	\$910.00 Draft settlement agreement for QBSI preference action

2073945.70160	4/28/2025	76949 Peterson, Brian	Partner	\$650.00	0.60	\$390.00	Draft correspondence to client and Legacy Support Services regarding settlement offer (.4); draft email correspondence to counsel for Apple regarding settlement offer (.1); finalize stipulation and order extending answer deadline for Enterprise of Kansas City (.1)
2073945.70160	4/29/2025	76949 Peterson, Brian	Partner	\$650.00	1.50	\$975.00	Analyze merits of avoidance action claim against Threshold Communications (1.3); draft correspondence to client and opposing counsel regarding QBSI settlement agreement (.2)
2073945.70160	4/29/2025	76949 Peterson, Brian	Partner	\$650.00	1.00	\$650.00	Analyze merits of claims against Threshold Communications for purposes of settlement discussions with opposing counsel
2073945.70160	4/30/2025	76949 Peterson, Brian	Partner	\$650.00	1.40	\$910.00	Prepare for and participate in settlement conference with counsel for Threshold Communications
2073945.70160	4/30/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.10	\$36.00	File mediation certification with USBC for Smith Bunday preference action
2073945.70160	4/30/2025	78991 Lentz, Denise	Paralegal	\$360.00	0.40	\$144.00	Prepare mediation certification for preference action adversary proceeding
				Total .70160	128.90	72,705.50	
Matter Litigation e-Dat Fees							
2073945.77100	11/11/2024	72320 Halter, Julie Anne	Partner	\$875.00	0.50	\$437.50	Prepare summary for Wireless Advocates fee application
2073945.77100	11/14/2024	72320 Halter, Julie Anne	Partner	\$875.00	0.30	\$262.50	Address follow up information required for quarterly fee application
				Total .77100	0.80	\$700.00	
				Total Fees	350.90	\$210,490.50	
Costs:							
2073945.99999	12/17/2024	Court Fees				\$52.00	Court Fees O'Connor, Angela - Court Costs - 2024-11-11 - KING CO CENTRAL A R - KCSC Receipt for Non-Compliance - Nagamine
2073945.99999	12/17/2024	Court Fees				\$52.00	O'Connor, Angela - Court Costs - 2024-11-11 - KING CO CENTRAL A R - KCSC Receipt for Non-Compliance - Gearin
2073945.99999	12/17/2024	Court Fees				\$52.00	O'Connor, Angela - Court Costs - 2024-11-11 - KING CO CENTRAL A R - KCSC Receipt for Non-Compliance - Peterson
2073945.99999	1/17/2025	Delivery and Courier Service				\$29.50	FedEx Charges TR#: 284487461302 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: Avalara Inc RCCO: c o CT Corporation System RCCT: OLYMPIA RCST: WA MTNUM: 2073945 00001

2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284499035937 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: Karr Tuttle Campbell RCCO: INFORMATION NOT SUPPLIED RCCT: SEATTLE RCST: WA MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284499001056 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: Karr Tuttle Campbell RCCO: c o KTC Service Corporation RCCT: SEATTLE RCST: WA MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284498766192 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: JML Law A Professi onal Law C RCCO: INFORMATION NOT SUPPLIED RCCT: WOODLAND HILLS RCST: CA MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284498680940 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: JML Law A Professi onal Law C RCCO: c o Paul Lovretovich RCCT: WOODLAND HILLS RCST: CA MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284497973610 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: IQMetrix USA Inc RCCO: c o Registered Agent Solutions RCCT: OLYMPIA RCST: WA MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$37.62 FedEx Charges TR#: 284494048383 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: RCCO: IQMetrix USA INC RCCT: CORNELIUS RCST: NC MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$18.06 FedEx Charges TR#: 284493522542 INV#: 235122260 INVDT: 20250127 SHIPDT: 20250117 SHNAME: RATHANA VANNARATH RCNAME: IQMETRIX RCCO: USA INC RCCT: VANCOUVER RCST: BC MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284492816696 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: Enterprise Rent A Car Kansas C RCCO: c o Enterprise Holdings Inc RCCT: SAINT LOUIS RCST: MO MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284490913870 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: Brightpoint North America L P RCCO: c o CT Corporation System RCCT: WILMINGTON RCST: DE MTNUM: 2073945 00001

2073945.99999	1/17/2025	Delivery and Courier Service	\$59.29 FedEx Charges TR#: 284490667552 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: Brightpoint North America L P RCCO: c o CT Corporation System RCCT: INDIANAPOLIS RCST: IN MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284489764184 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: Brightpoint North America L P RCCO: c o CT Corporation System RCCT: OLYMPIA RCST: WA MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284489472059 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: RCCO: Brightpoint North America L P RCCT: PLAINFIELD RCST: IN MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284488217579 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: RCCO: Apple Inc RCCT: CUPERTINO RCST: CA MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284487828429 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: Avalara Inc RCCO: INFORMATION NOT SUPPLIED RCCT: SEATTLE RCST: WA MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284499302462 INV#: 875868809 INVDT: 20250203 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: Legacy Support Services LTD RCCO: c o Richard Downs RCCT: WACO RCST: TX MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284491410050 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: Enterprise Rent A Car Kansas C RCCO: c o Enterprise Holdings Inc RCCT: SAINT LOUIS RCST: MO MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284499607289 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: Littler Mendelson P C RCCO: c o CT Corporation System RCCT: OLYMPIA RCST: WA MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$59.29 FedEx Charges TR#: 284499698147 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: Littler Mendelson P C RCCO: INFORMATION NOT SUPPLIED RCCT: PHILADELPHIA RCST: PA MTNUM: 2073945 00001

2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284500716982 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: Threshold Communications INC RCCO: INFORMATION NOT SUPPLIED RCCT: REDMOND RCST: WA MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284500698590 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: Threshold Communications INC RCCO: c o Corporation Service Company RCCT: OLYMPIA RCST: WA MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284500623477 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: Smith Bunday Berman Britton P RCCO: INFORMATION NOT SUPPLIED RCCT: BELLEVUE RCST: WA MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284500604840 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: Smith Bunday Berman Britton P RCCO: c o Colin Cary RCCT: BELLEVUE RCST: WA MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$34.71 FedEx Charges TR#: 284500532387 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: R R Donnelly & Sons Company RCCO: INFORMATION NOT SUPPLIED RCCT: CHICAGO RCST: IL MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284499322372 INV#: 875868809 INVDT: 20250203 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: Legacy Support Services LTD RCCO: INFORMATION NOT SUPPLIED RCCT: WACO RCST: TX MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284500313640 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: QBSI A Xerox Company RCCO: INFORMATION NOT SUPPLIED RCCT: YAKIMA RCST: WA MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284500507272 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: R R Donnelly & Sons Company RCCO: c o CT Corporation System RCCT: OLYMPIA RCST: WA MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284500285691 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: QBSI A Xerox Company RCCO: c o Xerox Corporation RCCT: NORWALK RCST: CT MTNUM: 2073945 00001

2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284500256765 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: QBSI A Xerox Comp c o Xerox RCO: c o Corporation Service Compan RCCT: OLYMPIA RCST: WA MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284500129666 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: Office Depot LLC RCO: INFORMATION NOT SUPPLIED RCCT: BOCA RATON RCST: FL MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284500107709 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: Office Depot LLC RCO: c o CT Corporation System RCCT: OLYMPIA RCST: WA MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$34.71 FedEx Charges TR#: 284500024319 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: Marsh USA LLC RCO: INFORMATION NOT SUPPLIED RCCT: NEW YORK RCST: NY MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284500301809 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: QBSI A Xerox Company RCO: INFORMATION NOT SUPPLIED RCCT: RENTON RCST: WA MTNUM: 2073945 00001
2073945.99999	1/17/2025	Delivery and Courier Service	\$29.50 FedEx Charges TR#: 284499991026 INV#: 875101142 INVDT: 20250127 SHIPDT: 20250117 SHNAME: Rathana Vannarath RCNAME: Marsh USA LLC RCO: c o CT Corporation System RCCT: OLYMPIA RCST: WA MTNUM: 2073945 00001
2073945.99999	3/17/2025	Delivery and Courier Service	\$284.00 Delivery and Courier Service Washington Legal Messengers - Delivery and Courier Services
2073945.99999	3/17/2025	Delivery and Courier Service	\$229.00 Delivery and Courier Service Washington Legal Messengers - Delivery and Courier Services
2073945.99999	3/17/2025	Delivery and Courier Service	\$72.00 Delivery and Courier Service Washington Legal Messengers - Delivery and Courier Services
2073945.99999	3/17/2025	Delivery and Courier Service	\$68.00 Delivery and Courier Service Washington Legal Messengers - Delivery and Courier Services
2073945.99999	3/17/2025	Delivery and Courier Service	\$68.00 Delivery and Courier Service Washington Legal Messengers - Delivery and Courier Services
2073945.99999	3/17/2025	Delivery and Courier Service	\$62.00 Delivery and Courier Service Washington Legal Messengers - Delivery and Courier Services
2073945.99999	3/17/2025	Delivery and Courier Service	\$319.00 Delivery and Courier Service Washington Legal Messengers - Delivery and Courier Services
2073945.99999	3/17/2025	Delivery and Courier Service	\$68.00 Delivery and Courier Service Washington Legal Messengers - Delivery and Courier Services

2073945.99999	3/17/2025	Delivery and Courier Service	\$68.00 Delivery and Courier Service Washington Legal Messengers - Delivery and Courier services
2073945.99999	3/24/2025	Delivery and Courier Service	\$220.00 Delivery and Courier Service Washington Legal Messengers - Courier charges
2073945.99999	3/27/2025	Delivery and Courier Service	\$230.00 Delivery and Courier Service Washington Legal Messengers - out of state courier
2073945.99999	4/8/2025	Delivery and Courier Service	\$241.10 Delivery and Courier Service Washington Legal Messengers - Courier fees
2073945.99999	4/8/2025	Delivery and Courier Service	\$241.10 Delivery and Courier Service Washington Legal Messengers - Courier
2073945.99999	4/16/2025	Delivery and Courier Service	\$289.00 Delivery and Courier Service Washington Legal Messengers - Out of state courier
2073945.77100	11/30/2024	eDAT Litigation Support Expenses (including CDROM expenses)	\$2,317.30 Relativity One Data Storage Fees: (November 2024) 47.86 GB @ \$20.00/GB for Active Review Storage; 272.02 GB @ \$5.00/GB for Secondary Storage Tiers; Total Fees: \$2,317.30
2073945.77100	12/31/2024	eDAT Litigation Support Expenses (including CDROM expenses)	\$2,317.30 Relativity One Data Storage Fees: December 2024) 47.86 GB @ \$20.00/GB for Active Review Storage; 272.02 GB @ \$5.00/GB for Secondary Storage Tiers; Total Fees: \$2,317.30
2073945.77100	1/31/2025	eDAT Litigation Support Expenses (including CDROM expenses)	\$1,566.68 Relativity One Data Storage Fees: (January 2025) 47.86 GB @ \$10.00/GB for Active Review Storage; 272.02 GB @ \$4.00/GB for Secondary Storage Tiers; Total Fees: \$1,566.68
2073945.77100	2/28/2025	eDAT Litigation Support Expenses (including CDROM expenses)	\$1,566.86 Relativity One Data Storage Fees: (February 2025) 47.89 GB @ \$10.00/GB for Active Review Storage; 271.99 GB @ \$4.00/GB for Repository Storage; Total Fees: \$1,566.86
2073945.77100	3/31/2025	eDAT Litigation Support Expenses (including CDROM expenses)	\$1,566.86 Relativity One Data Storage Fees: (March 2025) 47.89GB @ \$10.00/GB for Active Review Storage; 271.99GB @ \$4.00/GB for Repository Storage; Total Fees: \$1,566.86
2073945.77100	4/30/2025	eDAT Litigation Support Expenses (including CDROM expenses)	\$1,566.86 Relativity One Data Storage Fees: (April 2025) 47.89GB @ \$10.00/GB for Active Review Storage; 271.99GB @ \$4.00/GB for Repository Storage; Total Fees: \$1,566.86
2073945.99999	12/17/2024	Filing Fees	\$32.49 Filing Fees O'Connor, Angela - Filing Fees - 2024-10-29 - KING CO DJA E-FILING - KCSC Ex parte filing fee
2073945.99999	3/17/2025	Other Client Costs	\$2.00 Klopfenstein, Douglas - Other Expenses - 2025-02-27 - TEXAS SECRETARY OF STATE - Statement Report for Period 01/29 - 02/28
2073945.99999	3/21/2025	Other Client Costs	\$5.00 CourtTrax Corporation -
2073945.99999	4/17/2025	Other Client Costs	\$1.00 Klopfenstein, Douglas - Other Expenses - 2025-02-28 - TEXAS SECRETARY OF STATE - Statement Report for Period 03/01 - 03/30
2073945.99999	1/17/2025	Photocopying, Printing and Scanning Expense (Internal)	\$0.40 Photocopying, Printing and Scanning Expense (Internal)
2073945.99999	1/17/2025	Photocopying, Printing and Scanning Expense (Internal)	\$0.40 Photocopying, Printing and Scanning Expense (Internal)

2073945.99999	3/5/2025	Photocopying, Printing and Scanning Expense (Internal)	\$1.80 Photocopying, Printing and Scanning Expense (Internal)
2073945.99999	3/5/2025	Photocopying, Printing and Scanning Expense (Internal)	\$0.60 Photocopying, Printing and Scanning Expense (Internal)
2073945.99999	3/5/2025	Photocopying, Printing and Scanning Expense (Internal)	\$0.20 Photocopying, Printing and Scanning Expense (Internal)
2073945.99999	1/23/2025	Postage	\$21.44 Postage- 428183 -
2073945.99999	3/5/2025	Postage	\$87.92 Postage- 483756 -
2073945.99999	3/12/2025	Postage	\$10.99 Postage- 428183
2073945.99999	3/12/2025	Postage	\$10.99 Postage- 428183

Total Costs \$14,855.77

Grand Total \$225,346.27

EXHIBIT C

Timekeeper Name	Title	Hourly Rate	Hourly Rate	2024		2025		Practice
		2024	2025	Hours	Fees	Hours	Fees	
Peterson, Brian	Partner	\$605.00	\$650.00	16.20	\$ 9,801.00	70.40	\$ 45,760.00	Restructuring and Insolvency
Gearin, Michael	Partner	\$725.00	\$725.00	14.60	\$ 10,585.00	32.80	\$ 23,780.00	Restructuring and Insolvency
Lichter, Tyler	Associate	\$590.00	\$690.00	16.90	\$ 9,971.00	30.90	\$ 21,321.00	Commercial Disputes
Lentz, Denise	Paralegal	\$335.00	\$360.00	13.90	\$ 4,656.50	38.30	\$ 13,788.00	Restructuring and Insolvency
Talevich, Peter	Partner	\$670.00	\$750.00	0.20	\$ 134.00	17.80	\$ 13,350.00	Commercial Disputes
Meredith, Michael	Associate	\$580.00	\$625.00	6.20	\$ 3,596.00	32.30	\$ 20,187.50	Labor Employment Workplace Safety
Romero, Monica	Associate	\$515.00	\$560.00	6.10	\$ 3,141.50	33.40	\$ 18,704.00	Labor Employment Workplace Safety
Ross, Henry	Associate		\$585.00	-	\$ -	11.50	\$ 6,727.50	Commercial Disputes
Noreus, Robertson	e-DAT Sr Atty		\$455.00	-	\$ -	3.00	\$ 1,365.00	e-DAT Practice Group
Diaz, Karrie	Partner		\$845.00	-	\$ -	0.90	\$ 760.50	Benefirs and Executive Compensation
Sundin, Ashley	Librarian		\$350.00	-	\$ -	2.00	\$ 700.00	Librarian
Nagamine, Ruby	Associate	\$590.00		2.20	\$ 1,298.00			Commercial Disputes
Miller, Warner	Librarian		\$350.00	-	\$ -	0.30	\$ 105.00	Librarian
Halter, Julie Anne	Partner	\$875.00		0.80	\$ 700.00	-	\$ -	e-DAT Practice Group
Edwards, Anna	Paralegal	\$295.00		0.20	\$ 59.00	-	\$ -	Real Estate
					\$ 43,942.00		\$ 166,548.50	