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

In re:	)	Chapter 11
ZACHRY HOLDINGS, INC., *et al*[1]	)	Case No. 24-90377 (MI)
Debtors.	)	(Jointly Administered)
AVIS LAMOTTE, *on behalf of herself and those similarly situated*	)	
Plaintiff	)	
v.	)	Adv. Pro. No. 24-03122 (MI)
ZACHRY INDUSTRIAL, INC.,	)	
Defendants.	)	

DEBTORS' EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS (A) (I) APPROVING THE SETTLEMENT BY AND BETWEEN AVIS LAMOTTE, ON HER OWN BEHALF AND ON BEHALF OF OTHERS SIMILARLY SITUATED, AND THE DEBTORS, (II) CERTIFYING A CLASS FOR SETTLEMENT PURPOSES ONLY, (III) APPOINTING PLAINTIFF AS CLASS REPRESENTATIVE AND PLAINTIFF'S COUNSEL AS CLASS COUNSEL FOR SETTLEMENT PURPOSES ONLY, (IV) APPROVING THE FORM AND MANNER OF SERVICE OF THE SETTLEMENT CLASS NOTICE, (V) APPOINTING THE SETTLEMENT ADMINISTRATOR, (VI) SCHEDULING FINAL HEARING; AND (B) GRANTING RELATED RELIEF

Emergency relief has been requested. Relief is requested not later than 9:00 a.m. (prevailing Central Time) on September 30, 2024.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

[1] The last four digits of Zachry Holdings, Inc.'s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors' proposed claims and noticing agent at https://www.veritaglobal.net/ZHI. The location of the Debtors' service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.

A hearing will be conducted on this matter on September 30, 2024, at 9:00 a.m. (prevailing Central Time) in Courtroom 404, 4th floor, 515 Rusk, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Isgur's conference room number is 954554. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Isgur's home page. The meeting code is "Judge Isgur." Click the settings icon in the upper right corner and enter your name under the personal information setting.

The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state as follows in support of this motion (the "Motion").

Preliminary Statement

1. The Debtors commenced these chapter 11 cases due in part to their inability to resolve the disputes that delayed the design and construction of the Golden Pass liquefied natural production and export facility. The Debtors had spent years trying to resolve these complex disputes without the need for a bankruptcy filing—efforts that lasted right up until the petition date. In the months immediately preceding the filing, the Debtors were forced to make a difficult decision: notify workers of an impending reduction in force, thereby likely sealing the fate of the negotiations and the Debtors' involvement on the project, or continue negotiations in order to fix the problems that plagued the project without reducing their work force. The Debtors decided to continue negotiating with their joint venture partners and Golden Pass without terminating their work force at the project, which would have allowed the Debtors to resume work on a moment's notice. Unfortunately, the negotiations collapsed, the Debtors were forced to seek chapter 11 protection, and they were unable to continue to employ much of the work force at the project site after the bankruptcy filings.

2. One terminated employee, Avis Lamotte (the "Plaintiff" or "Class Representative") commenced an adversary proceeding (the "Class Action" or the "Adversary Proceeding")[2] against Zachry Industrial, Inc. ("Zachry") on behalf of herself and similarly situated former employees (the "Settlement Class," and each member of the Settlement Class, a "Class Member"). Ms. Lamotte's complaint (the "Complaint") alleges violations of the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101–2109 (the "WARN Act") based on the Debtors' supposed failure to provide requisite notice of the reduction in force and seeks damages for unpaid wages and benefits.

3. The Debtors deny all liability and have several available defenses, including that: (1) the circumstances resulting in the layoffs were unforeseeable in the sixty-day period preceding the layoffs (i.e., unforeseeable business circumstances); (2) Zachry was pursuing measures that would have avoided the need for layoffs altogether (i.e., Zachry was a "faltering company"); and (3) Zachry gave as much notice to the putative Class Members as was practicable under the circumstances (i.e., notice satisfied the statutory requirement under the circumstances). These exceptions to the notice requirement under the WARN Act are well-recognized and would significantly limit damages. The Debtors nevertheless prioritized settlement over litigation as the best way to manage risk and facilitate their emergence from bankruptcy without large contingent claims that could prevent or delay distributions to creditors. Following good-faith, arms' length negotiation, and with the assistance of their expert mediator, the parties agreed to terms to fully resolve the dispute (the "Settlement").

4. The Settlement is eminently reasonable and in the best interests of the Debtors and the Settlement Class. If approved, the Debtors will pay an aggregate amount of $7,000,000 (the

[2] *Avis Lamotte v. Zachry Industrial, Inc.*, Adversary No. 4:24-AP-03122 (Bankr. S.D. Tex.).

"Settlement Amount"), inclusive of costs, fees, and expenses, to the Settlement Class, to resolve all disputes, claims, and causes of action arising out of or related to the facts set forth in the Complaint. The Settlement allows the Debtors to avoid protracted and costly litigation. It limits the Debtors' potential liability and creates certainty for the Debtors' plan process. Class Members will receive in only months their share of proceeds from the Settlement Amount without a long, expensive, and uncertain litigation. The Settlement is a sound exercise of the Debtors' business judgment and the terms are well within the range of reasonable outcomes. The Court should approve the Settlement.

Relief Requested

5. The Debtors seek entry of an interim order (the "Preliminary Approval Order"): (i) certifying the Settlement Class for Settlement purposes only; (ii) appointing Plaintiff as Class Representative and Plaintiff's counsel as Class counsel ("Class Counsel") for Settlement purpose only; (iii) preliminarily approving the Settlement Agreement dated September 26, 2024, by and between Zachry and the Settlement Class (the "Settlement Agreement"), attached to the Interim Approval Order as **Exhibit 1**; (iv) approving the Settlement notice and Class opt-out form ("Settlement Class Notice"), attached to Ex. 1 of the Interim Approval Order (the Settlement Agreement) as **Exhibit A**, as well as the manner of serving it on Class Members; (v) appointing an administrator to distribute proceeds to Class Members (the "Settlement Administrator"); and (vi) scheduling a final hearing to consider approval of the Settlement Agreement on a final basis ("Final Fairness Hearing").

6. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Mohsin Y. Meghji*, filed contemporaneously herewith.

Jurisdiction, Venue, and Predicates for Relief

7. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding

under 28 U.S.C. § 157(b). The Debtors confirm their consent to the entry of a final order by the Court.

8. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

9. The predicates for the relief requested herein are sections 105(a) and 363(b) of Title 11 of the United States Code (the "Bankruptcy Code"), Rules 7023, 9014 and 9019 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules"), and Rule 23 of the Federal Rules of Civil Procedure (the "Federal Rules").

Background

10. On May 21, 2024, each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, commencing the above-captioned chapter 11 cases. The Debtors continue to operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases are being jointly administered pursuant to Bankruptcy Rule 1015(b). On June 4, 2024, the United States Trustee for the Southern District of Texas appointed the Official Committee of Unsecured Creditors pursuant to sections 1102(a)(1) and 1102(b)(1) of the Bankruptcy Code (the "Committee"). No trustee or examiner has been appointed in these chapter 11 cases.

I. The WARN Action

11. Between January 1, 2024, and August 8, 2024, Zachry laid off Plaintiff and other employees who worked at 3752 S Gulfway Dr., Sabine Pass, Texas 77655, the Zachry Human Resources/Recruiting office at Port Arthur, Texas, and the supporting facilities located in Baytown, Texas, Orange, Texas, and Beaumont, Texas, all of which constitute a single site of employment (the "Golden Pass Project").

12. On June 17, 2024, Plaintiff commenced the Adversary Proceeding and filed the Complaint against Zachry for alleged violation of the WARN Act. The Complaint asserts that

Zachry is liable to Plaintiff and a putative class for damages in the amount equal to the sum of each Class Member's unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay, pension and 401(k) contributions, and other COBRA benefits they allege they are entitled to receive in accordance with the WARN Act as a result of Zachry's alleged violation of the WARN Act. [Adv. D.I. 1].

13. On July 22, 2024, Zachry filed its Answer and Affirmative Defenses to the Complaint, denying all liability in respect of the allegations in the Complaint. [Adv. D.I. 20].

14. In an effort to resolve the Adversary Proceeding, the Parties participated in mediation with Ms. Gloria Portela (the "Mediator"). The Parties provided the Mediator with confidential mediation statements, participated in multiple virtual sessions with the Mediator, and participated in a full-day, in-person mediation session on September 3, 2024.

II. The Settlement

15. The terms of the Settlement are memorialized in the Settlement Agreement. Under the Settlement:[3]

- The Settlement Class will be certified for purposes of the Settlement, with Plaintiff as Class Representative and J. Gerard Stranch, IV, Michael C. Iadevaia of Stranch, Jennings & Garvey, PLLC, Samuel J. Strauss and Raina Borrelli of Strauss Borrelli, PLLC, Lynn A. Toops and Amina A. Thomas of Cohen & Malad, LLP, and Matthew S. Okin and David L. Curry, Jr., of Okin Adams Bartlett Curry, LLP, as Class Counsel ("Class Counsel").

- Kroll Settlement Administration LLC ("Kroll") will serve as Settlement Administrator, responsible for carrying out the procedures set forth in the Settlement Agreement.

- Class Members will also be notified of the Settlement and provided the opportunity to opt-out of the Settlement Class.

[3] This summary is qualified in its entirety by the Settlement Agreement. Nothing in this Motion is intended to supersede, modify, or interpret the language of the Settlement Agreement. To the extent there is a dispute or a perceived inconsistency, the Settlement Agreement shall control.

- Class Counsel will file a proof of claim in the chapter 11 cases on behalf of the Settlement Class in the Settlement Amount (the "Class Proof of Claim").
- The Settlement Agreement will become effective following entry of a final order.
- The Debtors will pay the Settlement Amount of $7,000,000, inclusive of fees, costs, and taxes, after the Settlement Agreement has become effective.
- The Bankruptcy Court will dismiss the Adversary Proceeding with prejudice upon the Settlement Agreement becoming effective, and all Class Members will release the Debtors from Released Claims (as defined in the Settlement Agreement).

Basis for Relief

I. The Settlement is Fair, Reasonable, and in the Best Interest of Debtors' Estate

16. Bankruptcy Rule 9019(a) provides, in relevant part:

> On motion by the [debtor in possession] and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee . . . and indenture trustee as provided in Rule 2002 and to any other entity as the court may direct.

Fed. R. Bankr. P. 9019(a).

17. "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) (internal quotations omitted) (citing 9 Collier on Bankruptcy ¶ 9019.03[1] (15th ed. 1993)). Settlements are considered a "normal part of the process of reorganization" and a "desirable and wise method[] of bringing to a close proceedings otherwise lengthy, complicated, and costly." *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980) (citations omitted) (decided under the Bankruptcy Act).

18. Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may, after appropriate notice and a hearing, approve a compromise or settlement so long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Ultimately, approval of a compromise is within the "sound discretion" of the

bankruptcy court. *United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 298 (5th Cir. 1984); *see also Jackson Brewing Co.*, 624 F.2d at 602–03 (same).

19. Generally, the role of the bankruptcy court is not to decide the issues in dispute when evaluating a settlement. *Watts v. Williams*, 154 B.R. 56, 59 (S.D. Tex. 1993). Instead, the court should determine whether the settlement is, as a whole, fair and equitable. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968).

20. "Great judicial deference is given to the [debtor's] exercise of business judgment." *GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd. (In re State Park Bldg. Grp., Ltd.)*, 331 B.R. 251, 254 (Bankr. N.D. Tex. 2005) (citation omitted). "As long as [the decision] appears to enhance a debtor's estate, court approval of a debtor-in-possession's decision . . . should only be withheld if the debtor's judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code." *Richmond Leasing Co.*, 762 F.2d 1303, 1309 (5th Cir. 1985) (citation omitted).

21. The Settlement is eminently reasonable and in the best interest of the Debtors, their creditors, and other parties in interest. It limits the cost of litigation and mitigates the risk of an adverse judgment. It facilitates the Debtors' emergence from bankruptcy without the overhang of contingent litigation claims that could indefinitely delay distributions to creditors.

II. The Settlement Satisfies the Three-Factor Test Courts in the Fifth Circuit Use to Analyze Proposed Settlements

22. The Fifth Circuit has established a three-factor balancing test to analyze proposed settlements. The factors a court must consider in determining whether a compromise is "fair, equitable, and in the best interest of the estate" are: "(1) [t]he probability of success in litigating the claim subject to settlement, with due consideration for the uncertainty in fact and law; (2) [t]he complexity and likely duration of litigation and any attendant expense, inconvenience, and delay; and (3) [a]ll other factors bearing on the wisdom of the compromise." *In re Roqumore*, 393 B.R.

474, 479 (Bankr. S.D. Tex. 2008) (citing the factors set forth by the court in *Jackson Brewing*); *see also Age Ref. Inc.*, 801 F.3d at 540 (same). Under the third factor, courts in this Circuit also consider "the paramount interest of creditors with proper deference to their reasonable views" and the "extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion." *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (Matter of Foster Mortg. Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995).

A. The Prospect of Liability Absent Settlement is Uncertain

23. The Debtors have several available defenses that reduce the risk of liability in the Class Action. Several defenses to WARN Act claims apply here, including the following: (1) the circumstances leading to the layoffs were unforeseeable in the sixty-day period preceding the layoffs, meeting the 29 U.S.C. § 2102(b)(2)(A) WARN Act exception for unforeseeable business circumstances; (2) the Debtors were reasonably pursuing measures that would avoid the need for layoffs, meeting the 29 U.S.C. § 2102(b)(1) WARN Act "faltering company" exception; and (3) the Debtors gave as much notice to the putative Class Members as was practicable under the circumstances, satisfying 29 U.S.C. § 2102(b)(3).

24. These defenses mitigate the risk of a judgment in the amount Plaintiff asserted. However, the WARN Act is a highly technical statute and the Debtors cannot discount the prospect of a significant adverse judgment. Nor can the Debtors control the cost of defending against these complex claims. Only the Settlement can provide certainty. The cost of the Settlement is very likely less than the liability and related costs absent resolution, and the certainty it provides is essential for the Debtors' emergence from bankruptcy.

B. Litigation Would be Long, Complex, and Expensive

25. Litigating the claims to judgment would require extensive discovery, legal briefing, witness preparation, and court hearings. It could last years and cost hundreds of thousands, if not

millions, of dollars. The litigation would also require the focus of the Debtors' management and legal team. The time and resources necessary for the Class Action would detract from the resources necessary for the Debtors' successful emergence.

C. The Settlement is Likewise in the Settlement Class's and the Creditors' Best Interests

26. The Settlement will likewise provide all stakeholders with certainty regarding the resolution of the disputes between the Debtors and the putative Class Members. The Settlement will obviate the need for further litigation and its associated costs for the Settlement Class and any other parties in interest. Further, the Settlement ensures that the Class Members and other creditors will get timely distributions that will not be dependent on potentially large contingent claims.

III. The Court Should Conditionally and for Settlement Purposes Only Certify the Settlement Class, Designate Class Representatives, and Appoint Class Counsel Pursuant to Federal Rule 23

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

27. Because the Settlement seeks to release class claims, the Parties agree that it is appropriate for the Court to direct the application of Bankruptcy Rule 7023, which incorporates Federal Rule 23. *See Matter of Skinner Group, Inc.*, 206 B.R. 252, 255 & n.1 (Bankr. N.D. Ga. 1997) (applying Bankruptcy Rule 7023 and Federal Rule 23 for the purpose of certifying a settlement class and preliminarily approving a settlement of claims that were the subject of "numerous actions" in both state and federal court). Federal Rule 23 "promote[s] efficiency and economy in litigation," and "these principles are not less compelling in the bankruptcy context." *In re Wilborn*, 609 F.3d 748, 754 (5th Cir. 2010).

28. Courts have found that "settlement classes are a typical feature of modern class litigation, and courts routinely certify them . . . to facilitate the voluntary resolution of legal disputes." *In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico, on Apr. 20, 2010*, 910

F. Supp. 2d 891, 913 (E.D. La. 2012), *aff'd sub nom. In re Deepwater Horizon*, 739 F.3d 790 (5th Cir. 2014); *see also, e.g., Prezant v. De Angelis*, 636 A.2d 915, 924 (Del. 1994) (recognizing the "beneficial aspects of temporary settlement classes," which "allow several steps of litigation to be collapsed into one").

29. To certify the Settlement Class for Settlement purposes only, the Court must determine that all four requirements of Federal Rule 23(a) and either Federal Rule 23(b)(1), (b)(2), or (b)(3) are satisfied (in this case, Rule 23(b)(3)). *See, e.g.*, *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 619 (1997); *Prezant*, 636 A.2d at 924. The Court is not to adjudicate the merits of the claims at the certification stage. *See Langbecker v. Electric Data Systems Corp.*, 476 F.3d 299, 307 (5th Cir. 2007). The Court has "wide discretion" in making the final determination. *Ordonez Orosco v. Napolitano*, 598 F.3d 222, 225 (5th Cir. 2010). Here, certification is warranted because the requirements of Federal Rules 23(a) and 23(b)(3) are readily satisfied.

1. The Settlement Class Satisfies the Requirements of Federal Rule 23(a)

30. Federal Rule 23(a) establishes four requirements for certification: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *See* Fed R. Civ. P. 23; *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1052 (S.D. Tex. 2012). The Settlement Class meets each of these requirements.

31. *Numerosity.* Federal Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." *See* Fed. R. Civ. P. 23(a)(1). A showing that the class consists of more than forty members "should raise a presumption that joinder is impracticable." *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 624 (5th Cir. 1999) (quoting 1 Newberg on Class Actions § 3.05, at 3–25 (3d ed. 1992)); *In re Talbert*, 347 B.R. 804, 808–809 (E.D. La. 2005) (finding numerosity requirement met when class potentially consisted of 88 members, while noting that classes consisting of as few as 25 or 30 members are certifiable). Courts may also consider

additional factors, including "(i) the interest of judicial economy, (ii) whether the class involves small individual claims, (iii) the geographical dispersion of the class, and (iv) the ease with which class members may be identified." *In re Rodriguez*, 432 B.R. 671, 692 (Bankr. S.D. Tex. 2010). But Federal Rule 23(a)(1) does not require a movant to show that every factor points toward numerosity for a court to find that numerosity exists. *See Mullen*, 186 F.3d at 624–25; *see also Reyes v. Julia Place Condominiums Homeowners Ass'n, Inc.*, No. CIV.A. 12-2043, 2014 WL 7330602, at *3 (E.D. La. Dec. 18, 2014) ("[a] common sense approach" is appropriate).

32. Here, the Settlement Class easily meets the numerosity requirement. Zachry's records show that 3,492 former employees meet the first three prongs of the proposed definition of the Settlement Class: employees who (i) worked at and/or received assignments from the Golden Pass Project; (ii) were laid off (as defined by Zachry) between January 1, 2024, and August 8, 2024; and (iii) are affected employees within the meaning of 29 U.S.C. § 2101(a)(5). The fourth prong—employees who (iv) have not filed a timely request to opt-out of the Settlement Class—is yet to be determined. However, the Parties have agreed to a three (3)% opt-out threshold. Even if that percentage is hit, the Settlement Class can be no smaller than 3,387, which still satisfies the numerosity requirement. *See Mullen*, 186 F.3d at 624 ("the size of the class in this case—100 to 150 members—is within the range that generally satisfies the numerosity requirement").

33. *Commonality.* Federal Rule 23(a)(2) requires that "there are questions of law or fact common to the class." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 368 (2011) (citing Fed. R. Civ. P. 23). "The principal requirement of [Dukes] is merely a single common contention that enables the class action 'to generate common answers apt to drive the resolution of the litigation.'" *In re Deepwater Horizon*, 739 F.3d at 811 (citing *M.D. ex rel. Stukenberg v. Perry*, 675 F.3d 832, 840 (5th Cir. 2012)). "These 'common answers' may indeed relate to the injurious effects

experienced by the class members, but they may also relate to the defendant's injurious conduct." *Id.* Regardless, "a single common question will do." *Id.*; *see* 1 Newberg on Class Actions § 3:21 (5th ed.) ("It is well settled that the requirement of 'common questions of law or fact' in Rule 23(a) is disjunctive; that is, *either* a question of law or a question of fact will suffice.").

34. Where a practice has allegedly caused class-wide harm, the commonality requirement for settlement purposes is met. *See Rodriguez*, 432 B.R. at 695; *see also* 1 Newberg on Class Actions § 3:20 ("When the party opposing the class has engaged in some course of conduct that affects a group of persons and gives rise to a cause of action, one or more of the elements of that cause of action will be common to all of the persons affected."). Here, fundamental issues of law and fact are common among the Class Members of the proposed Settlement Class: the Debtors' notice of termination and termination of employees between January 1, 2024, and August 8, 2024; the applicability of the Debtors' defenses under the WARN Act; and the priority of the Class Members' claims are common among the proposed class.

35. *Typicality*. Federal Rule 23(a)(3) requires that the "claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). The "test for typicality is not demanding." *James v. City of Dallas*, 254 F.3d 551, 571 (5th Cir 2001), *abrogated on other grounds by M.D. ex rel. Stukenberg v. Perry*, 675 F.3d 832 (5th Cir. 2012). "[T]he critical inquiry is whether the class representative's claims have the same essential characteristics of those of the putative class." *Id.*; *see also* 1 Newberg on Class Actions § 3:29 ("A plaintiff with typical claims will pursue his or her own self-interest in the litigation and, in so doing, will advance the interests of the class members, which are aligned with those of the representative."). In other words, the test is whether the representative plaintiff's claims "arise from

the same common nucleus of facts as the claims of absent class members." *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 281 (W.D. Tex. 2007).

36. Plaintiff here alleges that she and the Class Members were terminated by the Debtors through the same course of events. Accordingly, they all suffered the same type of injury due to the Debtors' alleged failure to comply with the requirements of the WARN Acts.

37. *Adequacy of Representation.* Federal Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). This involves examination of both the representatives' counsel and the representatives themselves. *See Jones v. Singing River Health Servs. Found.*, 865 F.3d 285, 294 (5th Cir. 2017), *cert. denied sub nom. Almond v. Singing River Health Sys.*, 138 S. Ct. 1000 (2018); *Horton v. Goose Creek Indep. Sch. Dist.*, 690 F.2d 470, 484 (5th Cir. 1982). More specifically, "[t]he adequacy requirement mandates an inquiry into the zeal and competence of the representative's counsel and into the willingness and ability of the representative to take an active role in and control the litigation and to protect the interests of absentees." *Id.* "The adequacy inquiry also 'serves to uncover conflicts of interest between the named plaintiffs and the class they seek to represent.'" *Berger v. Compaq Comput. Corp.*, 257 F.3d 475, 479–80 (5th Cir. 2001) (quoting *Amchem*, 521 U.S. at 625). Minor conflicts of interest will not defeat certification; however, "the conflict must be a 'fundamental' one going to the specific issues in controversy." *In re Deepwater Horizon*, 739 F.3d at 813 n. 99 (quoting *Valley Drug Co. v. Geneva Pharms., Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003)).

38. Here, there is no intraclass conflict because the interests of the Class Representative and those of the Class Members are fully aligned for Settlement purposes. Furthermore, the Class Counsel are well qualified, experienced with WARN actions, and able to fairly and adequately represent the Settlement Class.

2. The Settlement Class Satisfies the Requirements of Federal Rule 23(b)(3)

39. To certify the Settlement Class for Settlement purposes only, the Court must determine that either Federal Rule 23(b)(1), (b)(2), or (b)(3) are satisfied. Here, the Settlement Class satisfies Federal Rule 23(b)(3). Pursuant to that rule, class certification is proper when a court finds (a) that common questions of law or fact predominate over individual issues, and (b) that a class action is superior to other methods of adjudication. *See* Fed. R. Civ. P. 23(b)(3).

40. First, in analyzing whether common questions of law or fact predominate over questions affecting only individual members, courts have considered whether the proposed class is sufficiently cohesive to warrant adjudication by representation. *See, e.g.*, *Dukes*, 564 U.S. at 350-51; *Amchem*, 521 U.S. at 623-24; *Flecha v. Medicredit*, Inc., 946 F.3d 762, 766-67 (5th Cir. 2020); *Torres v. S.G.E. Management, L.L.C.*, 838 F.3d 629, 635-36 (5th Cir. 2016); *Ibe v. Jones*, 836 F.3d 516, 529 (5th Cir. 2016). Specifically, Federal Rule 23(b)(3) "does not require a plaintiff seeking class certification to prove that each elemen[t] of [her] claim [is] susceptible to classwide proof. What the rule does require is that common questions predominate over any questions affecting only individual [class] members." *Amgen Inc. v. Conn. Ret. Plans*, 568 U.S. 455, 469 (2013) (quoting Federal Rule 23(b)(3)). Further, "Rule 23(b)(3) requires a showing that questions common to the class predominate, not that those questions will be answered, on the merits, in favor of the class." *Id*. For the same reasons that typicality exists, predominance exists for Settlement purposes because there are common questions of law and fact that relate to all Class Members under the Settlement.

41. Second, Federal Rule 23(b)(3) 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 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." *Mullen*, 186 F.3d at 623-24. Federal 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 claims in the particular forum; and (D) the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3).

42. The Settlement satisfies the superiority requirement because: (A) this Class Action is the most efficient way for Class Members to pursue their claims, and also provides greater access to the courts for Class Members who may not be able or willing to pursue their claims individually; (B) there is no other litigation concerning this controversy already pending; (C) concentrating potential litigation conserves the Debtors' resources; and (D) the relative efficiencies and minimal cost involved in administering the Settlement means there will likely be no difficulties in managing the Settlement Class. *See* Fed. R. Civ. P. 23(b)(3). Based on the foregoing, the Court should certify the Settlement Class for Settlement purposes only.

B. The Court Should Designate Avis Lamotte as Class Representative and J. Gerard Stranch, IV, Michael C. Iadevaia of Stranch, Jennings & Garvey, PLLC, Samuel J. Strauss and Raina Borrelli of Strauss Borrelli, PLLC, Lynn A. Toops and Amina A. Thomas of Cohen & Malad, LLP, and Matthew S. Okin and David L. Curry, Jr., of Okin Adams Bartlett Curry, LLP, as Class Counsel for Settlement Purposes Only

43. Upon approving the Settlement Class for Settlement purposes only, the Court should designate Avis Lamotte as Class Representative and appoint J. Gerard Stranch, IV, Michael C. Iadevaia of Stranch, Jennings & Garvey, PLLC, Samuel J. Strauss and Raina Borrelli of Strauss Borrelli, PLLC, Lynn A. Toops and Amina A. Thomas of Cohen & Malad, LLP, and Matthew S. Okin and David L. Curry, Jr., of Okin Adams Bartlett Curry, LLP, as Class Counsel. As explained above, the Class Representative's interests and those of the other Class Members are fully aligned.

Further, the proposed Class Counsel devoted considerable resources to identifying and investigating the Class Representative's claims. The proposed Class Counsel are well qualified and experienced when it comes to prosecuting litigation on behalf of WARN Act claimants. Therefore, the proposed Class Counsel are best positioned to represent the Settlement Class.

IV. The Court Should Preliminarily Approve the Settlement Agreement and Schedule a Final Fairness Hearing to Approve the Settlement Agreement on a Final Basis

44. Once a court determines that a class should be certified for purposes of settlement, the settlement generally requires two approvals: a preliminary approval and a final approval after a fairness hearing. *See, e.g.*, *In re Shell Oil Refinery*, 155 F.R.D. 552, 555 (E.D. La. 1993). "Preliminary approval is . . . the first stage of the settlement process, and the court's primary objective at that point is to establish whether to direct notice of the proposed settlement to the class, invite the class's reaction, and schedule a final fairness hearing." 4 Newberg on Class Actions § 13:10 (5th ed.). It is at the final fairness hearing in the second stage of the process that class members may formally object to the settlement. *See In re Heartland Payment Sys.*, 851 F.Supp.2d at 1062–63 (citing Fed. R. Civ. P. 23(e)(5)).

45. The standard for preliminary approval is low. The Court must find that "(1) the proposed settlement appears to be the product of serious, informed non-collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly grant preferential treatment to class representatives or segments of the class; (4) and falls within the range of possible [judicial] approval." *In re Shell Oil Refinery*, 155 F.R.D. at 555 (citing Manael for Complex Litigation, Second § 30.44 (1985)); *accord McNamara v Bre-X Minerals Ltd.*, 214 F.R.D. 424, n.2 (E.D. Tex. 2002) ("[T]he purpose of the preliminary approval is to detect any obvious defects that will preclude final approval of the settlement") (internal citations omitted).

46. The Settlement Agreement easily satisfies the standard for preliminary approval. As discussed above, the Settlement Agreement has no obvious deficiencies and falls well within the range of reasonableness. The Settlement is the result of good faith, arm's length negotiations between the Parties. Def. Decl. ¶ 9–14. The Parties have been in discussions with Plaintiff since the Adversary Proceeding was filed in June 2024, *id.*, and the Settlement Class has been represented by Class Counsel who has extensive experience and expertise in WARN Act matters. No aspect of the Settlement Agreement improperly grants preferential treatment to the Class Representative or any segment of the Settlement Class. Each Class Member will receive his/her Settlement Award that will represent the share of the Settlement Amount that they are entitled to receive as determined by the Settlement Administrator ("Settlement Award(s)"). The Court should preliminarily approve the Settlement Agreement.

47. In addition to preliminary approval, a class settlement requires final approval after a fairness hearing, at which class members may appear and formally raise objections, if any. *See* Fed. R. Civ. P. 23(e)(2), 23(e)(5); *In re Shell Oil Refinery*, 155 F.R.D. at 555; *In re Heartland Payment Sys.*, 851 F.Supp.2d at 1062–63; Manual for Complex Litigation, Fourth § 21.633 ("The fairness hearing . . . will provide class members an opportunity to present their views on the proposed settlement and to hear arguments and evidence for and against the terms.").

48. The Parties propose that the Court schedule the Final Fairness Hearing approximately 90 days from the date of entry of the Proposed Preliminary Order, which will allow the Debtors to comply with the notice requirements of 28 U.S.C. § 1715 (the "Class Action Fairness Act") and will provide adequate notice to Class Members so that they may consider the terms of the Settlement and decide whether to object. This further satisfies the notice requirement for the Class Members. *See* Fed. R. Bankr. P. 2002(a)(3) (providing that "parties in interest" must receive

"at least 21 days' notice of "the hearing on approval of a compromise or settlement of a controversy").

V. The Court Should Approve the Form and Manner of Servicing the Settlement Class Notice and the Appointment of the Settlement Administrator

49. Kroll should be appointed as the Settlement Administrator. Kroll possesses requisite qualifications and experience to administer the Settlement Agreement.

50. Federal Rule 23(e)(1) provides that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by" the terms of any proposed settlement. Fed. R. Civ. P. 23(e). This requirement is designed to "inform class members of the nature of the pending litigation; of the settlement's general terms; that complete information is available from court files; and that any class member may appear and be heard at the fairness hearing." *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 300 (W.D. Tex. 2007). Proper notice "generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and to be heard." *Id.* at 300 (citing *In re Cement & Concrete Antitrust Litig.*, 817 F.2d 1435, 1440 (9th Cir. 1987)).

51. The Settlement Administrator will take great care to ensure that Class Members are made aware of this Settlement. The Settlement Class Notice outlines the terms of the Settlement Agreement and provides instructions for how each Class Member may obtain a complete copy of the Settlement Agreement. The Settlement Class Notice also states the date, time, location, and purpose of the Final Fairness Hearing, informs each Class Member of the Final Fairness Hearing, and describes the procedure for objecting to the Settlement Agreement at the Final Fairness Hearing. The Settlement Class Notice further provides detailed instructions on how a Class Member may opt-out of the Settlement Class or object to the Settlement.

52. With the Court's approval, the Settlement Administrator will mail the Settlement Class Notice, substantially in the form attached to the Settlement Agreement as **Exhibit A,** to each Class Member. The Debtors will provide a spreadsheet to the Settlement Administrator with Class Members' contact information based on Zachry's personnel records (the "Class Member Spreadsheet"). The Settlement Administrator will run a check of the Class Members' last-known addresses against those on file with the U.S. Postal Service's National Change of Address List. Within ten (10) days of receipt of the Class Member Spreadsheet from Zachry, the Settlement Administrator will mail Settlement Class Notices to the Class Members. Notices returned to the Settlement Administrator as non-delivered shall be re-sent to the forwarding address, if any, on the returned envelope. Finally, if there is no forwarding address, the Settlement Administrator will conduct a computer search for a new address using the last four digits of the Class Member's social security number. Said search will be performed by the Settlement Administrator one time for each Settlement Class Notice returned without a forwarding address per Class Member. *See DeHoyos*, 240 F.R.D. at 296 (observing that notice by mail is preferred when all or most of the class members can be identified); *see also* 3 Newberg on Class Actions § 8:15 (5th ed.) ("[S]ettlement notice, like any form of notice, must comply with the Constitution's due process requirements – that is, the notice must be 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'") (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)); *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1098 (5th Cir. 1977) ("[T]he type of notice to which a member of a class is entitled to depends upon the information available to the parties about that person").

53. Accordingly, the form and manner of service of the Settlement Class Notice are sufficient and should be approved. No other notice need be provided.

Emergency Consideration

54. The Debtors request emergency consideration of this Motion. The Settlement is the result of extensive arm's-length negotiations and mediation. Before the Class Members can receive their Settlement Award, the Settlement Agreement must undergo a three-months long approval process pursuant to Rule 23 and the Class Action Fairness Act. Time is of the essence. Providing full notice of the Motion would further delay the approval of the Settlement Agreement and payment of the Settlement Award. Further, the Debtors are in the process of formulating their chapter 11 plan and intend to finalize it in the near future. Any delay in approving the Settlement Agreement will cause uncertainty as to the resolution of the Class Action and impact the Debtors' ability to formulate their chapter 11 plan.

55. The Parties consent to shortening notice of the Motion. No other parties in interest will be prejudiced. The Debtors submit that cause has been shown to reduce the notice period pursuant to Bankruptcy Rule 9006(c)(1).

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

56. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

57. The Debtors will provide notice of this Motion to: (a) Class Counsel; (b) the U.S. Trustee; (c) counsel to the Committee; (d) the United States Attorney's Office for the Southern District of Texas; (e) the state attorneys general for the states in which the Debtors operate; (f) the Internal Revenue Service; (g) the Prepetition Agent; and (h) any party that has requested notice

pursuant to Bankruptcy Rule 2002 and Bankruptcy Local Rule 9013-1(d). Based on the nature of the relief requested, no other or further notice need be provided.

The Debtors respectfully request that the Court enter the Order granting the relief requested in this Motion and such other and further relief as the Court deems appropriate under the circumstances.

Dated: September 26, 2024
Houston, Texas

/s/ Charles R. Koster

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Counsel to the Debtors and Debtors in Possession

Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ *Charles R. Koster*
Charles R. Koster

Certificate of Service

I certify that on September 26, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ *Charles R. Koster*
Charles R. Koster

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

In re:	)	Chapter 11
ZACHRY HOLDINGS, INC., *et al*[1]	)	Case No. 24-90377 (MI)
Debtors.	)	(Jointly Administered)
AVIS LAMOTTE, *on behalf of herself and those similarly situated*	)	
Plaintiff	)	
v.	)	Adv. Pro. No. 24-03122 (MI)
ZACHRY INDUSTRIAL, INC.,	)	
Defendants.	)	**Re Docket No. _____**

INTERIM ORDER (A) (I) APPROVING THE SETTLEMENT BY AND BETWEEN AVIS LAMOTTE, ON HER OWN BEHALF AND ON BEHALF OF OTHERS SIMILARLY SITUATED, AND THE DEBTORS, (II) CERTIFYING A CLASS FOR SETTLEMENT PURPOSES ONLY, (III) APPOINTING PLAINTIFF AS CLASS REPRESENTATIVE AND PLAINTIFF'S COUNSEL AS CLASS COUNSEL FOR SETTLEMENT PURPOSES ONLY, (IV) APPROVING THE FORM AND MANNER OF SERVICE OF THE SETTLEMENT CLASS NOTICE, (V) APPOINTING THE SETTLEMENT ADMINISTRATOR, AND (VI) SCHEDULING FINAL HEARING; AND (B) GRANTING RELATED RELIEF

Upon the emergency motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an interim order (this "Preliminary Approval Order") and a final order (the "Final Approval Order"): (A) (i) approving the Settlement

[1] The last four digits of Zachry Holdings, Inc.'s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors' proposed claims and noticing agent at https://www.veritaglobal.net/ZHI. The location of the Debtors' service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion or the Settlement Agreement, as applicable.

by and between Plaintiff, on her own behalf and on behalf of others similarly situated, and the Debtors; (ii) certifying the Settlement Class for Settlement purposes only; (iii) appointing Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel for Settlement purposes only; (iv) approving the form and manner of service of the Settlement Class Notice; (v) appointing the Settlement Administrator; and (vi) scheduling a Final Fairness Hearing to consider final approval of the Settlement Agreement; and (B) granting related relief; all as more fully set forth in the Motion and the Settlement Agreement; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that this Court may enter an interim order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of and in opposition, if any, to the relief requested therein at an interim hearing before this Court (the "Interim Hearing"); and this Court having considered the *Declaration of Mohsin Y. Meghji in Support of the Debtors' Emergency Motion for Interim and Final Orders Approving the Settlement by and Between Avis Lamotte, on Her Own Behalf and on Behalf of Others Similarly Situated, and the Debtors*; and this Court having determined that the legal and factual bases set forth in the Motion and at the Interim Hearing, if any, establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor.

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[3]

A. The Settlement is a good-faith compromise and settlement of disputes, controversies, claims, and causes of action arising out of or otherwise related to the *Avis Lamotte v. Zachry Industrial, Inc.*, Adversary No. 4:24-AP-03122 (the "Class Action" or the "Adversary Proceeding").

B. The Settlement Agreement is the product of extensive arm's-length, good faith negotiations and represents a fair and reasonable compromise among the Parties. The Settlement is reasonable, fair, equitable, appropriate, and in the best interests of each of the Debtors and their estates, and entry into the Settlement Agreement reflects a sound exercise of the Debtors' business judgment.

IT IS HEREBY ORDERED THAT:

1. The Debtors are authorized to enter into the Settlement Agreement, attached as **Exhibit 1**, in accordance with and subject to the terms and conditions of this Preliminary Approval Order.

2. The Settlement Class shall include employees who (i) worked at and/or received assignments from the Golden Pass Project; (ii) were laid off (as defined by Zachry) between January 1, 2024, and August 8, 2024; (iii) are affected employees within the meaning of 29 U.S.C. § 2101(a)(5); and (iv) have not filed a timely request to opt-out of the Settlement Class.

3. The Settlement Class is approved for Settlement purposes only pursuant to Federal Rule 23 and Bankruptcy Rules 7023 and 9014.

4. Avis Lamotte is hereby designated as Class Representative for Settlement purposes only. No aspect of the Settlement Agreement shall improperly grants preferential treatment to the Class Representative.

[3] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

5. J. Gerard Stranch, IV, Michael C. Iadevaia of Stranch, Jennings & Garvey, PLLC, Samuel J. Strauss and Raina Borrelli of Strauss Borrelli, PLLC, Lynn A. Toops and Amina A. Thomas of Cohen & Malad, LLP, and Matthew S. Okin and David L. Curry, Jr., of Okin Adams Bartlett Curry, LLP, are hereby appointed as Class Counsel for Settlement purposes only.

6. Kroll is appointed as the Settlement Administrator to administer the terms of the Settlement Agreement.

7. The form of the notice of the Settlement and opt-out form to be sent to the Class Members (the "Settlement Class Notice"), which is attached to Exhibit 1 (the Settlement Agreement) as **Exhibit A**, comports with all applicable law and is hereby approved.

8. Within ten (10) days following the entry of this Preliminary Approval Order, Zachry shall provide a spreadsheet to the Settlement Administrator that lists, for each Class Member, their name, last-known address, and last four digits of their social security number ("Class Member Spreadsheet"). The Settlement Administrator will run a check of the Class Members' last-known addresses against those on file with the U.S. Postal Service's National Change of Address List.

9. The Settlement Administrator shall serve the Settlement Class Notice in accordance with the Settlement Agreement within ten (10) business days of receipt of the Class Member Spreadsheet. Notices returned to the Settlement Administrator as non-delivered shall be re-sent to the forwarding address, if any, on the returned envelope. If there is no forwarding address, the Settlement Administrator will conduct a computer search for a new address using the last four digits of the Class Member's social security number. Such search will be performed by the Settlement Administrator one time for each Settlement Class Notice returned without a forwarding address per Class Member.

10. If any putative member of the Settlement Class does not wish to be a Class Member, then such party may opt-out of the Settlement Class by following the procedures set forth in the Settlement Class Notice and mailing the opt-out form to the Settlement Administrator at the address provided in the Settlement Class Notice postmarked no later than thirty (30) days after the date of mailing the Settlement Class Notice (the "Opt-Out Deadline").

11. Within five (5) business days after the Opt-Out Deadline, Class Counsel shall provide a declaration to the Bankruptcy Court and the Debtors reflecting the results of the Settlement Class Notice and opt-out process. This declaration shall inform and disclose to the Court and the Debtors about (a) the number of putative class members who opt-out of the Settlement Class as a percentage against the total number of putative Class Members; (b) the manner by which the opt-out percentage was determined, including underlying documents, if applicable; and (c) the names of the putative members of the Settlement Class who have opted-out.

12. Class Counsel is authorized to file a proof of claim on behalf of the Settlement Class within five (5) business days from the execution of the Settlement Agreement in an amount equal to the Settlement Agreement.

13. Pending entry of the Final Approval Order, any pending dates and deadlines related to the Adversary Proceeding, Bankruptcy Rule 2004 notices, and the Adversary Proceeding, are hereby abated.

14. Pending entry of the Final Approval Order, the Parties shall not commence any additional proceedings against, or serve any additional discovery upon, any other Party (including their respective affiliates, parents, representatives, related parties, members, member parents,

member parent affiliates, shareholders, officers, directors, employees, agents, professionals, successors, and assigns) related to or arising from the Adversary Proceeding.

15. The Court shall conduct the Final Fairness Hearing on [_____, ____], 202[_____] at [___ : _____], prevailing Central Time.

16. Objections or other responses to final approval of the Settlement Agreement are to be filed with the Court no later than [_____, ____], 202[_____] (the "Objection Deadline").

17. Objections or other responses must be (a) in writing, (b) identify the putative member of the Settlement Class, and (c) must state with particularity the legal and factual basis for such objection or other response to the Settlement Agreement.

18. If the Settlement Agreement is not approved, is voided, terminated, or fails to become effective for any reason, the Class Representative, the Settlement Class, and the Debtors shall be returned to the status quo that existed immediately prior to the date of execution of the Settlement Agreement.

19. Notice of the Motion as provided therein shall be deemed good and sufficient notice and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

20. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Preliminary Approval Order are immediately effective and enforceable upon its entry.

21. The Debtors, the Settlement Administrator, the Class Representative, and Class Counsel are authorized to take all actions necessary to effectuate the relief granted in this Preliminary Approval Order in accordance with the Motion.

22. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Preliminary Approval Order.

Dated: _____, 202____

MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Settlement Agreement

SETTLEMENT AND RELEASE AGREEMENT

This Settlement Agreement ("Settlement Agreement") sets forth the principal terms of a settlement (the "Settlement") by and among Zachry Industrial, Inc. ("Zachry" or the "Defendant") and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (together with Zachry, the "Debtors"), and plaintiff Avis Lamotte (the "Plaintiff") (together with Debtors, the "Parties," and each individually, a "Party") on her own behalf and on behalf of others similarly situated (together with Plaintiff, for purposes of the Settlement only, the "Settlement Class" (defined in further detail *infra* § 2), with each individual person who is a member of the Settlement Class, including Plaintiff, a "Class Member"), by and through their undersigned counsel, J. Gerard Stranch, IV, Michael C. Iadevaia of Stranch, Jennings & Garvey, PLLC, Samuel J. Strauss and Raina Borrelli of Strauss Borrelli, PLLC, Lynn A. Toops and Amina A. Thomas of Cohen & Malad, LLP, and Matthew S. Okin and David L. Curry, Jr., of Okin Adams Bartlett Curry, LLP (for purposes of the Settlement only, "Class Counsel"), subject to approval under Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") by the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court"), in the above-captioned chapter 11 cases, of all disputes, controversies, claims, and causes of action arising out of, or otherwise related to, the allegations and/or claims brought in Plaintiff's Class Action Complaint [Adv. D.I. 1] (the "Complaint," and the underlying litigation, more generally, the "Dispute") under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101–2109 (the "WARN Act") in *Avis Lamotte v. Zachry Industrial, Inc.*, Adversary No. 4:24-AP-03122 (the "Class Action" or the "Adversary Proceeding"). The Parties, by and through their respective counsel, stipulate and agree as follows:

RECITALS

WHEREAS, between January 1, 2024, and August 8, 2024, Plaintiff and certain other employees of Debtor who worked at 3752 S Gulfway Dr., Sabine Pass, Texas 77655, the Zachry Human Resources/Recruiting office at Port Arthur, Texas, and the supporting facilities located in Baytown, Texas, Orange, Texas, and Beaumont, Texas, all of which constitute a single site of employment (the "Golden Pass Project"), were laid off by Zachry (as defined by Zachry);

WHEREAS, on May 21, 2024, Zachry, and twenty of its affiliated entities, each filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code ("Bankruptcy Code") in the Bankruptcy Court. The chapter 11 cases are being jointly administered under Case No. 24-90377 (MI);

WHEREAS, on June 17, 2024, Plaintiff commenced the Adversary Proceeding and filed the Complaint against Zachry for alleged violation of the WARN Act;

WHEREAS, the Complaint asserts that Zachry is liable to Plaintiff and a putative class for damages in the amount equal to the sum of each Class Member's unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay, pension and 401(k) contributions, and other COBRA benefits they allege they are entitled to receive in accordance with the WARN Act as a result of Zachry's alleged violation of the WARN Act;

WHEREAS, on July 22, 2024, Zachry filed an Answer and Affirmative Defenses to the Complaint, denying all liability in respect of the allegations in the Complaint;

WHEREAS, Zachry continues to deny all liability, including but not limited to because: (1) the circumstances resulting in the layoffs were unforeseeable in the sixty (60)-day period preceding the layoffs, satisfying the 29 U.S.C. § 2102(b)(2)(A) WARN Act exception for unforeseeable business circumstances; (2) Zachry was reasonably seeking capital to avoid layoffs, satisfying the 29 U.S.C. § 2102(b)(1) WARN Act "faltering company" exception; and (3) Zachry gave as much notice to the putative Class Members as was practicable under the circumstances, satisfying 29 U.S.C. § 2102(b)(3);

WHEREAS, there are significant, complex legal and factual issues in dispute between the Parties that would, absent consensual resolution, require extensive discovery, including class discovery, and potentially involve protracted litigation and risks to the Parties and putative Class Members;

WHEREAS, Class Counsel have conducted a thorough investigation into the facts of the Class Action. Class Counsel spent considerable time interviewing Class Members. Class Counsel also reviewed and analyzed many documents, as well as data provided by Zachry. Class Counsel further researched the Defendant, its public filings, and its operations in Port Arthur, Texas. Class Counsel investigated the number of Zachry's legal and factual defenses. Based on Class Counsel's independent investigation and evaluation, Class Counsel is of the opinion the Settlement is fair, reasonable, and

adequate and, in light of all known facts and circumstances—including potential litigation risks such as significant delay, the potential that class certification may not be granted, the defenses asserted by Defendant, and numerous potential appellate issues—is in the best interest of the Settlement Class. The Debtors and the Debtors' counsel also agree the Settlement is fair and in the best interest of the Settlement Class and the Debtors' estates.

WHEREAS, in an effort to resolve the Dispute, the Parties participated in mediation with Ms. Gloria Portela (the "Mediator"), including the preparation of confidential mediation statements for the Mediator, multiple Zoom sessions with the Mediator, as well as, a full day in-person mediation session on September 3, 2024;

WHEREAS, to avoid extensive, costly, prolonged, and uncertain litigation, the Parties want to enter into a final settlement and release of any and all claims, demands, debts, liabilities, obligations, liens, actions and causes of action, costs, expenses, attorneys' fees, damages, and other amounts or claims, that the Releasing Parties (defined *infra* § 35) may have had, now have, or hereafter may have against the Released Parties (defined *infra* § 35), as asserted in the Complaint, the Class Proof of Claim (defined *infra* § 17), the Proofs of Claim by any Class Members (defined *infra* § 16), or which materially relate to, or arise from, the violations of WARN Act alleged in the Complaint in accordance with the terms of this Settlement, subject to Bankruptcy Court approval;

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Plaintiff, on behalf of herself and as a representative of the Settlement Class ("Class Representative"), the Settlement Class, Class Counsel, and the Debtors, agree, subject to Bankruptcy Court approval, as follows:

SETTLEMENT

1. **Class Counsel** – For Settlement purposes only, J. Gerard Stranch, IV, Michael C. Iadevaia of Stranch, Jennings & Garvey, PLLC, Samuel J. Strauss and Raina Borrelli of Strauss Borrelli, PLLC, Lynn A. Toops and Amina A. Thomas of Cohen & Malad, LLP, and Matthew S. Okin and David L. Curry, Jr., of Okin Adams Bartlett Curry, LLP shall be appointed "Class Counsel."

2. **Settlement Class** – For Settlement purposes only, the "Settlement Class" shall refer to Plaintiff, as well as other similarly-situated employees of Zachry who: (i) worked at and/or received assignments from the Golden Pass Project; (ii) were laid off (as defined by Zachry) between January 1, 2024, and August 8, 2024[1]; (iii) are affected employees within the meaning of 29 U.S.C. § 2101(a)(5); and (iv) have not filed a timely request to Opt-Out of the Settlement Class. The list of putative Class Members that constitute the Settlement Class completely and in its entirety is set forth in the attached **Exhibit B**. To the extent that there is any alleged inconsistency, Exhibit B controls.

3. **Class Representative** – For Settlement purposes only, Plaintiff Avis Lamotte shall be appointed the "Class Representative."

4. **Class Members Subject to Settlement** – Plaintiff and each and every individual Class Member, including his or her agents, attorneys, heirs, representatives, and assigns, shall be bound by this Settlement Agreement, the Preliminary Approval Order (defined *infra* § 12), and the Final Approval Order (defined *infra* § 12).

5. **Settlement Amount** – Subject to Bankruptcy Court approval, in full and final settlement of the Class Action and Released Claims, the Parties agree that Debtors shall fund the Settlement by making a payment to the Settlement Administrator (defined *infra* § 10) in the total amount of $7,000,000 USD (the "Settlement Amount"), which includes: (i) a Service Payment (defined *infra* § 8), (ii) the amount from which settlement distributions will be made to individual Class Members (each individual payment to an individual Class Member, a "Settlement Award," and the total combined amount of all Settlement Awards, the "Total Settlement Award Amount"), (iii) Class Counsel Fees (defined *infra* § 9), Administration Costs (defined *infra* § 10), including but not limited to the cost of issuing Settlement Class Notices (defined *infra* § 18), and (iv) all taxes and withholdings an employer is required to make arising out of, or based on, Settlement payments to the Settlement Class, including: (1) Federal Insurance Contribution Act ("FICA"), (2) Federal Unemployment Tax Act ("FUTA"), and

[1] This definition excludes employees who (i) were terminated for any reason other than layoff, as that term is defined by Zachry; (ii) voluntarily quit, resigned, or retired; (iii) were rehired (within a six-month period following the termination of employment); and/or (iv) transferred to another Zachry location or function, as determined by Zachry in its sole discretion.

(3) State Unemployment Tax Act ("SUTA") obligations. After accounting for the Service Payment, Class Counsel Fees, Administration Costs, and all taxes and withholdings, the Total Settlement Award Amount shall be distributed among the Settlement Class according to a formula provided by Class Counsel that will properly pay each Class Member for the damages he or she incurred.

6. **Notice Costs** – Defendant recognizes and understands that the funds necessary to pay for the issuance of the Settlement Class Notices (defined *infra* § 18) may be required before the Settlement Class Notices are distributed to Class Members, and that any such payment shall be included in, and not in addition to, the total Settlement Amount of $7,000,000 noted above. Defendant agrees to pay for the issuance of the Settlement Class Notices as part of the Settlement Amount before full funding, as described herein.

7. **Settlement Awards Considered Income** – All Settlement Awards made to Class Members under this Settlement Agreement shall be deemed to be income to such Class Members solely in the year in which the Class Members receive such payments. It is expressly understood and agreed that the receipt of a Settlement Award will not entitle any Class Member to any additional compensation or benefits from Zachry under any company bonus, contest, compensation, benefit plan, or agreement in place during the period covered by the Settlement, nor will it entitle any Class Member to any increased retirement benefits, 401(k) benefits, matching benefits, or deferred compensation benefits (notwithstanding any contrary language or agreement in any benefit or compensation plan document for Zachry that might have been in effect during the period covered by the Settlement).

8. **Class Representative Service Payment** – Subject to Bankruptcy Court approval, a payment in the amount of $2,000 shall be made to the Class Representative, Avis Lamotte, as a class services award ("Service Payment"), to be deducted from the Settlement Amount for her role as Class Representative in the Class Action. The Settlement Administrator (defined *infra* § 10) will issue an IRS Form 1099 to the Class Representative for the Service Payment, and the Class Representatives will be solely responsible for correctly characterizing the Service Payment for tax purposes and for paying any taxes on the amounts received.

9. **Class Counsel Fees** – Subject to Bankruptcy Court approval and following distribution of the Settlement Class Notices (defined *infra* § 18) to, and the opportunity to object by, parties in

interest (including the United States Trustee), Class Counsel shall receive attorneys' fees and costs in the maximum amount of $2,333,333.34, plus reasonable and actual incurred expenses (collectively, "Class Counsel Fees"). All Class Counsel Fees shall be deducted from the Settlement Amount. Defendant agrees not to object to the payment of Class Counsel Fees. The Class Counsel Fees will cover (a) all of Class Counsel's work performed on the Class Action; (b) all fees and costs incurred to date in the Class Action; (c) all work to be performed on the Class Action (subject to Bankruptcy Court approval); (d) all fees and costs to be incurred in the Class Action (subject to Bankruptcy Court approval); (e) administration of the Settlement (other than those fees and costs attributable to the Settlement Administrator, defined below); (f) resolution of the Class Action and associated Adversary Proceeding; and (g) any challenges, writs, or appeals to the Settlement. Should Class Counsel request and/or the Bankruptcy Court approve a lesser amount for Class Counsel Fees, the difference between the lesser amount, and the maximum amount set forth above, shall be added to the Total Settlement Award Amount. Approved Class Counsel Fees shall be paid to Class Counsel within seven (7) days of the Effective Date (defined *infra* § 15).

10. **Settlement Administrator** – Subject to Bankruptcy Court approval, Class Counsel shall be authorized to retain Kroll Settlement Administration LLC ("Kroll") as the settlement administrator (the "Settlement Administrator"), subject to the Debtors' approval of the Settlement Administrator. All costs and fees associated with the administration of the Settlement, including but not limited to the disbursement of Settlement Awards and the Settlement Class Notices (defined *infra* § 18) ("Administration Costs"), shall be deducted from the Settlement Amount. The Settlement Administrator shall coordinate with the Debtors to create a Qualified Settlement Fund ("QSF") from which to disburse Settlement Awards and other applicable fees and costs. Within ten (10) days of the Preliminary Approval Order (defined *infra* § 12), Defendant shall provide a spreadsheet to the Settlement Administrator that lists for each Class Member their name, last-known address, and last four digits of their social security number ("Class Member Spreadsheet"). The Parties agree that (i) the Class Member Spreadsheet data as well as any other Settlement Class data (together, "Settlement Class Data") will be used solely by the Settlement Administrator, who will agree to keep such information confidential, (ii) the Settlement Administrator will use the Settlement Class Data for the sole purpose

of effectuating the Settlement, and (iii) the Settlement Class Data will not be provided to Class Counsel. The Class Member Spreadsheet shall be based on Defendant's personnel records and provided in a format reasonably acceptable to the Settlement Administrator. Defendant agrees to consult with the Settlement Administrator before the Class Member Spreadsheet production date to ensure the format will be acceptable to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' last-known addresses against those on file with the U.S. Postal Service's National Change of Address List. Within ten (10) days of receipt of the Class Member Spreadsheet from Defendant, the Settlement Administrator will mail Settlement Class Notices to the Class Members. Settlement Class Notices returned to the Settlement Administrator as non-delivered shall be re-sent to the forwarding address, if any, on the returned envelope. If there is no forwarding address, the Settlement Administrator will conduct a computer search for a new address using the last four digits of the Class Member's social security number. Said search will be performed by the Settlement Administrator one time for each Settlement Class Notice returned without a forwarding address per Class Member. Upon completion of these steps by the Settlement Administrator, Defendant and the Settlement Administrator shall be deemed to have satisfied their obligations to provide Settlement Class Notice to any affected Class Members and, regardless of whether the affected Class Members actually received Settlement Class Notice, the affected Class Members shall remain members of the Settlement Class and shall be bound by all the terms of the Settlement and the Court's Final Approval Order (defined *infra* § 12).

11. **CAFA Notice Requirements** – Defendant shall work with the Settlement Administrator to issue the notices of settlement contemplated by the Class Action Fairness Act of 2005, 28 U.S.C.A. § 1332(d) *et seq.* ("CAFA"), in accordance with the deadlines provided by CAFA. The Final Fairness Hearing (defined *infra* § 12) to approve this Settlement Agreement shall be scheduled for a date that will allow for the notice requirement of CAFA to be satisfied (28 U.S.C.A. § 1715(d)). The Class Representatives and Class Counsel agree to cooperate and provide Defendant with any data or information they possess which may be helpful to Defendant in complying with the CAFA notice requirements.

12. **Settlement Filings** – The Parties shall jointly file with the Bankruptcy Court a motion under Rule 23 of the Federal Rules of Civil Procedure (the "Federal Rules") as made applicable by Bankruptcy Rules 7023 and 9019 (the "Settlement Motion" or "Rule 9019 Motion"), for approval of this Settlement Agreement through a two-stage hearing process. The Settlement Motion shall request an initial hearing to be set on the earliest date convenient for the Bankruptcy Court and seek entry of an order conditionally approving this Settlement Agreement (the "Preliminary Approval Order"), among other things. The Parties shall jointly request a final fairness hearing (the "Final Fairness Hearing") on or around ninety (90) days (as required under CAFA) after the Preliminary Approval Order. At the Final Fairness Hearing, the Parties shall seek entry of an order, among other things, approving this Settlement Agreement on a final basis (the "Final Approval Order" and, together with Preliminary Approval Order, the "Approval Orders"). The Debtors shall use commercially reasonable efforts to achieve entry of the Approval Orders as soon as reasonably practicable, including by working in good faith to promptly resolve all formal and informal objections, if any, to the Rule 9019 Motion. If requested by the Debtors, the Plaintiff and Class Counsel shall take reasonable actions in support of the entry of the Approval Orders and shall not take any action inconsistent with obtaining the Approval Orders.

13. **Preliminary Approval Order** – The Preliminary Approval Order shall, among other things: (a) conditionally approve this Settlement Agreement; (b) certify the Settlement Class for purposes of this Settlement only; (c) approve the filing of the Class Proof of Claim as a class proof of claim; (d) authorize the Plaintiff, through Class Counsel or Settlement Administrator, to provide Settlement Class Notice (defined *infra* § 18) addressing, among other things, the Settlement and the certification of the Settlement Class; (e) implement reasonable procedures for individual Class Members to Opt-Out of the Settlement Class or object to this Settlement Agreement as set forth in the Preliminary Approval Order; and (f) schedule a Final Fairness Hearing.

14. **Final Approval Order** – The Final Approval Order shall, among other things: (a) approve this Settlement Agreement on a final basis; (b) approve the material terms of the Settlement as set forth in this Settlement Agreement, including procedures for distributing the Settlement Amount to members of the Settlement Class; (c) approve the release of the Released Claims set forth herein by the

Releasing Parties (excluding Opt-Outs); (d) provide that the Adversary Proceeding is dismissed with prejudice upon the receipt of Settlement Amount by the Settlement Administrator; and (e) approve such other procedures as may be necessary or desirable to implement this Settlement Agreement set forth herein.

15. **Effective Date** – The effective date of this Settlement Agreement shall occur on the latest date of the following events: (a) when the period for filing any appeal, writ, or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ, or other appellate proceeding having been filed; (b) when any appeal, writ, or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (c) when any appeal, writ, or other appellate proceeding has upheld the Bankruptcy Court's Final Approval Order with no right to pursue further remedies or relief (the "Effective Date"). It is the intention of the Parties that the Settlement shall not become effective until the Final Approval Order is completely final and there is no further recourse by any appellant or objector who seeks to contest the Settlement.

16. **Bar Date** – On July 26, 2024, the Bankruptcy Court entered an order [Bankr. D.I. 636] setting September 16, 2024, at 5:00 p.m. (prevailing Central Time) (the "Bar Date") as the deadline for all claimants to file their individual proof of claim ("Proof(s) of Claim") for any alleged prepetition claims against the Debtors.

17. **Class Proof of Claim** – Class Counsel shall, in the above-captioned chapter 11 cases, file a proof of claim on behalf of the Settlement Class (the "Class Proof of Claim") within five (5) business days from the execution of this Settlement Agreement. For Settlement purposes only, the Debtors shall consent to: (a) the application of Bankruptcy Rule 7023 to the Class Proof of Claim, as well as the certification of the Settlement Class pursuant to Federal Rules of Civil Procedure 23(b)(2) and (b)(3), as modified and made applicable in the Bankruptcy Cases by Rules 7023 and 9014 of the Bankruptcy Rules; and (b) the filing and allowance of the Class Proof of Claim as set forth herein in an amount equal to the Settlement Amount, and the Debtors shall not object to the Class Proof of Claim before the Effective Date.

18. **Settlement Class Notices** – Upon appointment, Settlement Administrator shall be responsible for the production and mailing of all notices required to be provided to the Class Members

(the "Settlement Class Notice(s)"), including taking reasonable steps in the event Settlement Class Notice is returned as undeliverable (*see supra* § 10). Class Counsel shall perform the responsibilities of the Settlement Administrator until a Settlement Administrator is appointed, including the production and mailing of all Settlement Class Notices.

19. **Contents of the Settlement Class Notice** – The Settlement Class Notice shall contain the following information:

- That this Settlement Agreement shall only become effective on the Effective Date, subject to its approval by the Bankruptcy Court and the Bankruptcy Court entering a Final Approval Order without material modification under Bankruptcy Rules 7023 and 9019;
- That, upon approval and occurrence of the Effective Date, this Settlement Agreement shall be effective as to all Class Members;
- That Class Members shall have the right to Opt-Out of the Settlement Class and to object to this Settlement Agreement either in person or through counsel, at the Final Fairness Hearing;
- That, upon the Effective Date, all Released Claims of a Class Member in the Settlement Class (other than those claims to be paid under the terms of this Settlement Agreement) shall be waived, and no person, including the Settlement Class Member, shall be entitled to any further payment or other distribution thereon; and
- That any Class Member wishing to exercise his/her right to Opt-Out of the Settlement Class shall complete the Opt-Out Form accompanying the Settlement Class Notice and mail it to Class Counsel no later than then the Opt-Out Deadline.

20. **Opting-Out of Settlement Class** – Class Counsel shall cause Settlement Class Notice to be issued to putative Class Members. Such Settlement Class Notice shall provide members of the Settlement Class thirty (30) days from the date of mailing to Opt-Out of the Settlement (the "Opt-Out Deadline"), but shall conspicuously disclose that the effect of his or her Opting-Out will be to bar any recovery from any Debtor in connection with the Class Action or the allegations set forth in the Complaint, unless such a putative Settlement Class member timely filed by the Bar Date individual Proof(s) of Claims in the chapter 11 cases asserting claims arising from the allegations set forth in the Complaint. Such Settlement Class Notice shall also state that any Class Member who (a) timely files an individual Proof of Claim asserting claims arising from the allegations set forth in the Complaint and (b) chooses to Opt-Out, may (i) pursue such claims in their individual capacity and (ii) will not receive a Settlement Award. The form of the Opt-Out notice is set forth in the attached **Exhibit A**.

21. **No Soliciting Opt-Outs** – The Parties' shared objective is to settle the Released Claims in the Debtors' chapter 11 cases. This objective cannot be realized if a substantial number of putative Settlement Class members elect to Opt-Out of the Settlement Class. Class Counsel acknowledges resolution of the Adversary Proceeding is in the best interest of the Settlement Class. Accordingly, the Parties agree they will not solicit, or actively encourage, putative members of the Settlement Class to Opt-Out of the Settlement Class. However, this Settlement Agreement neither prohibits Class Counsel from counseling any putative member of the Settlement Class about his or her legal rights, nor prohibits any putative member of the Settlement Class who seeks such counsel from electing to Opt-Out of the Settlement Class.

22. **Results of Opt-Out Notice and Procedure** – Within five (5) business days after the Opt-Out Deadline, Class Counsel shall provide a declaration to the Bankruptcy Court and the Debtors reflecting the results of the Settlement Class Notice and Opt-Out process. This declaration shall inform and disclose to the Bankruptcy Court and the Debtors about (a) the number of putative class members who Opt-Out of the Settlement Class as a percentage against the total number of putative Class Members (the "Opt-Out Percentage"); (b) the manner by which the Opt-Out Percentage was determined, including underlying documents, if applicable (*e.g.*, mathematical formulae and data sets used); and (c) the names of the putative members of the Settlement Class who have Opted-Out.

23. **Conditions for Effectiveness** – The Debtors shall have the right and option, in their sole discretion, to terminate this Settlement Agreement when the Opt-Out Percentage exceeds three percent (3%) of the total members of the putative Settlement Class. The Debtors must elect to terminate this Settlement Agreement by written notice delivered to Class Counsel on, or before, five (5) business days following the date on which they receive the above-referenced written notice indicating the threshold for Opt-Outs has been surpassed. If the Debtors do not exercise their right to terminate on, or before, the expiration of that business day period, their right to terminate based on the Opt-Out Percentage shall expire.

24. **Failure to Opt-Out** – Each putative member of the Settlement Class who has not timely and properly elected to Opt-Out of this Settlement shall be a Class Member and shall receive distribution of the Settlement Amount in accordance with this Settlement Agreement and shall be bound

by the releases set forth below (*see infra* § 35). Each putative member of the Settlement Class who has timely and properly elected to Opt-Out of this Settlement shall not be a Class Members and shall not receive distribution of the Settlement Amount nor be bound by the release.

25. **Releases Binding on All Class Members** – Class Counsel acknowledges the releases set forth below (*see infra* § 35) shall bind all Class Members who do not timely and properly Opt-Out.

26. **Disbursement of Settlement Amount** – The Settlement Amount shall be paid within five (5) business days of the Effective Date. The Settlement Amount will be paid to a QSF identified by the Settlement Administrator for distribution to the members of the Settlement Class as set forth herein.

27. **Disbursement of Settlement Agreement Fund Payments** – The Settlement Administrator shall be responsible for determining the share of each individual Class Member and the preparation and mailing of the individual checks to each Class Member for his or her share under this Settlement Agreement (including the Service Payment). Individual Settlement Award payments shall be administered to Class Members by the Settlement Administrator. The Settlement Administrator shall cause the individual checks to be mailed to each Class Member as soon as reasonably practicable, but no more than thirty (30) days following the Effective Date.

28. **Uncashed/Undelivered Settlement Checks** – Following distribution of the checks for each Class Member for his or her share under this Settlement, the Settlement Administrator shall provide the Debtors no less frequently than monthly with the names of those Class Members whose Settlement checks have been (a) returned as undeliverable or (b) remain uncashed or unnegotiated, as well as the amounts due to each of those Class Members. For all checks returned as undeliverable, the Settlement Administrator shall perform the forwarding address and/or change of address search procedures outlined in above in § 10 with regard to disbursement of Settlement Class Notices. If, after seventy-five (75) days from distribution, a check remains uncashed or unnegotiated, the Settlement Administrator shall send a follow-up notice and/or replacement check. If any check remains undelivered and/or uncashed after 120 days, the funds associated therewith will be treated as described below in § 33 (“Treatment of Unclaimed Funds”).

29. **Responsibilities of Class Counsel** – Class Counsel will respond to all inquiries of Class Members arising from or related to this Settlement Agreement and may utilize the services of the Settlement Administrator for this purpose when proper to do so.

30. **Taxation of Each Class Member's Share** – The Settlement Administrator shall pay and report each individual Settlement Award as wages. The Settlement Administrator will report each individual Settlement Award to the appropriate taxing authorities on a Form W-2 issued to the Class Member with their individual taxpayer identification number. Each individual Settlement Award shall be subject to deductions for applicable taxes and withholdings as required by federal, state, and local law. Neither the Debtors, nor Class Counsel, will calculate, withhold, or pay any taxes from the distributions paid to Class Members under this Settlement Agreement. Each Class Member shall be responsible for calculating and paying all applicable federal, state, and local income taxes, as well as statutory taxes including, without limitation, FICA and federal and state unemployment insurance amounts ("UI" and, collectively, "Payroll Taxes"), associated with the individual fund distribution that the Class Member has received. Neither shall the Debtors nor Class Counsel be responsible for fulfilling any requisite reporting requirements. Neither the Debtors nor Class Counsel believe that any FICA or UI tax liabilities exist with respect to distributions made in respect of this Settlement Agreement and shall provide a statement with each payment expressing same. Plaintiff and the Settlement Class acknowledge that neither the Released Parties nor Defendant's counsel has provided or will provide any tax advice. Moreover, Plaintiff and the Settlement Class acknowledge they are solely and entirely responsible for the payment and discharge of all federal, state, and local taxes, if any, which may, at any time, be found to be due upon or as a result of any amount that is paid to them under this Settlement Agreement. Plaintiff and the Settlement Class agree to indemnify, defend, and hold the Released Parties (defined *infra* § 35) from any claim or liability, or for any taxes and related penalties and/or interest, asserted against the Released Parties relating to the manner in which payments under this Settlement Agreement are allocated and paid.

31. **Third-Party Beneficiaries** – This Settlement Agreement is for the benefit of the Parties themselves, along with any heirs, executors, or attorneys in fact, and not for the benefit of any third parties, including commercial third parties who purport to obtain claims of the Class

Representative or Class Members through assignment, transfer, or otherwise, if any. Absent an order from the Bankruptcy Court, neither Class Counsel, Settlement Administrator, nor the Debtors shall be obligated to distribute payments from the Settlement Amount, or otherwise, to Class Members except pursuant to the provisions of this Settlement Agreement.

32. **Uncashed Settlement Checks** – Any Settlement Award checks which are not deposited, endorsed, or negotiated within 120 calendar days of their date of issuance without any further action by the Court, shall be deemed unclaimed funds (the "Unclaimed Funds") on the 121st day following the date of such issuance and treated as described below.

33. **Treatment of Unclaimed Funds** – If the total amount of Unclaimed Funds exceeds 10% of the Total Settlement Award Amount, the Unclaimed Funds shall be distributed to those Class Members that have cashed their Settlement Award checks in proportion to their original Settlement Awards. Any of these checks for additional payments to class members which are not deposited, endorsed, or negotiated within 60 calendar days of their date of issuance, shall be deemed Remaining Funds on the 61st day following the date of such issuance and treated as described below in § 34. If the total amount of Unclaimed Funds constitutes 10% or less of the Total Settlement Award Amount, the Unclaimed Funds shall be returned to the Debtors within ten (10) business days of becoming categorized as Unclaimed Funds (i.e., on the 131st day following their date of issuance). In either event, this Settlement Agreement shall remain binding on all Parties, including any and all Class Members whose Settlement Awards were properly deemed Unclaimed Funds.

34. **Any Other Remaining Funds** – Any funds that are not distributed per the terms of this Settlement Agreement ("Remaining Funds"), including any funds that remain, for any reason, after the date on which all distributions, payments, and returns mandated by this Settlement Agreement are completed (the "Settlement Distribution Completion Date"), including the amount of any uncashed checks existing after redistribution of Unclaimed Funds pursuant to § 33 (if any), shall not be redistributed among members of the Settlement Class but shall belong to Defendant. Accordingly, any Remaining Funds shall be returned to the Debtors within ten (10) business days of the Settlement Distribution Completion Date.

35. **Release of Debtors and Related Parties** – Upon the Effective Date, except for any rights arising out of, provided for, or reserved in this Settlement Agreement, the Class Representative and each Class Member, for, and on behalf of themselves and their respective agents, attorneys, heirs, representatives, or assigns (the "Releasing Parties"), will fully and forever release and discharge the Debtors and their affiliates, and the Debtors' estates, subsidiaries, predecessors, parent(s), successors, assigns, officers, directors, shareholders, agents, employees, professionals, partners, members, insurers, accountants, attorneys, representatives, and other agents, as well as their respective predecessors, successors, and assigns (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, liquidated or unliquidated, contingent or non-contingent, asserted or unasserted, fixed or not, matured or unmatured, disputed or undisputed, anticipated, suspected, or disclosed, that the Releasing Parties may have had, now have, or hereafter may have against the Released Parties, which were asserted in the Complaint, the Class Proof of Claim, the proofs of claim by Class Members, or which materially relate to, or arise from, the violations of the WARN Act alleged in the Class Action (the "Released Claims"). On the Effective Date, all Released Claims are deemed settled, released, withdrawn, and dismissed in their entirety, on the merits, with prejudice.

36. **Release of Debtors and Released Parties Pursuant to California Civil Code** – The Releasing Parties expressly waive and release, to the fullest extent that the law permits, any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code, which provides:

> Section 1542. Certain Claims Not Affected by General Release. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party; or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code.

37. **Voiding Proofs of Claim** – The Final Approval Order shall provide that the Class Proof of Claim and any and all Proofs of Claim filed by the Class Members before the Effective Date on account of liabilities asserted, assertible, and arising from, or out of, or relating to the allegations and/or claims asserted in the Complaint or the Adversary Proceeding by Class Members, shall be

disallowed and expunged from the Debtors' claims register on the Effective Date. Nothing in this Settlement Agreement shall waive, or limit, defenses available to the Debtors against any proof of claim that has been, or may be, filed against the Debtors in the Bankruptcy Case. Any additional claims or causes of action filed or asserted by any of the Class Members with respect to liabilities arising from the allegations and/or claims alleged in the Adversary Proceeding shall be null, void, and of no effect.

38. **Class Members' Exclusive Remedy** – All claims of the Releasing Parties arising from, or related to, the Adversary Proceeding are to be paid pursuant to the terms of, and in accordance with, this Settlement Agreement. This Settlement Agreement represents each such Releasing Party's exclusive remedy as against any of the Released Parties for all Released Claims or causes of action or claims for relief arising from the Adversary Proceeding. Accordingly, upon the Effective Date, no Released Party shall be subject to liability or expense of any kind to any Releasing Party with respect to any claim or cause of action arising from the Adversary Proceeding, including the Released Claims. As of the Effective Date, each Releasing Party shall be enjoined from instituting, or maintaining, any claim or cause of action arising from the Adversary Proceeding, including the Released Claims, against any Released Party in any state or federal court or any other forum.

39. **Dismissal of the Adversary Proceeding** – The Parties agree that the Adversary Proceeding shall be dismissed with prejudice upon receipt of payment of the Settlement Amount. Zachry shall notify the Bankruptcy Court of the payment within five (5) business days following the receipt of payment of the Settlement Amount.

40. **Denial or Failure of Settlement Agreement** – If the Bankruptcy Court denies approval of this Settlement, or the conditions set forth herein are not met and the Effective Date does not occur, then the Parties shall work in good faith to amend, revise, or otherwise modify the Settlement Agreement and further seek the Bankruptcy Court's approval of the Settlement. Alternatively, with the agreement of the Parties, Zachry shall appeal any order denying the Settlement. However, if the Parties agree to cease all efforts to amend, revise, or otherwise modify the Agreement or appeal the Bankruptcy Court's order denying the Settlement, this Settlement Agreement will be null, void, and of no force and effect, and the rights and defenses of the Debtors, or any successor thereto, including any and all rights of the Debtors to object to the Proofs of Claim and/or certification of the proposed class on any grounds

permitted under applicable law, shall be reserved and retained. Upon such an event, all Parties reserve all rights, defenses, and remedies with respect to the Class Action, the Class Proof of Claim, and any Proofs of Claim filed by the Class Members, and all communications relating to the Settlement and Settlement Agreement shall be deemed confidential settlement communication under Rule 408 of the Federal Rules of Evidence.

41. **Voluntary Termination of Settlement Before Final Approval Order** – If any Party timely and properly exercises its option to terminate this Settlement Agreement pursuant to any of the applicable provisions herein, including, but not limited to, terminating this Settlement Agreement due to the Opt-Out Percentage exceeding the stated threshold (*see supra* § 23), this Settlement Agreement shall become null and void; all orders of the Court preliminarily or otherwise certifying the Settlement Class, Class Counsel, or Class Representative, including for Settlement purposes only, shall be vacated; and the Parties shall be returned to the status quo that existed in the Adversary Proceeding before the date of execution of this Settlement Agreement (subject to appropriate extensions of deadlines to enable the Dispute to proceed).

42. **No Admission of Violation of WARN Act or Liability** – This Settlement Agreement is made, among other reasons, to avoid the uncertainties, delays, and expense of further litigation. The payment of the consideration by, or on behalf of, any of the Parties herein, and/or their agreement to this Settlement Agreement, is not, and shall not be construed as, an admission of liability of any kind, including an admission as to the applicability of inapplicability of the WARN Act to the events or circumstances identified in the underlying Complaint filed in the Class Action or the Adversary Proceeding, as well as any violation of the WARN Acts and/or any other state or federal law, whether pled, or unpled, all such liability being expressly denied. This Settlement Agreement, and/or its terms, shall not be admissible in any proceeding against any Party, except in any proceeding to construe, interpret, or enforce this Settlement Agreement or any of its terms. For avoidance of doubt, this Settlement Agreement shall not be admissible in any proceeding arising from or related to any of the matters addressed herein, including, but not limited to, the claims raised in the Adversary Proceeding or similar claims raised by parties other than the Plaintiff. If the Final Approval Order is not entered or is not a final order as defined *supra* § 12 above: (a) this Settlement Agreement and the recitals herein

shall be without force or effect, and neither this Settlement Agreement, nor any of the statements herein, shall be admissible in any proceeding involving the Parties; (b) neither the Settlement Motion, nor any of the pleadings filed in support thereof, shall be admissible in any proceeding involving the Parties; and (c) none of the provisions herein shall prejudice, or impair any rights, remedies, or defenses of any of the Parties.

43. **Governing Law and Jurisdiction** – This Settlement Agreement shall be construed pursuant to the laws of the State of Texas and the United States Bankruptcy Code. The Bankruptcy Court shall retain exclusive jurisdiction over this Settlement Agreement, the Preliminary Approval Order, the Final Approval Order, and any disputes or claims related to, or arising from, the foregoing.

44. **Entire Settlement Agreement** – This Settlement Agreement, and the Exhibits and/or Schedules attached hereto, sets forth the entire agreement and understanding between the Parties, Class Counsel, and each Class Member about the subject matter hereof, and supersedes all previous discussions between, or among, each of the foregoing as to the matters herein addressed, and no promise, understanding, or representation made by any Party or agent, director, officer, employee, attorney, or financial advisor of any Party that is not expressly in this Settlement Agreement shall be binding or valid.

The Exhibits to this Settlement Agreement are:

Exhibit A: Form of Settlement Class Notice and Opt-Out Form
Exhibit B: List of Putative Class Members

45. **Recitals** – The recitals set forth above are incorporated in full and made a part of this Settlement Agreement.

46. **Interpretation** – This Settlement Agreement was the product of negotiations between the Parties, and any rule of construction requiring ambiguities to be resolved against the drafting Party shall not apply when interpreting this Settlement Agreement.

47. **Conflicting Provisions** – To the extent there is a conflict between the provisions of this Settlement Agreement, the Preliminary Approval Order, and the Final Approval Order, each such document shall have controlling effect in the following rank order: (1) the Final Approval Order; (2) the Preliminary Approval Order; and (3) this Settlement Agreement.

48. **Amendments** – Except by a written agreement the Parties or their counsel have signed, along with any required approval of the Bankruptcy Court, this Settlement Agreement may not be modified, amended, or supplemented by the Parties.

49. **Waiver** – The Parties may mutually waive any provision of this Settlement Agreement, provided, however, such waiver must be in writing, signed by authorized representatives of all Parties, and delivered either by mail, courier, facsimile, or electronic mail. A waiver of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

50. **Cooperation and Further Assurances** – The Parties shall cooperate with each other, in good faith, to achieve, execute, and otherwise consummate the terms of this Settlement Agreement and all related transactions, and to take all reasonable steps to give effect to all the terms, conditions, and agreements in this Settlement Agreement.

51. **Notices** – Any notice or other communication required or permitted to be delivered under this Settlement Agreement from any Class Member to Class Counsel, the Debtors, and/or the Bankruptcy Court, shall be (a) in writing, (b) delivered personally, by courier service, by certified or registered mail, first class postage prepaid and return receipt requested, or by electronic mail, (c) deemed to have been received on the date of delivery, and (d) addressed as follows (or to such other address as the Party entitled to notice shall hereafter designate by a written notice filed with the Bankruptcy Court):

If to Zachry:

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.
One Allen Center
500 Dallas Street Suite 2100
Houston, TX 77002
Attention: Patrick F. Hulla

WHITE & CASE LLP
609 Main Street, Suite 2900
Houston, TX 77002
Telephone: (713) 496-9700
Facsimile: (713) 496-9701
Attention: Charles R. Koster

If to Class Members or Class Counsel:

STRANCH, JENNINGS, & GARVEY, PLLC
223 Rosa Parks Ave. Suite 200
Nashville, TN 37203
Attention: J. Gerard Stranch, IV

OKIN ADAMS BARTLETT CURRY LLP
1113 Vine St., Suite 240
Houston, Texas 77002
Attention: Matthew S. Okin

STRAUSS BORRELLI, PLLC
613 Williamson St., Suite 201
Madison, WI 53703
Attention: Samuel J. Strauss

COHEN & MALAD, LLP
One Indiana Square, Suite 1400
Indianapolis, Indiana 46204
Attention: Lynn A. Toops

52. **Settlement Authority, Representations, and Warranties** – Class Counsel represents and warrants, on behalf of the Settlement Class, that they have the authority to (a) enter into this Settlement Agreement; (b) compromise and settle all the claims and causes of action released herein; and (c) release claims on behalf of the Settlement Class, contingent on the Opt-Out Percentage remaining below the stated threshold herein (*see supra* § 23). The Debtors represent and warrant that they are authorized to enter into this Settlement Agreement (subject to Bankruptcy Court approval) and that they have the right to compromise and settle all the claims and causes of action released herein. The Settlement Class represents and warrants that they own all the claims and causes of action released herein and that no claims or portions of any claims released herein have been assigned, sold, or transferred to any person or entity.

53. **No Public Disclosure** – The Plaintiff and Class Counsel will not make any public disclosure of the terms and conditions of this Settlement or public comment on the allegations of the Class Action, except for the filing of pleadings and declarations with the Court in support of the Bankruptcy Court's Preliminary and Final Approval Orders of the Settlement. Class Counsel will take all steps necessary to ensure that Plaintiff is aware of and adheres to the restriction against any public disclosure of and/or comment about the Settlement. The Plaintiff and Class Counsel will not have any communications with the media or engage in discussion or disclosure of this Settlement through social

media of any kind. Class Counsel will take all steps necessary to ensure the Plaintiff is aware of and adheres to the restriction against any media/social media comment about the Settlement and its terms.

54. **Counterparts** – This Settlement Agreement may be executed by two (2) or more counterparts, each of which shall be deemed an original, but all of which shall constitute one Settlement Agreement. This Settlement Agreement may be executed on behalf of any of the Parties by counsel of record either in the chapter 11 case or the Adversary Proceeding. This Settlement Agreement may be executed by facsimile or electronic mail, and such facsimile or electronic mail signature shall be treated as an original signature.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Settlement Agreement as of the date set forth opposite their names.

CLASS REPRESENTATIVE:

_____

AVIS LAMOTTE

Date Signed: September _____, 2024

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Settlement Agreement as of the date set forth opposite their names.

APPROVED BY SETTLEMENT CLASS COUNSEL:

J. GERARD STRANCH, IV

Date Signed: September _____, 2024

J. Gerard Stranch, IV
Michael C. Iadevaia
STRANCH, JENNINGS, & GARVEY, PLLC
223 Rosa Parks Ave., Suite 200
Nashville, TN 37203
Telephone: (615) 254-8801
Facsimile: (615) 255-5419
gstranch@stranchlaw.com
miadevaia@stranchlaw.com

SAMUEL J. STRAUSS

Date Signed: September _____, 2024

Samuel J. Strauss
Raina C. Borrelli
STRAUSS BORRELLI, PLLC
613 Williamson St., Suite 201
Madison, WI 53703
Telephone: (608) 237-1775
Facsimile: (608) 509-4423
sam@straussborrelli.com
raina@straussborrelli.com

MATTHEW S. OKIN

Date Signed: September _____, 2024

Matthew S. Okin (Texas Bar No. 00784695)
David L. Curry, Jr. (Texas Bar No. 24065107)
OKIN ADAMS BARTLETT CURRY LLP
1113 Vine St., Suite 240
Houston, TX 77002
Telephone: (713) 228-4100
Facsimile: (346) 247-7158
mokin@okinadams.com
dcurry@okinadams.com

LYNN A. TOOPS

Date Signed: September _____, 2024

Lynn A. Toops
Amina A. Thomas
COHEN & MALAD, LLP
One Indiana Square, Suite 1400
Indianapolis, IN 46204
Telephone: (317) 636-6481
ltoops@cohenandmalad.com
athomas@cohenandmalad.com

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Settlement Agreement as of the date set forth opposite their names.

DEFENDANTS:

Zachry Group

_____

TAMMY MALLAISÉ, Sr. Vice President, People & Culture

Date Signed: September _____, 2024

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Settlement Agreement as of the date set forth opposite their names.

APPROVED BY DEFENDANTS' COUNSEL

PATRICK F. HULLA

Date Signed: September _____, 2024

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

Christopher E. Moore (Texas Bar No. 24052778)
One Allen Center
500 Dallas Street Suite 2100
Houston, TX 77002
Telephone: (713) 655-0855
Facsimile: (713) 655-0020
Christopher.Moore@ogletree.com

Patrick F. Hulla
Madeline Nebel
700 West 47th St, Suite 500
Kansas City, MO 64112
Telephone: (816) 471-1301
Facsimile: (816) 471-1303
Patrick.Hulla@ogletree.com
Maddie.Nebel@ogletree.com

CHARLES R. KOSTER

Date Signed: September _____, 2024

WHITE & CASE LLP

Charles R. Koster (Texas Bar No. 24128278)
609 Main Street, Suite 2900
Houston, Texas 77002
Telephone: (713) 496-9700
Facsimile: (713) 496-9701
charles.koster@whitecase.com

Bojan Guzina
Andrew F. O'Neill
Barrett Lingle
111 South Wacker Drive, Suite 5100
Chicago, Illinois 60606
Telephone: (312) 881-5400
bojan.guzina@whitecase.com
aoneill@whitecase.com
barrett.lingle@whitecase.com

EXHIBIT A

Form of Settlement Class Notice and Opt-Out Form

EXHIBIT A-1

Form of Settlement Class Notice

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

In re:	)	Chapter 11
ZACHRY HOLDINGS, INC., *et al*[1]	)	Case No. 24-90377 (MI)
Debtors.	)	(Jointly Administered)
AVIS LAMOTTE, *on behalf of herself and those similarly situated*	)	
Plaintiff	)	
v.	)	Adv. Pro. No. 24-03122 (MI)
ZACHRY INDUSTRIAL, INC.,	)	
Defendants.	)	

NOTICE OF PROPOSED SETTLEMENT AND FAIRNESS HEARING

TO: CERTAIN FORMER EMPLOYEES OF ZACHRY INDUSTRIAL, INC.

There is currently pending a lawsuit titled *Avis Lamotte v. Zachry Holdings, Inc.*, Adv. Proc. No. 24-03122 (MI) (the "Adversary Proceeding") in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court"). Plaintiff, Avis Lamotte ("Plaintiff"), sued Defendant Zachry Industrial, Inc. ("Defendant" or "Zachry") for having terminated her and certain other employees without 60 days' advanced written notice in alleged violation of the federal WARN Act (the "WARN Action").

Plaintiff and Defendant (collectively, the "Parties") have reached a proposed settlement of the WARN Action (the "Settlement") in which money would be distributed to the Class Members, Ms. Lamotte, as the Class Representative, and Class Counsel (each defined below). The Bankruptcy Court has authorized the sending of this notice to you as a Class Member (defined below).

YOU ARE NOT BEING SUED. You should review this notice carefully as you may be entitled to receive money from the Settlement and your rights may be affected by the Settlement. This notice advises you that Class Members who do not opt out of the Settlement can receive an award consisting of a share of the settlement fund, and advises you of the date, time, and place of the hearing to approve the Settlement.

[1] The last four digits of Zachry Holdings, Inc.'s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors' proposed claims and noticing agent at https://www.veritaglobal.net/ZHI. The location of the Debtors' service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.

DEFINITION OF THE CLASS

The Bankruptcy Court has, for settlement purposes only, certified a Class (defined below), appointed Plaintiff as the Class Representative (defined below), and appointed Plaintiff's lawyers, J. Gerard Stranch, IV, Michael C. Iadevaia of Stranch, Jennings & Garvey, PLLC, Samuel J. Strauss and Raina Borrelli of Strauss Borrelli, PLLC, Lynn A. Toops and Amina A. Thomas of Cohen & Malad, LLP, and Matthew S. Okin and David L. Curry, Jr., of Okin Adams Bartlett Curry, LLP , as class counsel ("Class Counsel"). The Bankruptcy Court has also preliminarily approved the Settlement, approved this notice, and set a date for a final hearing for approval of the Settlement (the "Fairness Hearing").

The "Class" is defined as: Plaintiff and other similarly situated employees of Defendant: (i) who worked at and/or received assignments from the facilities located at 3901 Twin City Hwy, Port Arthur, TX 77642; the Zachry Human Resources/Recruiting office at Port Arthur, Texas; Sabine Pass, Texas; Baytown, Texas; Orange, Texas; and Beaumont, Texas, all of which constitute a single site of employment (the "Golden Pass Project"); (ii) were laid off (as defined by Zachry) between January 1, 2024, and August 8, 2024; (iii) who are affected employees within the meaning of 29 U.S.C. § 2101(a)(5), and (iv) who have not filed a timely request to opt-out of the Class.

"Class Members" are defined as a member of the Class. You have been identified as a Class Member who is eligible to participate in the Settlement.

The "Class Representative" is Avis Lamotte, a former employee who initiated this lawsuit.

BACKGROUND

Between January 1, 2024, and August 8, 2024, Plaintiff and other employees of Zachry who worked at or reported to the Golden Pass Project were laid off by Zachry.

On May 21, 2024, Zachry and certain of its affiliated entities each filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court (the "Chapter 11 Cases"). The Chapter 11 Cases are being jointly administered under Case No. 24-90377 (MI).

On June 17, 2024, Plaintiff commenced the Adversary Proceeding and filed Plaintiff's Class Action Complaint [Adv. D.I. 1] (the "Complaint") against Zachry. The Complaint asserts that Zachry is liable to Plaintiff and the Class Members for damages they are entitled to receive in accordance with the WARN Act as a result of Zachry's alleged violation of the WARN Act.

On July 22, 2024, Zachry filed an Answer and Affirmative Defenses to the Complaint, denying all liability in respect of the allegations in the Complaint.

Zachry has continued to deny all liability, and no court has made any finding related to liability. The Parties have concluded that it is in their best interests to settle this lawsuit to avoid the risk, expense, and uncertain outcome associated with continued litigation. The proposed Settlement was reached through extensive arm's-length negotiations and a mediation between the Parties.

Pursuant to an order dated September [___], 2024, the Bankruptcy Court (i) preliminarily approved the Settlement Agreement dated September 26, 2024 by and between Plaintiff on her own behalf and on behalf of others Class Members and Defendant (the "Settlement Agreement"); (ii) approved this notice, and (iii) scheduled the Fairness Hearing for final approval of the Settlement.

COUNSEL TO THE PARTIES

Any questions you may have concerning the proposed Settlement should be directed to Class Counsel:

STRANCH, JENNINGS, & GARVEY, PLLC 223 Rosa Parks Ave. Suite 200 Nashville, TN 37203 Telephone: Facsimile: Attention: J. Gerard Stranch, IV, Esq., gstranch@stranchlaw.com	OKIN ADAMS BARTLETT CURRY LLP 1113 Vine St., Suite 240 Houston, Texas 77002 Telephone: Facsimile: Attention: Matthew S. Okin, Esq., mokin@okinadams.com
STRAUSS BORRELLI, PLLC 613 Williamson St., Suite 201 Madison, WI 53703 Telephone: Facsimile: Attention: Samuel J. Strauss, Esq., sam@straussborrelli.com	COHEN & MALAD, LLP One Indiana Square, Suite 1400 Indianapolis, Indiana 46204 Telephone: Facsimile: Attention: Lynn A. Toops, Esq., ltoops@cohenandmalad.com

Questions concerning the proposed Settlement should **NOT** be directed to counsel for Zachry.

THE PROPOSED SETTLEMENT

The terms of the Settlement are set forth in the Settlement Agreement. The following description of the proposed Settlement is only a summary and any inconsistency shall be governed by the terms of the Settlement Agreement. You may request the complete text of the Settlement Agreement from Class Counsel. A copy of the Settlement Agreement is also available on the Debtors' claims and notice agent's website: [_____].

The terms of the Settlement Agreement are summarized as follows:

a) **Settlement Amount:** In full and final settlement of the Class Action and Released Claims, the Parties agree that Debtors shall fund the Settlement by making a payment to Kroll Settlement Administration LLC (the "Settlement Administrator") in the total amount of $7,000,000 USD (the "Settlement Amount"), which includes: (i) a Service Payment to the Class Representative (see below), (ii) the settlement distributions to be made to individual Class Members (each individual payment to an individual Class Member, a "Settlement Award"), (iii) Class Counsel Fees and Expenses (see below), and (iv) all taxes and withholdings Class Members are required to make arising out of, or based on, Settlement payments to the Settlement Class (see below).

b) **Distribution of the Settlement Amount:** The Settlement Administrator and Class Counsel shall be responsible for determining the share of each individual Class Member and the preparation and mailing of the individual checks to each Class Member for his or her share under this Settlement Agreement (including the Service Payment). Individual Settlement Award payments shall be administered to Class Members by the Settlement Administrator. The Settlement Administrator shall cause the individual checks to be mailed to each Class Member as soon as reasonably practicable, but no more than thirty (30) days following the Effective Date.

c) **Responsibilities of Defendant:** Zachry shall, within five (5) days of the Effective Date (defined below), fund the Settlement Administrator with the Settlement Amount.

d) **Responsibilities of Class Counsel:** Class Counsel shall be responsible for responding to Class Members' questions arising from or related to the Settlement Agreement.

e) **Class Representative Service Payment:** Subject to the Bankruptcy Court's approval, Plaintiff Avis Lamotte, as the Class Representative, shall be entitled to a one-time payment of $2,000 (the "Class Representative Service Payment"), for her services on behalf of the Class, payable from the Settlement Amount in addition to her share of the Settlement Amount.

f) **Class Counsel's Fees:** Subject to the Court's approval, Class Counsel shall receive attorneys' fees and costs in the maximum amount of $2,333,333.34, plus reasonable and actual incurred expenses ("Class Counsel's Fees and Expenses").

g) **Effective Date:** The Settlement Agreement shall only become effective on the date on which the order approving the Settlement Agreement becomes a "final order" (the "Effective Date"). The final settlement order shall become a final order (a) when the period for filing any appeal, writ, or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ, or other appellate proceeding having been filed; (b) when any appeal, writ, or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (c) when any appeal, writ, or other appellate proceeding has upheld the Bankruptcy Court's Final Approval Order with no right to pursue further remedies or relief. Upon the Effective Date, the Settlement Agreement shall be effective as to all Class Members.

h) **Release:** Upon the Effective Date, except for any rights arising out of, provided for, or reserved in this Settlement Agreement, the Class Representative and each Class Member, for, and on behalf of themselves and their respective agents, attorneys, heirs, representatives, or assigns (the "Releasing Parties"), will fully and forever release and discharge the Debtors and their affiliates, and the Debtors' estates, subsidiaries, predecessors, parent(s), successors, assigns, officers, directors, shareholders, agents, employees, professionals, partners, members, insurers, accountants, attorneys, representatives, and other agents, as well as their respective predecessors, successors, and assigns (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, liquidated or unliquidated, contingent or non-contingent, asserted or unasserted, fixed or not, matured or unmatured, disputed or undisputed, anticipated, suspected, or disclosed, that the Releasing Parties may have had, now have, or hereafter may have against the Released Parties, which were asserted in the Complaint, proof of claim on behalf of the Class, the proofs of claim by Class Members, or which materially relate to, or arise from, the violations of the WARN Act alleged in the Class Action (the "Released Claims"). On the Effective Date, all Released Claims are deemed settled, released, withdrawn, and dismissed in their entirety, on the merits, with prejudice. The Releasing Parties expressly waive and release, to the fullest extent that the law permits, any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code, which provides:

> Section 1542. Certain Claims Not Affected by General Release. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code.

i) **Taxation of each Class Member's Share of the Settlement**: The Settlement Administrator shall pay and report each individual Settlement Award as wages. The Settlement Administrator will report each individual Settlement Award to the appropriate taxing authorities on a Form W-2 issued to the Class Member with their individual taxpayer identification number. Each individual Settlement Award shall be subject to deductions for applicable taxes and withholdings as required by federal, state, and local law. Neither the Debtors, nor Class Counsel, will calculate, withhold, or pay any taxes from the distributions paid to Class Members under this Settlement Agreement. Each Class Member shall be responsible for calculating and paying all applicable federal, state, and local income taxes, as well as statutory taxes including, without limitation, Federal Insurance Contribution Act ("FICA") and federal and state unemployment insurance amounts ("UI"), associated with the individual fund distribution that the Class Member has received. Neither shall the Debtors nor Class Counsel be responsible for fulfilling any requisite reporting requirements. Neither the Debtors nor Class Counsel believe that any FICA or UI tax liabilities exist with respect to distributions made in respect of this Settlement Agreement and shall provide a statement with each payment expressing same. Plaintiff and the Class Members acknowledge that neither the Released Parties nor Defendant's counsel has provided or will provide any tax advice. Moreover, Plaintiff and the Class Members acknowledge they are solely and entirely responsible for the payment and discharge of all federal, state, and local taxes, if any, which may, at any time, be found to be due upon or as a result of any amount that is paid to them under this Settlement Agreement. Plaintiff and the Class Members agree to indemnify, defend, and hold the Released Parties from any claim or liability, or for any taxes and related penalties and/or interest, asserted against the Released Parties relating to the manner in which payments under this Settlement Agreement are allocated and paid.

j) **Unclaimed Funds:** Any checks for a Class Member's Settlement Award which are not deposited, endorsed, or negotiated within 120 calendar days of their date of issuance shall be deemed unclaimed funds (the "Unclaimed Funds") on the 121st day following the date of such issuance and treated as described below. The same is true of funds for those who decide to Opt-Out of the Settlement Class.

The proposed Settlement will be presented to the Bankruptcy Court for final approval at the Fairness Hearing to be held on [_____], **202**[_] **at [__:__] [a.m./p.m.] (prevailing Central Standard Time) at 515 Rusk, Courtroom 404, Houston, TX 77002.**

The Bankruptcy Court will, at that time, decide whether the Settlement is fair, reasonable, and adequate to the Class Members and whether the request of Class Counsel for attorneys' fees and expenses should be approved. As explained below, you have the right to object to the proposed Settlement including the Class Counsel's request for attorneys' fees and expenses

and to appear in person at the Fairness Hearing to be heard, or to engage counsel to do so on your behalf.

WHAT TO DO IF YOU WANT TO RECEIVE A SHARE OF THE SETTLEMENT

To receive your share of the Settlement, there is nothing you need to do. Your check will be mailed to you following the final approval of the Settlement by the Bankruptcy Court. If the name or address information provided on this form is incorrect, please update your information with the Settlement Administrator by emailing robert.dewitte@kroll.com.

WHAT HAPPENS IF YOU DO NOTHING IN RESPONSE TO THIS NOTICE

If you do nothing in response to this notice, you will receive your share of the Settlement and you will be bound by the terms of the Settlement, including the release, described above. Therefore, you will not have the right to pursue any claims covered by the release against Zachry or the Released Parties and will be forever barred from doing so.

WHAT TO DO IF YOU WANT TO EXCLUDE YOURSELF FROM THE SETTLEMENT

You may preserve your right to pursue any claims you may have separately from the Adversary Case by choosing to "opt out" of the Settlement. If you choose not to participate in the Settlement and do not want to receive your Settlement Award, you must fill out the "opt-out" form ("Opt-Out Form") and sign and mail it as directed on the form.

The Opt-Out Form must be postmarked no later than [_____]**, 202[_]**. All Opt-Out Forms postmarked after that date will be disregarded, and any person who sends a late Opt-Out Form will be bound by the terms of the Settlement and not be able to pursue any claims separately from this lawsuit.

If you choose to Opt-Out, you will not receive any money from the Settlement, and you will not have any right to object to the Settlement.

If you choose to Opt-Out, unless you timely filed, by September 16, 2024, individual proof of claim in the Chapter 11 Cases asserting claims arising from the allegations set forth in the Complaint, you will be barred from any recovery in connection with the allegations set forth in the Complaint.

OBJECTIONS

If you believe the proposed Settlement is unfair or otherwise wish to object to the proposed Settlement, including Class Counsel's Fees and Expenses, you must do so either in person or through counsel at the final Fairness Hearing. You may object by mailing a written statement bearing the caption of this case that appears on the first page of this notice setting forth the reason(s) for your objection to the United States Bankruptcy Court for the Southern District of Texas, 515 Rusk, Houston, TX 77902, and sending copies to (i) Class Counsel (Stranch, Jennings & Garvey, PLLC, Attention: J. Gerard Stranch, IV, Esq., gstranch@stranchlaw.com; Strauss Borrelli, PLLC, Samuel J. Strauss, Esq., sam@straussborrelli.com; Okin Adams Bartlett Curry, LLP, Attention: Matthew S. Okin, Esq., mokin@okinadams.com; Cohen & Malad, LLP, Lynn A. Toops, Esq., ltoops@cohenandmalad.com), and (ii) Counsel to Defendant (Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Attention: Patrick F. Hulla, Esq., patrick.hulla@ogletree.com; White & Case LLP, Attention: Charles R. Koster, Esq., charles.koster@whitecase.com).

Objections must be **RECEIVED** by the Bankruptcy Court no later than **[_____, _____], 202[_]** and must include the case name and number, your name, address, and telephone number together with the basis for your objection.

You also have the right, but are not required, to retain counsel to appear for you, to object on your behalf and be heard at the Fairness Hearing at which the Bankruptcy Court will consider whether to finally approve the Settlement. If you do, then you will be responsible for your personal attorney's fees and costs. You or your counsel may also appear at the Fairness Hearing when the Bankruptcy Court considers your objection and final approval of the Settlement. If your objection is overruled or rejected by the Court, then you will be bound by the Settlement just as if you had not objected.

If you elect to engage counsel, your counsel must file a notice of appearance with the Bankruptcy Court no later than **[_____], 202[_]** and at that time also file a statement setting forth any objections on your behalf. Copies of the notice of appearance and the objection must be mailed at the same time to (i) Class Counsel (Stranch, Jennings & Garvey, PLLC, Attention: J. Gerard Stranch, IV, Esq., gstranch@stranchlaw.com; Strauss Borrelli, PLLC, Samuel J. Strauss, Esq., sam@straussborrelli.com; Okin Adams Bartlett Curry, LLP, Attention: Matthew S. Okin, Esq., mokin@okinadams.com; Cohen & Malad, LLP, Lynn A. Toops, Esq., ltoops@cohenandmalad.com), and (ii) Counsel to Defendant (Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Attention: Patrick F. Hulla, Esq., patrick.hulla@ogletree.com; White & Case LLP, Attention: Charles R. Koster, Esq., charles.koster@whitecase.com).

OTHER INFORMATION

Providing you with this notice does not mean that the Bankruptcy Court has any opinion as to the claims or defenses of the Parties.

Requests for more information should be made by phone, email, or first-class mail to Class Counsel as identified above.

If you have any questions, please do not write or call the Bankruptcy Court or counsel for Zachry.

EXHIBIT A-2

Opt-Out Form

OPT-OUT FORM

Lamotte v. Zachry Industrial, Inc.
United States Bankruptcy Court for the Southern District of Texas
Adversary Proceeding No. 24-03122 (MI)

I, the undersigned, have read the foregoing Notice and understand its contents. I, the undersigned, **do not** want to be part of the WARN Action or receive any benefits from the WARN Action and do not wish to be bound by the outcome of the WARN Action.

_____ _____
Signature Address

_____ _____
Name (printed or type) Telephone:

_____
Date

If you do NOT wish to be included, send this completed form to:

Robert DeWitte, Managing Director
Kroll Settlement Administration LLC
167 North Green Street,
Chicago, IL 60607, United States
E: robert.dewitte@kroll.com
T: (312) 697-4971

EXHIBIT B

List of Putative Class Members

FILED UNDER SEAL

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

In re:	)	Chapter 11
ZACHRY HOLDINGS, INC., *et al*[1]	)	Case No. 24-90377 (MI)
Debtors.	)	(Jointly Administered)
AVIS LAMOTTE, *on behalf of herself and those similarly situated*	)	
Plaintiff	)	
v.	)	Adv. Pro. No. 24-03122 (MI)
ZACHRY INDUSTRIAL, INC.,	)	
Defendants.	)	**Re Docket No. ____**

FINAL ORDER (A) APPROVING THE SETTLEMENT BY AND BETWEEN AVIS LAMOTTE, ON HER OWN BEHALF AND ON BEHALF OF OTHERS SIMILARLY SITUATED, AND THE DEBTORS AND (B) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of a final order (this "Final Approval Order"): (i) approving the Settlement by and between Plaintiff, on her own behalf and on behalf of others similarly situated, and the Debtors; and (ii) granting related relief; all as more fully set forth in the Motion and the Settlement Agreement; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; this Court having found that this is a core proceeding pursuant to 28 U.S.C.

[1] The last four digits of Zachry Holdings, Inc.'s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors' proposed claims and noticing agent at https://www.veritaglobal.net/ZHI. The location of the Debtors' service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion or the Settlement Agreement, as applicable.

§ 157(b)(2); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of and in opposition of, in any, to the relief requested therein at an interim hearing before this Court (the "Interim Hearing"), and a final hearing before this Court (the "Final Fairness Hearing"); this Court having considered the *Declaration of Mohsin Y. Meghji in Support of the Debtors' Emergency Motion for Interim and Final Orders Approving the Settlement by and Between Avis Lamotte, on Her Own Behalf and on Behalf of Others Similarly Situated, and the Debtors*; and this Court having determined that the legal and factual bases set forth in the Motion, the Interim Hearing, and at the Final Fairness Hearing, if any, establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor.

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[3]

A. The Settlement is a good-faith compromise and settlement of disputes, controversies, claims, and causes of action arising out of or otherwise related to the *Avis Lamotte v. Zachry Industrial, Inc.*, Adversary No. 4:24-AP-03122 (the "Class Action" or the "Adversary Proceeding").

[3] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. The Settlement Agreement is the product of extensive arm's-length, good faith negotiations and represents a fair and reasonable compromise among the Parties. The Settlement is reasonable, fair, equitable, appropriate, and in the best interests of each of the Debtors and their estates, and entry into the Settlement Agreement reflects a sound exercise of the Debtors' business judgment.

IT IS HEREBY ORDERED THAT:

1. The Debtors are authorized to enter into the Settlement Agreement attached hereto as **Exhibit 1** on a final basis in accordance with and subject to the terms and conditions of this Final Approval Order.

2. The Settlement Agreement shall become effective on the latest date of the following events: (a) when the period for filing any appeal, writ, or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ, or other appellate proceeding having been filed; (b) when any appeal, writ, or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (c) when any appeal, writ, or other appellate proceeding has upheld the Final Approval Order with no right to pursue further remedies or relief (the "Effective Date").

3. The Settlement Class shall include employees of Zachry who: (i) worked at and/or received assignments from the Golden Pass Project; (ii) were laid off (as defined by Zachry) between January 1, 2024, and August 8, 2024; (iii) are affected employees within the meaning of 29 U.S.C. § 2101(a)(5); and (iv) have not filed a timely request to Opt-Out of the Settlement Class. The list of putative Class Members that constitute the Settlement Class completely and in its entirety is set forth is attached to Exhibit 1 (the Settlement Agreement) as **Exhibit B**.

4. The Debtors shall pay the Settlement Amount to the Settlement Administrator within five (5) business days of the Effective Date. The Settlement Administrator shall coordinate with the Debtors to create a Qualified Settlement Fund to which the Settlement Amount will be

paid on behalf of the Settlement Class for distribution to the members of the Settlement Class as set forth herein.

5. The Settlement Administrator is authorized and directed to disburse the funds comprising the Settlement Amount, as set forth in the Settlement Agreement. The Settlement Administrator and the Class Counsel shall be responsible for determining the share of each individual Class Member and the preparation and mailing of the individual checks to each Class Member for his or her share under this Settlement Agreement (including the Service Payment). The Settlement Administrator shall mail the individual checks to each Class Member as soon as reasonably practicable, but no more than thirty (30) days following the Effective Date.

6. Any Settlement Award checks which are not deposited, endorsed, or negotiated within 120 calendar days of their date of issuance without any further action by the Court, shall be deemed unclaimed funds (the "Unclaimed Funds") on the 121st day following the date of such issuance and treated as described below.

7. If the total amount of Unclaimed Funds exceeds 10% of the Total Settlement Award Amount, the Unclaimed Funds shall be distributed to those Class Members that have cashed their Settlement Award checks in proportion to their original Settlement Awards. Any of these checks for additional payments to class members which are not deposited, endorsed, or negotiated within 60 calendar days of their date of issuance, shall be deemed Remaining Funds, as defined below, on the 61st day following the date of such issuance. If the total amount of Unclaimed Funds constitutes 10% or less of the Total Settlement Award Amount, the Unclaimed Funds shall be returned to the Debtors within ten (10) business days of becoming categorized as Unclaimed Funds (i.e., on the 131st day following their date of issuance). In either event, this Settlement Agreement

shall remain binding on all Parties, including any and all Class Members whose Settlement Awards were properly deemed Unclaimed Funds

8. Any funds that are not distributed per the terms of this Settlement Agreement ("Remaining Funds"), including any funds that remain, for any reason, after the date on which all distributions, payments, and returns mandated by this Settlement Agreement are completed (the "Settlement Distribution Completion Date"), including the amount of any uncashed checks existing after redistribution of Unclaimed Funds (if any), shall not be redistributed among members of the Settlement Class but shall belong to Defendant. Accordingly, any Remaining Funds shall be returned to the Debtors within ten (10) business days of the Settlement Distribution Completion Date.

9. The Class Members were provided with adequate notice of the Settlement Class Notice and the opt-out form in accordance with the Preliminary Approval Order.

10. All Class Members who did not exercise the right to opt-out of the Settlement Class are bound by this Final Approval Order and the terms of the Settlement Agreement.

11. Upon the Effective Date, except for any rights arising out of, provided for, or reserved in this Settlement Agreement, the Class Representative and each Class Member who did not opt-out of the Settlement Class, for, and on behalf of themselves and their respective agents, attorneys, heirs, representatives, or assigns (the "Releasing Parties"), shall fully and forever release and discharge the Debtors and their affiliates, subsidiaries, predecessors, parent(s), successors, assigns, officers, directors, shareholders, agents, employees, partners, members, insurers, accountants, attorneys, representatives, and other agents, as well as their respective predecessors, successors, and assigns (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, liquidated or unliquidated, contingent or non-contingent, asserted or unasserted, fixed or not, matured or unmatured, disputed or undisputed, anticipated, suspected, or disclosed, that the Releasing Parties may have had, now have, or hereafter may have against the Released Parties, which were asserted in the Complaint, the Class Proof of Claim, the proofs of claim by Class Members, or which materially relate to, or arise from, the violations of the WARN Act alleged in the Class Action (the "Released Claims"). On the Effective Date, all Released Claims are deemed settled, released, withdrawn, and dismissed in their entirety, on the merits, with prejudice. The Releasing Parties expressly waive and release, to the fullest extent that the law permits, any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code, which provides:

> Section 1542. Certain Claims Not Affected by General Release. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party; or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code

12. The Class Proof of Claim and any and all Proofs of Claim filed by the Class Members before the Effective Date on account of liabilities asserted, assertible, and arising from, or out of, or relating to the allegations and/or claims asserted in the Complaint or the Adversary Proceeding by Class Members, shall be disallowed and expunged from the Debtors' claims register on the Effective Date.

13. The Class Representative, Class Counsel, the Debtors, and the Released Parties shall have no liability to the Settlement Class or to any Class Member for mis-payment, late payment, nonpayment, overpayment, underpayments, interest, errors, or omissions in the

allocation or distribution methodology or process, or for the results of such methodology or process, including, without limitation, the distribution and disposition of the Settlement Awards.

14. Any objecting Class Member that wishes to appeal this Final Approval Order must file a notice of appeal within (14) days of entry of this Final Order pursuant to Bankruptcy Rule 8002 [and must elect either to: (a) appeal only the objecting Class Member's Settlement Award and/or the Service Fee, Class Counsel Fees, Administration Costs, and/or all taxes and withholdings an employer is required to make arising out of, or based on, Settlement Award ("Settlement or Class Fees and Expenses"), which are hereby severed from the rest of the Settlement so as to not delay the final judgment for all other Class Members; or (b) appeal on behalf of the entire Settlement Class. If the objecting Class Member purports to appeal on behalf of the entire Settlement Class, any of the Settlement or Class Fees and Expenses, or does not definitively choose option (a) or (b) above, each such objecting Class Member who appeals may be required to post a cash appeal bond to be set in the Court's sole discretion, not to exceed an amount sufficient to reimburse Class Counsel's appellate fees, Class Counsel's expenses, and the lost interest for one year to the Settlement Class caused by the likely delay.]

15. The Bankruptcy Court shall dismiss, with prejudice, the Adversary Proceeding within in five (5) business days of following the Settlement Administrator's receipt of the payment of the Settlement Amount.

16. Any pending Bankruptcy Rule 2004 notices, subpoenas, or other discovery requests related to the Adversary Proceeding are moot and deemed withdrawn.

17. Consistent with the Settlement Agreement, the Parties shall not commence any additional proceedings against, or serve any additional discovery upon, any other Party (including their respective affiliates, parents, representatives, related parties, members, member parents,

member parent affiliates, shareholders, officers, directors, employees, agents, professionals, successors, and assigns) related to the Adversary Proceeding subject to the releases provided under the Settlement Agreement.

18. All documents, electronic data, and other materials produced by the Debtors in the Class Action that were designated confidential, shall be returned to the Debtors or destroyed promptly after this Final Approval Order becomes non-appealable. If destroyed, Class Counsel shall provide a declaration to the Debtors' counsel to attest to the destruction and shall specify the date when the destruction occurred.

19. Neither the Preliminary Approval Order, this Final Approval Order, the Settlement Agreement, the negotiations leading to the Settlement Agreement, nor the carrying out of the Settlement Agreement may ever be used by any person or entity as proof of the viability of any claim, cause of action, or objection in these chapter 11 cases, the Class Action, or in any other proceeding.

20. Notice of the Motion as provided therein shall be deemed good and sufficient notice and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

21. The Debtors, the Settlement Administrator, the Class Representative, and Class Counsel are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

22. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 202____

MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Settlement Agreement

This exhibit is attached to the Proposed Interim Approval Order. Final version of this exhibit will be attached to the Proposed Final Approval Order to be submitted prior to the Final Fairness Hearing.