

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

In re:)	
	)	Chapter 11
ZACHRY HOLDINGS, INC., <i>et al.</i> ¹)	
	)	Case No. 24-90377 (MI)
Debtors.)	
	)	(Jointly Administered)

**DEBTORS’ WITNESS AND EXHIBIT LIST FOR HEARING SCHEDULED FOR
SEPTEMBER 30, 2024, AT 9:00 A.M. (PREVAILING CENTRAL TIME)**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) file their Witness and Exhibit List for the hearing to be held on **September 30, 2024 at 9:00 a.m. (prevailing Central Time)**, and as may be continued from time to time thereafter, as follows:

WITNESSES

The Debtors may call any of the following witnesses:

1. Mohsin Y. Meghji;
2. Any witness necessary to authenticate a document;
3. Any witness listed or called by any other party;
4. Rebuttal or impeachment witnesses as necessary; and
5. The Debtors reserve the right to cross-examine any witness called by any other party.

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 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.



EXHIBITS

The Debtors may introduce the following exhibits:

EXHIBIT NO.	DESCRIPTION	MARK	OFFERED	OBJECTION	ADMITTED	W/D	DISPOSITION AFTER CONFERENCE
1.	<i>Proposed</i> 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 the 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 [Docket No. 1029-1 (SEALED), 1030-1 (Redacted)]						
2.	Declaration of Mohsin Y. Meghji in Support of the Debtors' Emergency Motion for Interim and Final Order Approving the Settlement by and Between Avis Lamotte, on her own Behalf and on Behalf of Others Similarly Situated, and the Debtors [Docket No. 1031]						
3.	Debtors' Motion for Entry of an Order Authorizing the Debtors to File Under Seal Certain						

EXHIBIT NO.	DESCRIPTION	MARK	OFFERED	OBJECTION	ADMITTED	W/D	DISPOSITION AFTER CONFERENCE
	Information Contained in Debtors' <u>Emergency</u> 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 the 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 [Docket No. 1028]						
4.	Class Action Adversary Complaint [Adv. Docket No. 1]						
5.	Defendant's Answer and Affirmative Defenses to Class Action Adversary Complaint [Adv. Docket No. 20]						
6.	Any document or pleading filed in the above-captioned main cases.						
7.	Any exhibit necessary for impeachment and/or rebuttal purposes.						

EXHIBIT NO.	DESCRIPTION	MARK	OFFERED	OBJECTION	ADMITTED	W/D	DISPOSITION AFTER CONFERENCE
8.	Any exhibit identified or offered by any other party.						

Dated: September 27, 2024
Houston, Texas

/s/ Charles R. Koster _____

WHITE & CASE LLP

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*Counsel to the Debtors and
Debtors in Possession*

Certificate of Service

I certify that on September 27, 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

EXHIBIT 1

Partially Sealed

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

In re:)	
	)	Chapter 11
ZACHRY HOLDINGS, INC., <i>et al</i> ¹	)	Case No. 24-90377 (MI)
)	
Debtors.	)	(Jointly Administered)
)	
AVIS LAMOTTE, <i>on behalf of herself and those similarly situated</i>)	
)	
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 (MD);

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, 2024¹; (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 MALLAISE, 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
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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
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Bojan Guzina
Andrew F. O'Neill
Barrett Lingle
111 South Wacker Drive, Suite 5100
Chicago, Illinois 60606
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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., <i>et al</i> ¹	)	Case No. 24-90377 (MI)
Debtors.	)	(Jointly Administered)
)	
AVIS LAMOTTE, <i>on behalf of herself and those similarly situated</i>)	
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

EXHIBIT 2

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

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

**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**

I, Mohsin Y. Meghji, the Chief Restructuring Officer of Zachry Industrial, Inc. (“Zachry”), declare pursuant to 28 U.S.C. §1746 as follows:

1. I am the Chief Restructuring Officer (“CRO”) of Zachry. I am also the Managing Partner of M3 Advisory Partners, LP, which is the Debtors’ restructuring advisor in the above-captioned chapter 11 cases.

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. I submit this declaration (the “Declaration”) in support of 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 the 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 (IV) Scheduling Final Hearing; and (B) Granting Related Relief* (the “Motion”), filed contemporaneously herewith.²

3. On May 21, 2024, (the “Petition Date”), each Debtor (collectively, the “Debtors”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), commencing the chapter 11 cases.

4. As CRO, I am generally familiar with the Debtors’ business, financial condition, policies and procedures, day-to-day operations, and books and records. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my discussions with members of the Debtors’ management team and external advisors, my review of relevant documents and information, and my opinion based upon my experience and knowledge of the Debtors’ industry, operations, and financial condition.

Background

5. Based on information provided to me, I understand that on June 17, 2024, Avis Lamotte (the “Plaintiff” or “Class Representative”), on behalf of herself and all other similarly situated (the “Settlement Class”, with each individual person who is a member of the Settlement Class, including Plaintiff, a “Class Member”) (and, together with the Debtors, the “Parties”)

² Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Motion.

commenced an adversary proceeding, *Avis Lamotte v. Zachry Industrial, Inc.*, Adversary No. 4:24-AP-03122 (the “Class Action” or the “Adversary Proceeding”), against Zachry, on behalf of herself and purportedly on behalf of the Class Members, asserting certain claims under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101–2109 (the “WARN Act”).

6. I understand that the Debtors have been in discussion with the Plaintiff since the Adversary Proceeding was filed.

7. I understand that on July 22, 2024, the Debtors filed an Answer and Affirmative Defenses to the Complaint, denying all liability in respect of the allegations in the Complaint. [Adv. D.I. 20].

8. I understand that, in an effort to resolve the Adversary Proceeding, the Parties participated in mediation with Ms. Gloria Portela (the “Mediator”). This included preparation of confidential mediation statements for the Mediator and multiple Zoom sessions with the Mediator, which culminated in a full day, in-person mediation session on September 3, 2024. I worked with counsel to preparing for and participated in the September 3, 2024, mediation session.

The Settlement

9. It is my understanding that after weeks of good-faith and arms-length negotiation and mediation since the Adversary Proceeding was filed on June 2024, the Parties have reached a settlement (the “Settlement”) that would fully and completely resolve all disputes, claims, and causes of action relating to the allegations asserted in the Plaintiff’s Class Action Complaint (the “Complaint”). I believe that, in light of the foregoing, the Settlement is fair and equitable.

10. **First**, the Settlement provides all Parties with certainty regarding the Class Action. Class Members will enjoy the definite benefit of receiving their respective shares of proceeds from the Settlement (the “Settlement Award”), rather than waiting for an uncertain future amount, if any. Further, in limiting potential liability for the Debtors, it will create certainty as they begin the

process of confirming and soliciting a chapter 11 plan and preparing to exit chapter 11. I believe that it is highly unlikely that these disputes would be litigated to conclusion in the chapter 11 cases, as any judgment would very likely lead to appeal that could significantly delay the Debtors' prospect of emergence from chapter 11.

11. It is my opinion, that based on the foregoing alone, the Settlement exceeds the lowest point in the range of plausible litigation outcomes for the Debtors. It is my belief that the material benefits to all Parties are far superior to the uncertain outcome of the continued dispute.

12. **Second**, the Settlement efficiently resolves expensive and distracting matters, preserving vital estate resources. The Parties seek to resolve the Class Action consensually. Further negotiation and mediation would be costly and time-consuming both in the process itself and through the delay it could cause in these chapter 11 cases. If the Adversary Proceeding were to proceed to litigation, the costs incurred therewith would be exponentially higher.

13. **Third**, the Settlement is the culmination of weeks of arm's-length negotiations and discussions among the Parties and their respective professionals, including through mediation. All Parties support the terms as a superior alternative to extensive and uncertain litigation.

Conclusion

14. Based on the foregoing considerations, I respectfully submit that the Settlement represents a fair and reasonable transaction that is in the best interest of the Debtors' estates.

[Remainder of page intentionally left blank]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: September 26, 2024

/s/ Mohsin Y. Meghji

Mohsin Y. Meghji
Chief Restructuring Officer of Zachry
Holdings, Inc.

EXHIBIT 3

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

In re:)	
	)	Chapter 11
ZACHRY HOLDINGS, INC., <i>et al.</i> ¹)	
	)	Case No. 24-90377 (MI)
Debtors.	)	(Jointly Administered)

DEBTORS’ MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO FILE UNDER SEAL CERTAIN INFORMATION CONTAINED IN THE 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 THE 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

<p>If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at https://ecf.txsb.uscourts.gov/ within twenty-one days from the date this motion was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk within twenty-one days from the date this motion was filed. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.</p>
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The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) state as follows in support of this motion (this “**Motion**”):

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’ 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.

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto (the “**Order**”), authorizing the Debtors to redact and file under seal a certain exhibit in the 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 the 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 (IV) Scheduling Final Hearing; and (B) Granting Related Relief* (the “**Settlement Motion**”), filed concurrently herewith.²

Jurisdiction and Venue, and Predicates for Relief

2. 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.

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

4. The predicates for the relief requested herein are sections 105(a), 107(c), 365, and 554 of title 11 of the United States Code (the “**Bankruptcy Code**”), Bankruptcy Rules 6004, 6006, 6007, and rule 9013-1(b) of the Local Rules for the Southern District of Texas (the “**Bankruptcy Local Rules**”).

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Settlement Motion.

Background

5. On May 21, 2024, (the “**Petition Date**”), each Debtor (collectively, the “**Debtors**”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), commencing the chapter 11 cases.

1. On June 17, 2024, Avis Lamotte (the “**Plaintiff**”), on behalf of herself and all other similarly situated (together with the Debtors, the “**Parties**”), commenced an adversary proceeding, *Avis Lamotte v. Zachry Industrial, Inc.*, Adversary No. 4:24-AP-03122 (the “**Class Action**”), against Zachry, on behalf of herself and purportedly on behalf of the Class Members. 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.

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

7. In an effort to resolve the adversary proceeding, the Parties participated in mediation with Ms. Gloria Portela. After weeks of good-faith and arms-length negotiation and mediation since the adversary proceeding was filed on June 2024, the Parties have reached a settlement (the “**Settlement**”) that would fully and completely resolve all disputes, claims, and causes of action relating to the allegations asserted in the Plaintiff’s Class Action complaint. Attached to the Settlement is an Exhibit B (the “**Exhibit**”) which provides the names of all putative Class Members that constitute the Settlement Class (*see* Settlement Agreement § 5). The Debtors seek authority to file the Exhibit under seal.

BASIS FOR RELIEF

8. Section 105(a) of the Bankruptcy Code, which codifies the bankruptcy court's inherent equitable powers, empowers the Court to "issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Pursuant to section 107(c) of the Bankruptcy Code, the Court is authorized to issue orders authorizing the sealing of personally identifiable information if the court "finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property." Such personally identifiable information includes "any means of identification (as defined in section 1028(d) of title 18) contained in a paper filed, or to be filed, in a case under this title." *Id.*

9. Section 1028(d) of title 18, in turn, provides that "means of identification" includes any "name or number that may be used, along or in conjunction with any other information, to identify a specific individual." When such information is present, section 107(c) "permits the bankruptcy court to protect [this information]." *In re N. Bay Gen. Hosp., Inc. v. McNaull (In re N. Bay Gen. Hosp.)*, 404 B.R. 429, 438 (S.D. Tex. 2009). While there is a presumption in favor of public access to court records, access to judicial records is not without limits. *Id.* Section 105(a) of the Bankruptcy Code codifies the Court's inherent equitable powers and empowers it to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). When read in conjunction with section 105(a) of the Bankruptcy Code, section 107(c) authorizes the Court to take immediate action, including sealing pleadings, to protect parties-in-interest from the immediate and future harm of identity theft associated with the wrongful disclosure of personally identifiable information.

10. The Exhibit includes information that falls under the category of “means of identification.” Specifically, the Exhibit includes the first and last names of certain employees affected by the Settlement. Further, the fact that these putative Class Members are a part of the proposed Settlement Class is sensitive information for both the Debtors and the putative Class Members, who presumably do not want their employment status and/or qualification to receive a Settlement Award publicly known. Accordingly, the Debtors request that the Court permit the Debtors to redact and file under seal the Exhibit.

11. The Debtors submit that the proposed limited redaction is necessary and appropriate under section 107 of the Bankruptcy Code. The Debtors, therefore, request that the Court grant the requested relief.

Notice

12. 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

WHITE & CASE LLP

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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., <i>et al.</i> ¹	)	Case No. 24-90377 (MI)	
)		
Debtors.	)	(Jointly Administered)	
)		

ORDER AUTHORIZING THE DEBTORS TO FILE UNDER SEAL CERTAIN INFORMATION CONTAINED IN THE DEBTORS’ 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 THE 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 (IV) SCHEDULING FINAL HEARING; 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 an order (this “**Order**”) authorizing the Debtors to redact and file under seal certain portions of the *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 the Plaintiff as Class Representative and Plaintiff’s Counsel as Class Counsel for Settlement Purposes Only, (IV) Approving the Form and Manner of Service of*

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’ 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 Where context requires, capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

the Settlement Class Notice, (V) Appointing the Settlement Administrator, and (IV) Scheduling Final Hearing; and (B) Granting Related Relief (the “**Settlement Motion**”), all as more fully set forth in the Motion; 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 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 the relief requested therein at a hearing before this Court, if applicable (the “**Hearing**”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish, 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, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Pursuant to sections 105(a) and 107(c) of the Bankruptcy Code, Bankruptcy Rule 9018, and Bankruptcy Local Rule 9037-1, the Debtors are authorized to file the Settlement Motion with the Exhibit under seal.
3. The Exhibit shall remain confidential, shall remain under seal, and shall not be made available to anyone other than this Court, the U.S. Trustee, and counsel to the Committee on a

professional eyes only basis (all on a confidential basis), without further order of this Court. The Clerk of the Court shall treat the Exhibit as confidential.

4. To the extent that the Exhibit is attached or referred to in any further pleadings or documents filed with this Court related to these chapter 11 cases, this Order shall apply to such pleading or document.

5. Any party who receives the Exhibit in accordance with this Order shall not disclose or otherwise disseminate such Exhibit to any other person or entity, without the consent of the Debtors or further order of this Court.

6. Nothing in this Order prejudices the rights of any party in interest, including the U.S. Trustee, to seek, on appropriate motion, the unsealing of the Exhibit or any part thereof.

7. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

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

9. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2024
Houston, Texas

THE HON. MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 4

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

In re:	)	Chapter 11
)	
ZACHRY HOLDINGS, INC., et al.,	)	Case No. 24-90377 (MI)
)	
Debtors.	)	(Jointly Administered)
<hr style="border: 0.5px solid black;"/>		
)	
AVIS LAMOTTE, on behalf of herself and those similarly situated,)	
)	
Plaintiff	)	Adversary No. _____
)	
v.)	
	)	JURY TRIAL DEMANDED
ZACHRY INDUSTRIAL, INC.,)	
)	
Defendant.)	

CLASS ACTION ADVERSARY COMPLAINT

Plaintiff, Avis Lamotte, on behalf of herself and a putative class of similarly situated former employees as defined herein, brings this suit against Debtor-Defendant Zachry Industrial, Inc., by way of this Class Action and Adversary Proceeding Complaint, alleging as follows:

NATURE OF THE ACTION

1. This is a Class Action Complaint brought under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101–2109 (the “WARN Act”) by the Plaintiff on her own behalf and on behalf of the other similarly situated persons against Defendant Zachry Industrial, Inc. (“Zachry” or “Defendant”), Plaintiff’s employer for WARN Act purposes.

2. On or within 90 days of May 21, 2024, Defendant made a mass layoff and/or effected a plant closing by, unilaterally and without proper notice to employees or staff,

terminating approximately 4,072 employees at its facility, located at 3901 Twin City Hwy, Port Arthur, TX 77642 (“Facility”).

3. Defendant failed to provide 60 days advance written notice to employees or staff as required by the WARN Act, 29 U.S.C. § 2101 *et seq.*, to the affected employees.

4. Plaintiff was officially terminated by Defendant on or around May 21, 2024.

5. Defendant’s reduction in nearly its entire workforce at that plant constituted a mass layoff or plant closing, commencing on or around May 21, 2024. As such, Plaintiff and other similarly situated employees, should have received the full protection afforded by the WARN Act.

6. Plaintiff’s claims, as well as the claims of all similarly-situated employees, are entitled to partial administrative expense status pursuant to United States Bankruptcy Code § 503(b)(1)(A) and partial, or alternatively, full priority status under 11 U.S.C. § 507(a)(4) and (5), up to the priority cap, with the balance, if any, being a general unsecured claim.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C § 1331 and 29 U.S.C. § 2104(a)(5).

8. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (O).

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and 29 U.S.C. § 2104(a)(5).

PARTIES

10. Plaintiff Avis Lamotte is a citizen of the United States and resident of Port Arthur, Texas. Plaintiff Lamotte was employed by Defendant at all relevant times at the Facility. Plaintiff

worked for Defendant for about two years. Plaintiff is an “aggrieved employee” within the meaning of 29 U.S.C. § 2104(a)(7).

11. Defendant Zachry Industrial, Inc. is a company registered to do business in Texas with its principal place of business located at 527 Logwood Avenue, San Antonio, Texas 78221. Defendant at all times maintained and operated the Facility. Defendant may be served via its registered agent, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, TX 75201.

12. On May 21, 2024, Defendant filed a voluntary petition for Chapter 11 bankruptcy.

FACTS

13. Defendant is a private, Texas-based industrial manufacturing and transportation company.

14. On or around May 21, 2024, Plaintiff was unceremoniously terminated from employment with Defendant with no warning.

15. According to the Texas Workforce Commission, Defendant provided notice of the May 21, 2024, terminations on June 3, 2024. In other words, Defendant provided notice *after the fact*.

16. Defendant did not provide any WARN Act Notice as required by 29 U.S.C. §§ 2101 *et seq.* even though it planned to abolish, terminate, and/or layoff over one-hundred full-time employees employed there.

17. Upon information and belief, no circumstances existed that would have permitted Defendant from reducing the notification period as provided in 29 U.S.C. § 2102(b).

18. By failing to provide its affected employees who were temporarily or permanently terminated on or around May 21, 2024, with WARN Act Notices and other benefits, Defendant

acted willfully and cannot establish that it had any reasonable grounds or basis for believing its actions were not in violation of the statute.

RULE 23 CLASS ACTION ALLEGATIONS

19. Plaintiff brings this WARN Act claim as a Class Action pursuant to Federal Rule of Civil Procedure 23 on behalf of the following Nationwide class:

All employees of Defendant who were terminated pursuant to a mass layoff or plant closing (as those terms are defined in the WARN Act) within 90 days of May 21, 2024.

20. Class Action treatment of WARN Act claims is appropriate because all of Federal Rule of Civil Procedure 23's Class Action requisites can be satisfied. For example:

- a. The class includes, upon information and belief, over 50 class members, and, as such, is so numerous that joinder of all the class members is impracticable under these circumstances, thereby satisfying Federal Rule of Civil Procedure 23(a)(1).
- b. Questions of law and fact are common to the class, including, *inter alia*, whether Defendant provided adequate notice of its mass layoff under the WARN Act, 29 U.S.C. § 2102. Thus, Plaintiff satisfies Federal Rule of Civil Procedure 23(a)(2).
- c. Plaintiff is a member of the class, whose claims are typical of the claims of other class members. Plaintiff has no interests that are antagonistic to or in conflict with the interests of other class members. Thus, Plaintiff satisfies Federal Rule of Civil Procedure 23(a)(3).
- d. Plaintiff will fairly and adequately represent the class and its interests. Moreover, Plaintiff has retained competent and experienced counsel who will effectively

represent the interests of the class. Thus, Plaintiff satisfies Federal Rule of Civil Procedure 23(a)(4).

21. Class certification is appropriate pursuant to Federal Rule of Civil Procedure 23(b)(1) because the prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications. This would establish incompatible standards of conduct for Defendant and/or because adjudications with respect to individual class members would as a practical matter be dispositive of the interests of non-party class members.

22. Class certification is appropriate pursuant to Federal Rule of Civil Procedure 23(b)(2) because Defendant acted or refused to act on grounds generally applicable to the Class, making appropriate declaratory and injunctive relief with respect to Plaintiff and the class as a whole.

23. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over any question affecting only individual class members, and because a Class Action is superior to other available methods for the fair and efficient adjudication for this litigation.

VIOLATIONS OF THE WARN ACT, 29 U.S.C. §§ 2101, *et seq.*

COUNT I

(WARN Act)

(On behalf of Plaintiff and the Putative Class)

24. Plaintiff re-alleges and incorporates all preceding paragraphs as if set forth in full here.

25. Defendant is an “employer” within the meaning of the WARN Act, 29 U.S.C § 2101(a)(1).

26. Plaintiff and the putative class members were, at all relevant times, “affected employees” within the meaning of the WARN Act, 29 U.S.C § 2101(a)(5).

27. The May 21, 2024, permanent layoffs of at least 4,072 employees at the Facility resulted in “employment losses” as defined in 29 U.S.C. § 2101(a)(3)(B)(i)(I) and (II) for at least 33 percent of the employees and at least 50 employees.

28. For purposes of 29 U.S.C. § 2101(a)(3)(B)(i)(I) and (II), the Facility constitutes a single site of employment in that each employee’s facility was the location to which relevant employees were assigned as their home base, the place from which their work was assigned, and the place to which they reported for work.

29. The WARN Act requires employers to provide 60-days’ notice of any plant closing or mass layoff “to each representative of the affected employees . . . or, if there is no such representative at that time, to each affected employee,” 29 U.S.C. § 2102(a)(1), and “to the State or entity designated by the State to carry out rapid response activities under [29 U.S.C. §] 3174(a)(2)(A),” as well as to “the chief elected official of the local government within which such closing or layoff is to occur,” 29 U.S.C. § 2102(a)(2).

30. On information and belief, prior to May 21, 2024, Defendant did not give any written notice of the plant closing and/or mass layoff to any “affected employee,” including Plaintiff and the putative class, as that term is defined in 29 U.S.C § 2101(a)(5). Nor upon information and belief did Defendant give any prior written notice to the Texas state agency, or to the chief elected official of the local government within which the mass layoff was ordered. Rather, Defendant waited after announcing the mass layoffs already occurred to do so.

31. Defendant violated the WARN Act by failing to give timely written notice of the mass layoff as required by 29 U.S.C. § 2102(a), which began on or about May 21, 2024.

32. As such, Plaintiff and the putative class are “aggrieved employees” within the meaning of the WARN Act, 29 U.S.C. § 2104(a)(7).

33. The WARN Act expressly permits an “aggrieved employee” to bring a civil action individually and on behalf of the putative class to seek relief for violations of the provisions of 29 U.S.C. § 2102. See 29 U.S.C. § 2104(5).

34. Moreover, Defendant’s violations of the WARN Act were not in good faith, and Defendant had no reasonable grounds for believing that the plant closing or mass layoff it ordered was not in violation of the notice requirements at 29 U.S.C. § 2102.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray for the following relief:

1. Certification of the Class as a Class Action pursuant to Federal Rule of Civil Procedure 23(b), and designation of Plaintiff as a representative of the Class and counsel of record as Class Counsel.
2. A declaration that Defendant has violated the WARN Act;
3. A first priority administrative expense claim against Defendant pursuant to 11 U.S.C. § 503(b)(1)(A) in favor of the Plaintiff and the other similarly-situated former employees equal to the sum of their: unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay, pension and 401(k) contributions and other COBRA benefits, for 60 days, that would have been covered and paid under the then-applicable employee benefits had that coverage

continued for that period, all determined in accordance with the WARN Act, or alternatively, determining that the first \$15,150 of the WARN Act claims of the Plaintiff and each of the other similarly-situated former employees are entitled to priority status under 11 U.S.C. § 507(a)(4)-(5), and the remainder is a general unsecured claim;

4. A judgment against Defendant and in favor of Plaintiff and the putative class for back pay to the fullest extent permitted by the WARN Act, 29 U.S.C. § 2104(a)(1)(A).
5. A judgment against Defendant and in favor of Plaintiff and the putative class for the loss of benefits, including, but not limited to, medical expenses incurred by Plaintiff and the putative class during the employment loss, to the fullest extent allowable under the WARN Act, 29 U.S.C. § 2104(a)(1)(B).
6. A finding that Defendant's violations of the WARN Act was willful, not in good faith, and that Defendant had no reasonable grounds for believing that its mass layoff was not in violation of the notice requirements of the WARN Act, 29 U.S.C. § 2102.
7. A judgment against Defendant and in favor of Plaintiff and the putative class for litigation costs, expenses, attorney's fees to the fullest extent permitted under the WARN Act, 29 U.S.C. § 2104(a)(6), and for discretionary costs pursuant to Federal Rule of Civil Procedure 54(d);
8. A judgment against Defendant for civil penalties to the fullest extent allowable under the WARN Act, 29 U.S.C. § 2104(a)(3); and,

9. Such other and further relief as this Court deems just and proper and allowed under the WARN Act.

This 17th day of June 2024.

Respectfully submitted,

J. Gerard Stranch, IV*
(Lead Counsel)
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* *Pro Hac Vice* applications to be submitted

*Counsel for Plaintiff and the Proposed
Class*

EXHIBIT 5

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

in Re:

ZACHRY HOLDINGS, INC., et al.,

Debtors

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§

Chapter 11
Case No. 24-90377 (MI)
(Jointly Administered)

AVIS LAMOTTE, on behalf of herself
and those similarly situated,

Plaintiff,

v.

ZACHRY INDUSTRIAL, INC.,

Defendant.

§
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§

Adversary No. 4:24-AP-03122
JURY TRIAL DEMANDED

**DEFENDANT’S ANSWER AND AFFIRMATIVE
DEFENSES TO CLASS ACTION ADVERSARY COMPLAINT**

Defendant Zachry Industrial, Inc. (“Zachry”), through its attorneys of record, responds to Plaintiff’s Class Action Adversary Complaint as follows:

1. This is a Class Action Complaint brought under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101-2109 (the “WARN Act”) by the Plaintiff on her own behalf and on behalf of the other similarly situated persons against Defendant Zachry Industrial, Inc. (“Zachry” or “Defendant”), Plaintiff’s employer for WARN Act purposes.

ANSWER: Zachry admits Plaintiff purports to bring this Complaint under the Worker Adjustment Retraining Notification Act (the “WARN Act”), but denies the WARN Act applies under the circumstances, and alternatively denies it acted contrary to the WARN Act and Plaintiff is entitled to any relief. Zachry also admits Plaintiff purports to pursue the

claim as a class action on behalf of other similarly situated persons, but denies the claim should proceed as a class action. Zachry denies any remaining allegations in paragraph 1.

2. On or within 90 days of May 21, 2024, Defendant made a mass layoff and/or effected a plant closing by, unilaterally and without proper notice to employees or staff, terminating approximately 4,072 employees at its facility, located at 3901 Twin City Hwy, Port Arthur, TX 77642 ("Facility").

ANSWER: Zachry admits on, or within, 90 days of May 21, 2024, pursuant to a reduction in force, it laid off employees working on the Golden Pass Project (the "Project"), but denies the remaining allegations in paragraph 2.

3. Defendant failed to provide 60 days advance written notice to employees or staff as required by the WARN Act, 29 U.S.C. § 2101 *et seq.*, to the affected employees.

ANSWER: Zachry admits it did not provide 60 days' advance written notice to certain employees and staff, but contends it had no duty to do so under the WARN Act. Zachry denies the remaining allegations in paragraph 3.

4. Plaintiff was officially terminated by Defendant on or around May 21, 2024.

ANSWER: Zachry admits that on or around May 21, 2024, Plaintiff was subject to a reduction of force. Zachry denies the remaining allegations in paragraph 4.

5. Defendant's reduction in nearly its entire workforce at that plant constituted a mass layoff or plant closing, commencing on or around May 21, 2024. As such, Plaintiff and other similarly situated employees, should have received the full protection afforded by the WARN Act.

ANSWER: Zachry admits it laid off employees pursuant to a reduction of force. Zachry denies the remaining allegations in paragraph 5.

6. Plaintiff's claims, as well as the claims of all similarly-situated employees, are entitled to partial administrative expense status pursuant to United States Bankruptcy Code § 503(b)(1)(A) and partial, or alternatively, full priority status under 11 U.S.C. § 507(a)(4) and (5), up to the priority cap, with the balance, if any, being a general unsecured claim.

ANSWER: Zachry denies the allegations in paragraph 6.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C § 1331 and 29 U.S.C. § 2104(a)(5).

ANSWER: Zachry admits the Court has jurisdiction over Plaintiff's claim.

8. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (O).

ANSWER: Zachry admits Plaintiff brings a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (O). Under Federal Rules of Bankruptcy Procedure 7012-(b), and 7012-1, Zachry consents to the entry of final orders or judgment by the Bankruptcy Judge/Court.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and 29 U.S.C. § 2104(a)(5).

ANSWER: Zachry admits venue in this Court is proper.

10. Plaintiff Avis Lamotte is a citizen of the United States and resident of Port Arthur, Texas. Plaintiff Lamotte was employed by Defendant at all relevant times at the Facility. Plaintiff worked for Defendant for about two years. Plaintiff is an "aggrieved employee" within the meaning of 29 U.S.C. § 2104(a)(7).

ANSWER: Zachry is without knowledge or information concerning Plaintiff's current citizenship status or residence and therefore denies the same. Zachry admits it employed Plaintiff at the Project, but denies the remaining allegations in paragraph 10.

11. Defendant Zachry Industrial, Inc. is a company registered to do business in Texas with its principal place of business located at 527 Logwood Avenue, San Antonio, Texas 78221. Defendant at all times maintained and operated the Facility. Defendant may be served via its registered agent, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, TX 75201.

ANSWER: Zachry admits it is a company registered to do business in Texas with its principal place of business located at 527 Logwood Avenue, San Antonio, Texas 78221, and that it may be served via its registered agent, CT Corporation System, at 1999 Bryan St., Suite 900, Dallas, TX 75201. Zachry denies the remaining allegations in paragraph 11.

12. On May 21, 2024, Defendant filed a voluntary petition for Chapter 11 bankruptcy.

ANSWER: Zachry admits it is a joint debtor with respect to a bankruptcy action filed on May 21, 2024. Zachry denies the remaining allegations in paragraph 12.

13. Defendant is a private, Texas-based industrial manufacturing and transportation company.

ANSWER: Zachry admits it is a privately-held corporation, but denies the remaining allegations in paragraph 13.

14. On or around May 21, 2024, Plaintiff was unceremoniously terminated from employment with Defendant with no warning.

ANSWER: Zachry admits, on May 21, 2024, Plaintiff was laid off pursuant to a reduction of force on the Project. Zachry denies the remaining allegations in paragraph 14.

15. According to the Texas Workforce Commission, Defendant provided notice of the May 21, 2024, terminations on June 3, 2024. In other words, Defendant provided notice *after the fact*.

ANSWER: Zachry admits it provided formal written notice of the layoff to the Texas Workforce Commission on June 3, 2024. Zachry denies the remaining allegations in paragraph 15.

16. Defendant did not provide any WARN Act Notice as required by 29 U.S.C. §§ 2101 et seq. even though it planned to abolish, terminate, and/or layoff over one-hundred full-time employees employed there.

ANSWER: Zachry denies the allegations in paragraph 16.

17. Upon information and belief, no circumstances existed that would have permitted Defendant from reducing the notification period as provided in 29 U.S.C. § 2102(b).

ANSWER: Zachry denies the allegations in paragraph 17.

18. By failing to provide its affected employees who were temporarily or permanently terminated on or around May 21, 2024, with WARN Act Notices and other benefits, Defendant acted willfully and cannot establish that it had any reasonable grounds or basis for believing its actions were not in violation of the statute.

ANSWER: Zachry denies the allegations in paragraph 18.

19. Plaintiff brings this WARN Act claim as a Class Action pursuant to Federal Rule of Civil Procedure 23 on behalf of the following Nationwide class:

All employees of Defendant who were terminated pursuant to a mass layoff or plant closing (as those terms are defined in the WARN Act) within 90 days of May 21, 2024.

ANSWER: Zachry admits Plaintiff purports to bring a class action claim against it. Zachry denies that class action treatment under the circumstances is appropriate, and denies it is liable to Plaintiff, or any putative class members, in any way and further the remaining allegations in paragraph 19.

20. Class Action treatment of WARN Act claims is appropriate because all of Federal Rule of Civil Procedure 23's Class Action requisites can be satisfied. For example:

a. The class includes, upon information and belief, over 50 class members, and, as such, is so numerous that joinder of all the class members is impracticable under these circumstances, thereby satisfying Federal Rule of Civil Procedure 23(a)(1).

b. Questions of law and fact are common to the class, including, inter alia, whether Defendant provided adequate notice of its mass layoff under the WARN Act, 29 U.S.C. § 2102. Thus, Plaintiff satisfies Federal Rule of Civil Procedure 23(a)(2).

c. Plaintiff is a member of the class, whose claims are typical of the claims of other class members. Plaintiff has no interests that are antagonistic to or in conflict with the interests of other class members. Thus, Plaintiff satisfies Federal Rule of Civil Procedure 23 (a)(3).

d. Plaintiff will fairly and adequately represent the class and its interests. Moreover, Plaintiff has retained competent and experienced counsel who will effectively represent the interests of the class. Thus, Plaintiff satisfies Federal Rule of Civil Procedure 23 (a)(4).

ANSWER: Zachry denies the allegations in paragraph 20 and its subparts.

21. Class certification is appropriate pursuant to Federal Rule of Civil Procedure 23(b)(1) because the prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications. This would establish incompatible standards of conduct for Defendant and/or because adjudications with respect to individual class members would as a practical matter be dispositive of the interests of non-party class members.

ANSWER: Zachry denies the allegations in paragraph 21.

22. Class certification is appropriate pursuant to Federal Rule of Civil Procedure 23(b)(2) because Defendant acted or refused to act on grounds generally applicable to the Class,

making appropriate declaratory and injunctive relief with respect to Plaintiff and the class as a whole.

ANSWER: Zachry denies the existence of any “Class” and denies the allegations in paragraph 22.

23. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over any question affecting only individual class members, and because a Class Action is superior to other available methods for the fair and efficient adjudication for this litigation.

ANSWER: Zachry denies the allegations in paragraph 23.

24. Plaintiff re-alleges and incorporates all preceding paragraphs as if set forth in full here.

ANSWER: Zachry incorporates by reference its responses from all prior paragraphs.

25. Defendant is an "employer" within the meaning of the WARN Act, 29 U.S.C § 2101(a)(1).

ANSWER: Zachry admits it is a business enterprise that employed 100 or more employees, excluding part-time employees, or 100 or more employees who in the aggregate work at least 4,000 hours per week (excluding overtime hours). Zachry denies the remaining allegations in paragraph 25.

26. Plaintiff and the putative class members were, at all relevant times, "affected employees" within the meaning of the WARN Act, 29 U.S.C § 2101(a)(5).

ANSWER: Zachry denies the allegations in paragraph 26.

27. The May 21, 2024, permanent layoffs of at least 4,072 employees at the Facility resulted in "employment losses" as defined in 29 U.S.C. § 2101(a)(3)(B)(i)(I) and (II) for at least 33 percent of the employees and at least 50 employees.

ANSWER: Zachry denies the allegations in paragraph 27.

28. For purposes of 29 U.S.C. § 2101(a)(3)(B)(i)(I) and (II), the Facility constitutes a single site of employment in that each employee's facility was the location to which relevant employees were assigned as their home base, the place from which their work was assigned, and the place to which they reported for work.

ANSWER: Zachry admits the Project, including the supporting facilities located at Sabine Pass, Texas, Baytown, Texas, Orange, Texas, Beaumont, Texas and the Zachry Human Resources/Recruiting office at Port Arthur, Texas, constitutes a single site of employment, but denies the remaining allegations in paragraph 28.

29. The WARN Act requires employers to provide 60-days' notice of any plant closing or mass layoff "to each representative of the affected employees . . . or, if there is no such representative at that time, to each affected employee," 29 U.S.C. § 2102(a)(1), and "to the State or entity designated by the State to carry out rapid response activities under [29 U.S.C. §] 3174(a)(2)(A)," as well as to "the chief elected official of the local government within which such closing or layoff is to occur," 29 U.S.C. § 2102(a)(2).

ANSWER: Zachry admits the allegations in this paragraph accurately recite statutory language, but denies it is liable to Plaintiff, or any putative class members.

30. On information and belief, prior to May 21, 2024, Defendant did not give any written notice of the plant closing and/or mass layoff to any "affected employee," including Plaintiff and the putative class, as that term is defined in 29 U.S.C § 2101(a)(5). Nor upon

information and belief did Defendant give any prior written notice to the Texas state agency, or to the chief elected official of the local government within which the mass layoff was ordered. Rather, Defendant waited after announcing the mass layoffs already occurred to do so.

ANSWER: Zachry admits it did not give written notice to Plaintiff, the Texas state agency, or the chief elected official of the local government within which the reduction in force occurred before May 21, 2024, but denies any duty to do so, and alternatively denies it acted contrary to the WARN Act. Zachry denies it had an obligation to provide notice before May 21, 2024. Zachry denies the remaining allegations in paragraph 30.

31. Defendant violated the WARN Act by failing to give timely written notice of the mass layoff as required by 29 U.S.C. § 2102(a), which began on or about May 21, 2024.

ANSWER: Zachry denies the allegations in paragraph 31.

32. As such, Plaintiff and the putative class are "aggrieved employees" within the meaning of the WARN Act, 29 U.S.C. § 2104(a)(7).

ANSWER: Zachry denies the allegations in paragraph 32.

33. The WARN Act expressly permits an "aggrieved employee" to bring a civil action individually and on behalf of the putative class to seek relief for violations of the provisions of 29 U.S.C. § 2102. See 29 U.S.C. § 2104(5).

ANSWER: Zachry admits the allegations in paragraph 33.

34. Moreover, Defendant's violations of the WARN Act were not in good faith, and Defendant had no reasonable grounds for believing that the plant closing or mass layoff it ordered was not in violation of the notice requirements at 29 U.S.C. § 2102.

ANSWER: Zachry denies the allegations in paragraph 34.

WHEREFORE, Plaintiff pray for the following relief:

1. Certification of the Class as a Class Action pursuant to Federal Rule of Civil Procedure 23(b), and designation of Plaintiff as a representative of the Class and counsel of record as Class Counsel.

ANSWER: Zachry denies Plaintiff is entitled to the forms of relief requested in paragraph 1.

2. A declaration that Defendant has violated the WARN Act;

ANSWER: Zachry denies Plaintiff is entitled to relief requested in paragraph 2.

3. A first priority administrative expense claim against Defendant pursuant to 11 U.S.C. § 503(b)(1)(A) in favor of the Plaintiff and the other similarly-situated former employees equal to the sum of their: unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay, pension and 401(k) contributions and other COBRA benefits, for 60 days, that would have been covered and paid under the then-applicable employee benefits had that coverage continued for that period, all determined in accordance with the WARN Act, or alternatively, determining that the first \$15,150 of the WARN Act claims of the Plaintiff and each of the other similarly-situated former employees are entitled to priority status under 11 U.S.C. § 507(a)(4)-(5), and the remainder is a general unsecured claim;

ANSWER: Zachry denies Plaintiff is entitled to the forms of relief requested in paragraph 3.

4. A judgment against Defendant and in favor of Plaintiff and the putative class for back pay to the fullest extent permitted by the WARN Act, 29 U.S.C. § 2104(a)(1)(A).

ANSWER: Zachry denies Plaintiff is entitled to the relief requested in paragraph 4.

5. A judgment against Defendant and in favor of Plaintiff and the putative class for the loss of benefits, including, but not limited to, medical expenses incurred by Plaintiff and the putative class during the employment loss, to the fullest extent allowable under the WARN Act, 29 U.S.C. § 2104(a)(1)(B).

ANSWER: Zachry denies Plaintiff is entitled to the forms of relief requested in paragraph 5.

6. A finding that Defendant's violations of the WARN Act was willful, not in good faith, and that Defendant had no reasonable grounds for believing that its mass layoff was not in violation of the notice requirements of the WARN Act, 29 U.S.C. § 2102.

ANSWER: Zachry denies Plaintiff is entitled to the forms of relief requested in paragraph 6.

7. A judgment against Defendant and in favor of Plaintiff and the putative class for litigation costs, expenses, attorney's fees to the fullest extent permitted under the WARN Act, 29 U.S.C. § 2104(a)(6), and for discretionary costs pursuant to Federal Rule of Civil Procedure 54(d);

ANSWER: Zachry denies Plaintiff is entitled to the forms of relief requested in paragraph 7.

8. A judgment against Defendant for civil penalties to the fullest extent allowable under the WARN Act, 29 U.S.C. § 2104(a)(3); and,

ANSWER: Zachry denies Plaintiff is entitled to any of the forms of relief requested in paragraph 8.

9. Such other and further relief as this Court deems just and proper and allowed under the WARN Act.

ANSWER: Zachry denies Plaintiff is entitled to the forms of relief requested in paragraph 9.

DEFENDANT’S AFFIRMATIVE AND ADDITIONAL DEFENSES AND AVOIDANCES

Zachry states the following affirmative and additional defenses AND AVOIDANCES to the Complaint, but does not assume the burden of proof on any such defenses, except as required by applicable law with respect to a particular defense asserted.

1. The Complaint is barred in whole, or in part, because it fails to state a claim upon which relief may be granted.

2. This Court does not have personal jurisdiction over the claims of any plaintiff or potential plaintiff who did not work in Texas.

3. To the extent Plaintiff and any putative class members have any WARN Act claim, Plaintiffs’ demand for a jury trial should be stricken because jury trials are not permitted in WARN actions.

4. Plaintiff’s claims, and the claims of any putative class member, are barred by the faltering company defense, as set forth in 29 U.S.C. § 2102(b)(1).

5. Plaintiff’s claims, and the claims of any putative class member, are barred by the unforeseeable business circumstances defense, as set forth in 29 U.S.C. § 2102(b)(2)(A).

6. Plaintiff’s claims, and the claims of any putative class members, are barred to the extent the Project was a temporary facility and the employees were hired with the understanding that their employment was limited to the duration of the project or undertaking, as set forth in 29 U.S. Code § 2103

7. If notice had been required under the WARN Act, which Zachry denies, Plaintiffs and other putative class members received as much notice as was practicable in light of the

business circumstances that were not reasonably foreseeable and Zachry was a faltering company; Plaintiffs and other putative class members were given notice explaining the basis for reducing the notification period.

8. Pursuant to 29 U.S.C. § 2104(a)(2), any back pay liability alleged by Plaintiff "and those similarly situated" should be reduced by the amount of any payments made by Zachry to any Plaintiffs and similarly situated employees.

9. To the extent that Zachry is found to have violated the WARN Act, pursuant to 29 U.S.C. §2104(a)(4), any act or omission was in good faith and Zachry had reasonable grounds for believing the act or omission was not a violation of the WARN Act. Accordingly, the Court in its discretion, should reduce the amount of any liability found against Zachry.

10. Plaintiff's claims, and claims by any putative class members, are barred, in whole or in part, because Zachry provided as much notice as was practicable once it became apparent force reductions or a project closure were required due to previously unforeseen business circumstances.

11. To the extent Plaintiff seeks to certify a class pursuant to Rule 23(b)(3), Plaintiff is precluded from seeking any type of additional relief under Rule 23(b)(2).

12. Any alleged damages suffered by Plaintiff, and any putative class members, were caused and/or were solely caused by third parties.

13. Without conceding Plaintiff, and any putative class members, have suffered any damages as a result of any alleged wrongdoing by Zachry, Plaintiff, and any putative class members, have failed to mitigate their claimed damages, the entitlement to which is expressly denied.

14. To the extent Plaintiff and any putative class members have mitigated their damages, Zachry is entitled to offset those amounts.

15. Zachry is not liable to Plaintiff and any putative class members who received an offer to transfer to a different site of employment within a reasonable commuting distance with no more than a 6-month break in employment or received an offer to transfer to any other site of employment regardless of distance with no more than a 6-month break in employment, and accepted within 30 days of the offer or of the closing or layoff, whichever is later.

16. Assuming its applicability is established, Plaintiff's damages, and those of all of the putative class members, are capped in accordance with the WARN Act.

17. The claim in the Complaint for penalties must fail because no wages were due and owing to Plaintiff, and members of the putative class, at the times material to their allegations.

18. All of Zachry's actions regarding Plaintiff and any putative class members were taken in good faith.

Respectfully submitted,

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/s/ Patrick F. Hulla

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of July, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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