Honorable Christopher M. Alston
Chapter 11
Hearing Location: Seattle, Rm. 7206
Hearing Date: September 7, 2018
Hearing Time: 9:30 a.m.
Response Date: August 31, 2018

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re: NORTHWEST TERRITORIAL MINT, LLC, Debtor,	Case No. 16-11767-CMA JOINT MOTION FOR AN ORDER (1) GRANTING CLASS CERTIFICATION FOR PURPOSES OF SETTLEMENT ONLY; (2) APPOINTING SETTLEMENT CLASS REPRESENTATIVE AND SETTLEMENT CLASS COUNSEL; (3) PRELIMINARILY APPROVING THE SETTLEMENT AGREEMENT BETWEEN CLASS CLAIMANT, ON HER OWN BEHALF AND ON BEHALF OF THE SETTLEMENT CLASS; (4) APPROVING THE FORM AND MANNER OF NOTICE TO SETTLEMENT CLASS; (5) SCHEDULING A FINAL FAIRNESS HEARING FOR THE FINAL CONSIDERATION AND APPROVAL OF THE SETTLEMENT; AND (6) FINALLY, APPROVING THE SETTLEMENT

I. INTRODUCTION

Mark Calvert (the "Trustee") on behalf of Northwest Territorial Mint, LLC (the "Debtor") and Brittany Konkel (for purposes of this Settlement only the "Class Claimant"), on her own behalf and on behalf of others similarly situated, and counsel for the Class Claimant (for purposes of this Settlement only the "Settlement Class Counsel"), submit this Joint Motion for an

Order (1) Granting Class Certification for Purposes of Settlement Only; (2) Appointing Settlement Class Representative and Settlement Class Counsel; (3) Preliminarily Approving the Settlement Agreement between the Class Claimant, on her own behalf and on behalf of the Settlement Class of similarly situated former employees of the Debtor; (4) Approving the Form and Manner of Notice to Settlement Class; (5) Scheduling a Final Fairness Hearing for the Final Consideration and approval of the Settlement; and (6) Finally Approving the Settlement; (the "Joint Motion").

In support of their Joint Motion, the parties respectfully submit the following:

II. BACKGROUND

On April 1, 2016, the Debtor commenced this case by filing a voluntary petition under chapter 11 of the United States Bankruptcy Code. On April 11, 2016, the Court appointed Mark Calvert as chapter 11 Trustee. *See* Dkt. No. 51.

Class Claimant and the 99 other similarly situated employees listed on the Settlement Schedule to the Settlement Agreement ("Settlement Class Members" or "Settlement Class") were employed by Debtor until terminated without cause on their part, on or about December 29, 2017, or within thirty days of that date, as part of, or as the reasonably expected consequence of, the layoff conducted on or about December 29, 2017. The layoffs took place in connection with the Trustee's closure of the Debtor's Dayton, Nevada facility. The Trustee contends he had been negotiating a sale of substantially all of the Debtor's assets since October of 2017. The Trustee contends that proposed transaction provided for the continued employment of existing employees. The Trustee contends he closed the Dayton facility after it became certain that the proposed purchaser would not fund the purchase price for the contemplated sale transaction. The Trustee contends that, in addition, prior to the closure of the Dayton facility, Prestige Capital, a company with whom the Debtor had a factoring agreement, failed to extend repayment of the full amount of an overadvance that it had granted to the Debtor. The Trustee contends that Prestige had previously granted an extension on the repayment of the overadvance. The Trustee contends

that the failure of Prestige to grant an additional request for extension of the repayment deadline on the full amount of the overadvance left the Trustee with insufficient cash to continue operations.

Class Claimant initiated litigation under the Worker Adjustment and Retraining Notification, or "WARN," Act, 29 U.S.C. § 2101 *et seq* against the Debtor on January 31, 2018, captioned *Konkel, on behalf of herself and all others similarly situated v. Northwest Territorial Mint, LLC,* Adv. P. No. 16-11767-CMA. The Complaint alleged that the Class Claimant and proposed class members were separated from their employment, without cause on their part, on or about December 29, 2017 or thereafter, without receiving any advance written notice of their terminations as required by the WARN Act.

Class Claimant sought an allowed administrative priority claim pursuant to 11 U.S.C. § 503(b)(1)(A)(ii) against the Debtor in favor of herself and the proposed class members equal to the sum of: (a) unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay, pension and 401(k) contributions and other ERISA benefits, for a period of 60 days, that would have been covered and paid under the then applicable employee benefit plans had that coverage continued for that period, all determined in accordance with the WARN Act, 29 U.S.C. §2104(a)(1)(A). Class Claimant also sought an allowed administrative priority claim for attorneys' fees and costs incurred in the prosecution of the WARN litigation, as authorized by the WARN Act.

The Trustee answered the complaint on March 2, 2018. In the Answer, the Trustee denied that Class Claimant is entitled to any of the relief requested in Class Claimant's complaint. The Trustee admitted that Debtor did not provide sixty days' advance written notice of termination to employees terminated on or about December 29, 2017, but denied that the Debtor violated the WARN Act. The Trustee contends that his termination of employees without sixty days' advance notice was justified under the circumstances and did not trigger any liability under the WARN Act whatsoever. The Trustee further contends that the Class Claimant's claims

are barred in whole or in part by the "faltering company" and/or "unforeseeable business circumstances" exceptions to the WARN Act. The Trustee further contends that even if Class Claimant were to prevail in whole or in part, that Class Claimant is not entitled to an allowed administrative priority claim for attorneys' fees and costs. The Trustee contends that he acted in good faith at all relevant times without indifference to class Claimant's or the proposed class members' protected rights, if any.

The parties exchanged initial disclosures on March 8, 2018. The Court held a status conference on March 9, 2018, during which the Court, sua sponte, set a briefing scheduling concerning the issue of whether an adversary proceeding was procedurally appropriate versus a class motion for administrative expense payment. Following the hearing, the parties discussed the procedural issue raised by the Court and the fact that the bankruptcy estate is administratively insolvent. The parties agreed that it made sense, under the circumstances, to stipulate to the dismissal of the adversary proceeding initiated by Konkel. The parties further agreed to mediate the dispute between them. If the matter was not resolved through mediation, Class Claimant stated that she would then file a motion seeking class certification for administrative claims based on the WARN Act. The adversary proceeding was dismissed by stipulation on March 21, 2018, without prejudice.

The parties mediated this matter on July 24, 2018, with Lawrence Ream as mediator. Prior to the mediation, the parties exchanged mediation statements and other information relevant to the claims. At the mediation, the parties negotiated in good faith. The Trustee and Class Claimant dispute whether the bankruptcy estate is liable for damages under the WARN Act, and whether the Trustee will be able to successfully assert his defenses to liability under the WARN Act. The Trustee strongly contends that the dispute related to the WARN Claim is not appropriate for class certification in the Bankruptcy Case.

The parties have agreed, subject to Court approval, to compromise the WARN Claims on terms in accord with the Settlement Agreement (the "Settlement"), attached hereto as Exhibit 1.

Upon approval by the Court, the Settlement will resolve all issues among the Trustee, the Debtor, the Class Claimant and the other settlement class members relating to the WARN Act claims arising from the cessation of the settlement class members' employment.

The parties agree that in the event that the Bankruptcy Court does not approve the Settlement for any reason, the parties preserve any and all claims and defenses to the claims that are the subject of the Settlement. The parties further stipulate that the Trustee agrees to class certification for purposes of the Settlement only, and that if the Settlement is not approved by the Court, the existence of the Settlement, the fact that it was reached, and/or the fact that the Trustee sought approval of the Settlement shall not waive, impair, or limit the Trustee's ability to object to certification of a class with respect to the WARN Claims and/or assert that the WARN Claims may not be asserted as class claims in the Bankruptcy Case.

The essential terms of the Settlement are as follows[1]:

a) Certification of the Settlement Class for settlement purposes only; the appointment of the Class Claimant as the Settlement Class Representative; and the appointment of Class Claimant's counsel as Settlement Class Counsel;

b) The Trustee will, within fifteen (15) days of the date of entry of the Order finally approving the Settlement, distribute the cash sum of $125,000 (the "Settlement Amount") between and among the following, as set forth in more detail in the Settlement: the 100 Settlement Class members (except for those individuals who "opt out" of the Settlement), the Class Claimant on account of her Service Payment, and Settlement Class Counsel, to settle the WARN Claims, including claims for attorneys' fees and costs, any settlement class claimant service payment, and individual Settlement Class member payments;

c) Settlement Class Counsel shall be paid one third of the Settlement Amount (after deduction of the Service Payment, defined below) as their attorneys' fees

[1] In the event of any conflict, the Settlement itself shall govern over any description contained in this Joint Motion.

("Settlement Class Counsel's Fees") plus Settlement Class Counsel's reasonable expenses incurred in pursuit of the WARN Claim ("Settlement Class Counsel's Expenses") not to exceed $6,000;

d) A Settlement Class Representative payment of $3,000 ("Service Payment") for the Class Claimant to be paid from the Settlement Amount for her efforts on behalf of the Settlement Class;

e) The Settlement Schedule is attached to the Settlement and includes all Settlement Class members and will govern distributions of the Settlement Amount to Settlement Class members who do not "opt out" of the Settlement. Within 15 days from the date of entry of an order finally approving the Settlement, the Trustee will distribute the Settlement Amount (after deduction of the Service Payment, Settlement Class Counsel's Fees and Settlement Class Counsel's Expenses), pro rata, according to the terms of the Settlement Schedule, to the members of the Settlement Class who have not "opted out" of the terms of the Settlement.

f) A release, by the Settlement Class members, of all claims under the Worker Adjustment and Retraining Act, 29 U.S.C. §§ 2101 *et seq.*, (the "WARN Act") that were or could have been pled in the WARN Claim against the Debtor (and their officers, directors, employees, agents, and affiliates as well as the Trustee) on behalf of the Settlement Class, which release is conditioned solely upon payment of the Settlement Amount by the Trustee to Settlement Class Counsel and to the Settlement Class, as set forth herein and in the Settlement.

g) The Settlement does not constitute an admission of liability on behalf of the Trustee.

h) The effectiveness of the Settlement is conditioned upon the entry of a final Order approving the final Settlement by the Bankruptcy Court. In the event the Settlement is not given preliminary or final approval, or if the Final Approval Order is reversed on appeal, or if more than 10% by dollar amount or 20% by number of Settlement

Class members "opt out" of the Settlement Class, the Settlement shall become null and void in all respects and shall have no effect whatsoever.

i) Each party specifically retains all rights with regard to the WARN Claims should the Settlement become null and void, and the Trustee shall have the right to contest the WARN Claims in all respects, including by contesting the ability to certify a class with respect to the WARN Claim. However, any administrative claims bar date with regard to the WARN Claims shall not be set for a date earlier than November 15, 2018.

j) Any unclaimed funds will revert to the bankruptcy estate on the 61st day following issuance of the settlement checks.

III. EVIDENCE RELIED UPON

This Joint Motion relies upon the declarations of Mark Calvert and Mary E. Olsen filed in support, as well as the pleadings and records on file in this matter.

IV. ARGUMENT

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

Bankruptcy Rule 9019(a) provides that "[o]n motion by the [debtor in possession] and after a hearing on notice to creditors, the United States Trustee, the debtor and indenture trustees as provided in Rule 2002 and to such other entities as the Court may designate, the Court may approve a compromise or settlement. Fed. R. Bankr. 9019(a). The Ninth Circuit Court of Appeals has long recognized that "[t]he bankruptcy court has great latitude in approving compromise agreements." *Woodson v. Fireman's Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1998). Accordingly, when approving a settlement, the court need conduct neither an exhaustive investigation into the validity, nor a mini-trial on the merits, of the claims sought to be compromised. *See, e.g., Burton v. Ulrich (In re Schmitt)*, 215 B.R. 417, 421-423 (B.A.P. 9th Cir. 1997); *In re Richmond Produce Co., Inc.*, 1993 U.S. Dist LEXIS 16171, at *11 (N.D. Cal. Nov. 10, 1993). Rather, it is sufficient that the court find that the settlement was negotiated

in good faith and is reasonable, fair, and equitable. *See, e.g., Martin v. Kane (In re A & C Properties),* 784 F.2d 1377, 1381 (9th Cir. 1986).

In *Martin*, 784 F.2d at 1381, the Ninth Circuit identified the following factors for consideration in determining the reasonableness, fairness, and equity of a proposed settlement: (a) the probability of success; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation, and the expense, inconvenience, and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Consideration of these factors does not require the Court to decide questions of law or make findings of fact raised by the controversies sought to be settled, or to determine whether the settlement presented is the best one that could possibly have been achieved. In approving a settlement agreement, the Court need not conduct an exhaustive investigation into the validity of, nor a mini-trial upon, the merits, of the claims sought to be compromised. *United States v. Alaska Nat'l Bank,* 669 F.2d 1325, 1328 (9th Cir. 1982). It is sufficient that the settlement agreement was negotiated in good faith and is reasonable, fair and equitable. *Martin*, 784 F.2d at 1381. The Court need only canvas the issues to determine whether the settlement falls "below the lowest point in the zone of reasonableness." *Newman v. Stein*, 464 F.2d 689, 698 (2d Cir. 1972). *See also*, *Anaconda-Ericsson Inc. v. Hessen*, 762 F.2d 185, 189 (2d Cir. 1985); *Cosoff v. Rodman*, 699 F.2d 599, 608 (2d Cir. 1983). Finally, although the Court should give deference to the reasonable views of creditors, "objections do not rule. It is well established that compromises are favored in bankruptcy." *In re Lee Way Holding Co.*, 120 B.R. 881, 901 (Bankr. S.D. Ohio 1990).

The proposed compromise represents the resolution of claims which, if they had to be litigated, would have entailed very significant administrative cost and considerable delay. In contrast, the certainty created by the proposed settlement allows for a recovery benefitting discharged employees, and a more speedy resolution of this bankruptcy case, to the benefit of

creditors herein. As such, the proposed compromise meets the *Martin* factors and should be approved by the Court.

The Class Claimant and the Trustee ask the Court to approve the Settlement, for the following reasons:

(a) The Settlement reflects the recognition by the Parties that there are significant, complex issues regarding the application of the WARN Act, and the various cases and regulations interpreting the WARN Act to the facts of the case. These issues include, *inter alia*, (i) whether the Debtor provided adequate notice to the proposed class members under the WARN Act; (ii) whether the bankruptcy estate can be held liable under the WARN Act in connection with the alleged acts/omissions; (iii) whether the Trustee was entitled to give fewer than sixty (60) days' notice because of statutory exceptions under the WARN Act; (iv) the computation of the amount of damages; (v) whether the putative class may recover collectively from the bankruptcy estate, and (vi) what priority to afford the WARN Act claims and any attorneys' fees which may be awarded to the class members if they prevail and whether such fees are entitled to administrative priority. The Class Claimant and the Trustee disagree as to whether the estate had any obligation or liability under the WARN Act with respect to the class members' claims as well as what priority liability under the WARN Act would have in the Debtor's case and whether class certification would be granted.

(b) If the matter went to trial, the results would be uncertain. Further, this bankruptcy case is administratively insolvent and the Trustee presently estimates that administrative priority claims will receive a recovery of 1/3 or less of the amount of their allowed claims. In light of this uncertainty, and to avoid extensive, costly litigation and the attendant risks, the Class Claimant and the Trustee, through their respective counsel, engaged in significant negotiations regarding a possible consensual resolution of this litigation.

(c) There are three aspects to the complexity of litigation on the WARN Claim, and the presence of each strongly militates in favor of an early settlement. First, the Class Claimant will seek class certification, which the Trustee would contest for various reasons. Thus, without the Settlement, motion practice would ensue. Secondly, the Trustee's defenses to the claims under the WARN Acts are fact intensive and could require extensive discovery, which would significantly reduce the funds ultimately available for creditors. Finally, any rulings on the WARN claims would be subject to highly contested litigation. Moreover, the result of such litigation could be appealed, potentially delaying the resolution of this bankruptcy case for some time. Such delay likely would not benefit the Debtor's former employees and the members of the Settlement Class, who will receive payments soon after final approval of the proposed Settlement. The Settlement provides for a guaranteed recovery for the Settlement Class Members, assuming final approval is granted and the Trustee can cap the estate's exposure at $125,000, in addition to avoiding a trial (and any appeals) which would involve significant time and expense for this estate, to the detriment of its creditors.

(d) The cooperation of the parties, and the early mediation of the WARN Claims, has now yielded the compromise embodied in the Settlement. Undoubtedly, the proposed compromise is beneficial to creditors, and especially all the former employees – not just the members of the Settlement Class – because it clears the way for the resolution of this bankruptcy case. All in all, the Trustee submits that the proposed compromise is reasonable and adequate under the circumstances and should be approved. Moreover, the Trustee believes it is well within his business judgment in seeking to resolve the WARN Claims by means of the Settlement.

For the reasons discussed above, the proposed Settlement clearly falls within the range of reasonable litigation possibilities. The Settlement is therefore in the best interest of the Debtor's bankruptcy estate and its creditors.

B. Approval of the Settlement Under Rule 23

The Trustee and Class Claimant seek certification of the Settlement Class for settlement purposes only, pursuant to Fed. R. Civ. P. 23(e). That rule, which is made applicable by Fed. R. Bankr. P. 7023, provides that "[a] class action shall not be dismissed or compromised without the approval of the court." Although Class Claimant's adversary proceeding has been dismissed, the parties have agreed for purposes of this Settlement that the submission of a class proof of claim would be appropriate and that Fed. R. Civ. P. 23 should apply. Courts have permitted the submission of class proofs of claims in bankruptcy cases. *See In re Birting Fisheries, Inc.*, 92 F.3d 939 (9th Cir. 1996) (concluding that "the bankruptcy code should be construed to allow class claims" and citing other circuit decisions that have concluded the same). Therefore, a court must carefully examine a class action settlement under Fed. R. Civ. P. 23(e) to ensure its "fairness, adequacy and reasonableness," *County of Suffolk v. Long Island Lighting Co.*, 907 F.2d 1295, 1323 (2d Cir. 1990), and to ensure that the settlement was not a product of collusion between the parties. *Joel A. v. Giuliani*, 218 F.3d 132, 138 (2d Cir. 2000).

Although Fed. R. Civ. P. 23(e) does not specify any particular procedure as to how a court should review a class action settlement, a number of courts have adopted a two-step procedure, consisting of preliminary approval of the settlement before notice is given to class members, and a subsequent "fairness hearing," at which all class members have an opportunity to be heard on whether final approval of the settlement should be granted. *Armstrong v. Board of School Directors*, 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998); *In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F. Supp.1379, 1384 (D. Md. 1983); *see also Bennett v. Behring Corp.*, 737 F.2d 982, 985 (11th Cir. 1984) (preliminarily approving settlement and scheduling fairness hearing); *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 278 (S.D.N.Y. 1999) (same); *Hickerson v. Velsicol Chem. Corp.*, 121 F.R.D. 67, 69 (N.D. Ill. 1988) (same); *Seiffer v. Topsy's Int'l, Inc.*, 70 F.R.D. 622, 625 (D. Kan. 1976) (same). The purpose of the preliminary approval is to evaluate the settlement to

determine whether "the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval." Manual for Complex Litigation, Second § 30.44 (1985); *see also Armstrong*, 616 F.2d at 314; *Mid-Atlantic Toyota Antitrust Litig.*, 564 F. Supp. at 1384.

Consistent with the case law employing a two-step procedure, the movants request that the Court, at the hearing on the Motion, grant preliminary approval of the Settlement, certify the Settlement Class for settlement purposes only, set a date for a final hearing on the Motion, approve the form of Class Notices and subsequent to the final fairness hearing, enter an Order finally approving the Settlement.

When a proposed settlement is the result of arm's-length negotiations, there is a presumption that it is fair and reasonable. *See* 2 Newberg & Conte, *Newberg on Class Actions* §11.41 at 11-88 (3d ed. 1992); *Manual for Complex Litigation* §30.42. Indeed, a trial court is directed to operate under a presumption of fairness when, *inter alia*, the settlement is the result of arms-length negotiation, there has been investigation and discovery that are sufficient to permit counsel and the court to act intelligently, and counsel are experienced in similar litigation.

Due to the bankruptcy and limited assets in bankruptcy estate, this matter was time sensitive, and in the interests of preserving the assets of the estate so as to maximize a potential recovery for the members of the Settlement Class, the parties worked cooperatively in exchanging information rather than conducting formal discovery or motion practice. In this regard, parties conferred and exchanged information prior to and during the all-day mediation, which the parties attended. Thus, the parties were enabled to make an informed decision regarding settlement. The parties believe the settlement to be in the best interest of the estate, and the members of the Settlement Class, taking into account the costs and risks of continued litigation, as well as the current administrative insolvency of the estate. The opinion of experienced counsel supporting the settlement is entitled to considerable weight. *See, e.g.*, *In re*

First Capital Holdings Corp. Fin. Prods. Sec. Litig., 1992 U.S. Dist. LEXIS 14337, at *8 (C.D. Cal. June 10, 1992) (finding belief of counsel that the proposed settlement represented the most beneficial result for the class to be a compelling factor in approving settlement); *Kirkorian v. Borelli*, 695 F.Supp.446, 451 (N.D. Cal. 1988) (opinion of experienced counsel is entitled to considerable weight); *Boyd v. Bechtel Corp*., 485 F.Supp. 610, 622 (N.D. Cal. 1979) (recommendations of plaintiff's counsel should be given a presumption of reasonableness). Thus, this Court should grant this Motion.

Preliminary approval of the settlement should be granted if there are no "grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation for attorneys, and appear to fall within the range of possible approval." *Manual for Complex Litigation* §30.41, at 236-37 (3d ed. 1995). The proposed Settlement satisfies the standard for preliminary approval as it is within the range of possible approval and there are no grounds to doubt its fairness. The maximum theoretical claims under the WARN Act are approximately $640,000. While the Trustee contends that the WARN claims were without merit, the Settlement resolves all disputes over the WARN Claims, reduces litigation costs, eliminates uncertainty, provides finality on the WARN Claims and provides members of the Settlement Class with a real benefit.

C. The Settlement Class Should Be Preliminarily Certified for Settlement Purposes Only

Under Fed. R. Civ. P. 23, to maintain a class action, the following conditions must be met: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interest of the class. The parties agree for settlement purposes

only that the Settlement Class satisfies all the prerequisites to maintain a class action under Fed. R. Civ. P. 23.[2]

First, the Parties agree for settlement purposes only that the numerosity requirement is satisfied in that the proposed Settlement Class includes 100 of the Debtor's former employees.

Second, the Parties agree, for settlement purposes only, that common issues will be resolved through class treatment; such as, without limitation, applicability of the WARN Act and any defenses thereunder.

Third, the Parties agree, for settlement purposes only, that the proposed class representative's claims are precisely the same as those of the class: that they were terminated without advance WARN notice.

Fourth, the Parties agree, for settlement purposes only, that no conflicts, disabling or otherwise, exist between the representative and Settlement Class's members because the representative has allegedly been damaged by the same alleged conduct and have the incentive to fairly represent all Class Member's claims to achieve the maximum possible recovery.

Moreover, the Parties agree, for settlement purposes only, that the adequacy requirement is met for purposes of settlement. Class Counsel are experienced class action attorneys, have been appointed as lead counsel in numerous class actions, and have a successful track record in litigating class actions.

Also relevant to the Court's certification decision is whether a class action is the superior method of adjudication. Here, for purposes of settlement only, the parties agree that certifying the Settlement Class for purposes of resolving the WARN Claims is the superior method of adjudication.

Accordingly, the Parties agree, for settlement purposes only, that the Settlement Class

[2] As set forth in the Settlement, in the event that the Settlement is not approved for any reason, the Trustee and the Class Claimant preserve all rights, defenses, and arguments with respect to the WARN Claims, including but not limited to the Trustee's right to argue that the requirements for class certification have not been met pursuant to Fed. R. Civ. P. 23, or that class certification is otherwise inappropriate and should not be granted by the Court.

meets all criteria for certification and should be certified for purposes of effectuating the Settlement. *See Amchen Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (finding that because the Court was certifying the action for settlement purposes only, it did not need to determine whether the class would be manageable for litigation purposes).

D. The Proposed Class Notice is Adequate

The proposed Class Notice, which is attached hereto as Exhibit 2, is accurate, informative, and readable by the average person. The Class Notice is written in simple, plain language, and provides key information about the Settlement as well as an individualized statement of expected recovery for each Settlement Class Member, after deduction of the service payment and one third attorneys' fees, plus costs, so that each Settlement Class Member can choose what to do, as well as the date, time, and place of the final hearing to consider approval of the Settlement. The Class Notice also informs Settlement Class Members that they will be bound by the terms of the Settlement and that they have the right to object to, or be excluded from, the Settlement. The Class Notice further provides the deadline for submitting objections to the Settlement and the process by which a party may appear or opt-out of the Settlement Class. In short, the Class Notice is "adequate to 'fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with [the] proceedings.'" *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1164 (2000) (citation omitted).

The proposed method of notice is also adequate. The Class Notices will be mailed to the Settlement Class members' home addresses as reflected in the Debtor's books and records, and Class Counsel will follow up on any undeliverable mailings. This method of notice will provide Settlement Class Members with the greatest opportunity to receive notice.

E. The Settlement Should be Finally Approved at the Fairness Hearing

Rule 23(e) of the Federal Rules of Civil Procedure provides that

> [t]he claims, issues, or defenses of a certified class may be settled,

> voluntarily dismissed, or compromised only with the court's approval.

Fed. R. Civ. P. 23(e).

The Ninth Circuit favors class settlements: "When reviewing class action settlements, we have a 'strong judicial policy that favors settlements'." *In re Pacific Enterprises Litigation*, 47 F. 3d 373, 378 (9th Cir. 1995) (citation omitted).

In *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993), the Ninth Circuit reaffirmed the settled rule that a class "settlement should be approved if it is fundamentally fair, adequate and reasonable'." (citation omitted). In *Officers for Justice v. Civil Serv. Comm. of San Francisco*, 688 F. 2d 615, 625 (9th Cir. 1982), *cert. denied*, 459 U.S. 1217 (1983), the court stated that this determination requires

> a balancing of several factors which may include, among others, some or all of the following: the strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

In *Torrisi*, 8 F.3d at 1375, the Ninth Circuit reaffirmed the factors delineated in *Officers for Justice* and declared, as did the Court in *Officers for Justice*, that "this list is not exclusive and different factors may predominate in different factual contexts." *Id*. at 1376.

The movants submit that the Settlement should also be approved as fair, reasonable and adequate to the Settlement Class under the factors enumerated by the Ninth Circuit.

- As set forth above, litigation of the WARN Claims would have been complicated, protracted and expensive.
- The Class Claimant supports the Settlement and Settlement Class Counsel believes that the bulk of the other Settlement Class members will have a favorable reaction to the Settlement and not object to it or opt out of it.
- The Settlement was reached after the essential facts had been thoroughly investigated by Settlement Class Counsel, including informal disclosure from Debtor. Class Counsel believes that the Settlement is fair and reasonable and in the best interests of the Settlement Class.

- As set forth above, the risks of being unable to fully establish liability and damages on the claims were present because of the numerous defenses which Trustee intended to assert.
- The Settlement provides for the Settlement Class members to receive their *pro rata* share of the Settlement Amount within fourteen days after final approval.

The Movants submit that the Settlement is well within the range of reasonableness given the uncertainty of establishing liability and damages. To sum up, the majority of the relevant factors strongly support approval of the Settlement. Accordingly, in addition to approving the Settlement pursuant to Federal Rule of Bankruptcy Procedure 9019, the Court should preliminarily approve the Settlement and at a later the fairness hearing the Court should finally approve the Settlement as "fair, reasonable and adequate" to the Settlement Class.

WHEREFORE, the parties respectfully request that the Court enter the proposed form of order attached hereto as Exhibit 3, (1) granting Class Certification for purposes of settlement only; (2) appointing Settlement Class Counsel; (3) preliminarily approving the Settlement between the Trustee and Class Claimant, on her own behalf and on behalf of the Settlement Class of similarly situated former employees of the Debtor; (4) approving the form and manner of Notice to Class; (5) scheduling a Fairness Hearing for the Final Consideration and approval of the Settlement; and (6) granting related relief. The parties further request that after the final Fairness Hearing, the Court enter the form of order attached hereto as Exhibit 4, finally granting the motion and approving the Settlement.

DATED this 16th day of August, 2018.

K&L GATES LLP

By */s/ Michael J. Gearin* _____
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Attorneys for Class Claimant

CERTIFICATE OF SERVICE

The undersigned declares as follows:

That she is a Sr. Practice Assistant in the law firm of K&L Gates LLP, and on August 16, 2018, she caused the foregoing document to be filed electronically through the CM/ECF system which caused Registered Participants to be served by electronic means, as fully reflected on the Notice of Electronic Filing.

Also on August16, 2018, she caused the foregoing document to be placed in the mail to the Parties at the addresses listed below:

Northwest Territorial Mint LLC
c/o Ross Hansen, Member
P.O. Box 2148
Auburn, WA 98071-2148

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

Executed on the 16th day of August, 2018 at Seattle, Washington.

/s/ Benita G. Gould
Benita G. Gould