IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 11
	)	
POWERMATE HOLDING CORP., ET AL.	)	Case No. 08-10498 (KG)
	)	
Debtors.	)	
GREG HENDERSON	)	
On his own behalf and on behalf of all	)	
Other persons similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Adv. Pro. No. 08-50559 (KG)
	)	
POWERMATE HOLDING CORP.,	)	
POWERMATE CORPORATION,	)	
POWERMATE INTERNATIONAL, INC.,	)	
SUN CAPITAL PARTNERS, LLC,	)	
SUN POWERMATE, LLC ,	)	
SCSF POWERMATE, LLC,	)	
and	)	
JOHN DOES 1-20,	)	
	)	
Defendants.	)	

JOINT STIPULATION AND SETTLEMENT AGREEMENT

This *Joint Stipulation and Settlement Agreement* (the "***Settlement Agreement***" or "***Settlement***"), dated as of July _____, 2009, is entered into by and between (i) the Chapter 11 estates of Powermate Holding Corp., et al., Chapter 11 Case No. 08-10498 (KG) (jointly administered and collectively the "***Debtors,***" and with respect to their cases, the "***Chapter 11 Cases***"), and (ii) Greg Henderson, acting on his own behalf and on behalf of all other persons similarly situated to him (the "***Class Representative***"), and specifically those individuals named on **Exhibit 1** hereto (the ***Class Representative*** and the persons listed on **Exhibit 1** hereto are collectively referred to as the "***Class Members***" or the "***Class***"), on the other hand.

WHEREAS, the Debtors filed voluntary petitions under Chapter 11 of Title 11 of the United States Code (the "***Bankruptcy Code***") on March 17, 2008, and their cases are being administered in the United States Bankruptcy Court for the District of Delaware (the "***Bankruptcy Court***");

WHEREAS, the Class Representative filed a class-action complaint (the "***Complaint***"), commencing an adversary proceeding (the "***WARN Action***")) against the Debtors and certain non-Debtor Defendants, on behalf of himself and purportedly on behalf of the Class Members,

on or about April 3, 2008, alleging that the Defendants violated the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §2101 *et seq.* (the "***WARN Act***") by ordering plant closings and/or mass layoffs in March of 2008 without providing sixty (60) days advance notice thereof. The Class Representative also filed at that time a class proof of claim in respect of such damages. The Class Representative further asserted that, as a consequence of this alleged failure, the affected employees have an administrative priority claim pursuant to §503(b)(l)(A) against the Debtors' estates for damages for the alleged 60-day violation period. The ***WARN Action*** was styled as *Greg Henderson, on his own behalf and on behalf of all other persons similarly situated, v. Powermate Holding Corp., Powermate Corporation, Powermate International, Inc., Sun Capital Partners, LLC, Sun Powermate, LLC, SCSF Powermate, LLC, York Street Mezzanine Partners, L.P. and John Does 1-20,* and is presently pending in the Bankruptcy Court as Adversary Proceeding No. 08-10498 (KG). The Class Representative voluntarily dismissed York Street Mezzanine Partners, L.P. as a defendant, but all other defendants remain of record;

WHEREAS, the Creditors' Committee in the Chapter 11 Cases is aware of and has to some extent participated in the WARN Action;

WHEREAS, the Parties recognize and agree that:

1. The question of whether the ***WARN Act*** claims asserted in the ***WARN Action***, if allowed, would be entitled to administrative priority treatment involves unsettled legal issues. Specifically, the Bankruptcy Court determined they were not entitled to such priority, but the matter is on appeal;

2. Voluntary and unconditional payments made by the Debtors to or on behalf of former employees would reduce any potential liability of the Debtors under the ***WARN Act***; and

3. Any priority payments to former employees based on a ***WARN* Act** claim could convert prior payments made to or on behalf of former employees to avoidable preferential transfers.

WHEREAS, subject to certain exceptions, the ***WARN Act*** requires employers having 100 or more full-time employees to provide written notice of a "plant closing" (as defined by the ***WARN Act***), if the shut-down results in an "employment loss" (as defined in the ***WARN Act***) during any 30-day period for 50 or more employees at a single site of employment, excluding "part-time employees" (as defined in the ***WARN Act***);

WHEREAS, the ***Debtors*** and the ***Class Representative*** disagree as to whether the Defendants have any liability under the WARN Act and as to the proper scope of the alleged ***Class***. Relying on the definition of a "plant closing" found in 29 U.S.C. §2101(a)(2) that requires the layoff of at least 50 employees excluding part-time employees, ***Debtors*** have urged that the ***Class Members*** who worked at facilities with fewer than 50 employees ("***Small Facility Employees***") were not protected by the WARN Act. The weight of authority supports ***Debtors***' contention. *See Williams v. Phillips Petroleum Co.*, 23 F. 3d 930, 934-935 (5th Cir.), *cert denied*,

513 U.S. 1019 (1994) (holding that only employees of facilities with 50 or more full time employees are protected by the WARN Act). *But cf.*, *Kirkvold v. Dakota Pork Industries, Inc.*, CIV 97-4166, (Dist. S.D. Dec. 15, 1997)(unreported decision holding that employees of a "small" facility closed as the foreseeable consequence of the closure of a "large" facility were protected by the WARN Act, citing 29 U.S.C. §2101 (a)(5)). In light of this authority, there was a possibility that based on *Williams*, the Small Facility Employees' claims would be dismissed on summary judgment. In addition, there are several statutory exceptions to liability under the ***WARN Act***. For example, the ***Debtors*** have asserted that they satisfy the requirements of the "faltering company" and/or "unforeseeable business circumstances" exceptions under the ***WARN Act***, which, the Defendants further assert, can excuse notice or reduce the time such notice must be provided to the employees. The ***Class Representative*** disputes that these defenses apply;

WHEREAS, even if the faltering company or unforeseeable business circumstances exceptions to the ***WARN Act*** do not apply, the ***Debtors*** have asserted that they are nonetheless entitled to other defenses and/or legal avenues to reduce their damages, including their good-faith belief that they fell under the faltering company and/or unforeseen business circumstances exceptions or that the provisions of the ***WARN Act*** were otherwise satisfied or did not apply. The ***Class Representative*** disputes this;

WHEREAS, the ***Class Representative*** contends that Defendants constitute a "single employer" for purposes of the ***WARN Act***. Defendants dispute this;

WHEREAS, there exist significant, complex legal and factual issues regarding the application of the ***WARN Act*** to this case based on the applicable caselaw and Department of Labor regulations interpreting the ***WARN Act*** and the viability of the ***WARN Action;***

WHEREAS, to avoid extensive, costly litigation over these issues, the ***Debtors*** and the ***Class Representative***, on his own behalf and on behalf of the ***Class Members***, through their counsel, Margolis Edelstein ("***Class Counsel***") have engaged in significant negotiations regarding a mutually consensual resolution of the ***WARN Action*** and all related claims (collectively sometimes referred to herein as the "***WARN Act Litigation***"). As a result of these negotiations, the Parties have agreed to enter into this ***Settlement Agreement***;

WHEREAS, the ***WARN Act*** provides that attorneys fees may be awarded to the prevailing party in a WARN action;

WHEREAS, ***Class Counsel*** asserts that each of the ***Class Members***, in retaining the undersigned ***Class Counsel***, have agreed to pay counsel legal fees equal to one-third of his/her recovery;

WHEREAS, the ***Class Representative*** supports the settlement of the ***WARN Act Litigation*** pursuant to the terms of this ***Settlement Agreement***;

WHEREAS, ***the Class Representative*** asserts, and, solely for purposes of this ***Settlement Agreement***, the ***Debtors*** agree, that a class consisting of the ***Class Members***, because it is comprised of approximately two hundred and six (206) persons, is so numerous that joinder of

all members is impracticable, satisfies the numerosity requirements of Rule 23 (a) of the Federal Rules of Bankruptcy Procedure as made applicable by Rule 7023 of the Federal Rules of Bankruptcy Procedure;

WHEREAS, ***the Class Representative*** asserts, and, solely for purposes of this ***Settlement Agreement***, the ***Debtors*** agree, that the issues common to the claims of the members of the ***Class*** constitute virtually all the issues affecting their rights and thus predominate over the issues that are not common;

WHEREAS, ***the Class Representative*** asserts, and, solely for purposes of this ***Settlement Agreement***, the ***Debtors*** agree, that the claims of the ***Class Representative*** are typical of the ***WARN Act*** claims of the ***Class Members*** in that the ***WARN Act*** claims of the ***Class Representative*** arose from the same course of conduct that gave rise to the ***WARN Act*** claims of the ***Class Members***;

WHEREAS, ***the Class Representative*** asserts, and, solely for purposes of this ***Settlement Agreement***, the ***Debtors*** agree, that the determination of the claims of some but not all ***Class Members*** would prejudice the claims of the remaining ***Class Members***;

WHEREAS, ***Class Counsel*** asserts, and, solely for purposes of this ***Settlement Agreement***, the ***Debtors*** agree, that it has been appointed numerous times as class counsel in WARN actions in U.S. Bankruptcy Courts;

WHEREAS, ***Class Counsel*** asserts, and, solely for purposes of this ***Settlement Agreement***, the ***Debtors*** agree, that it is experienced in handling class claims under the ***WARN Act*** in bankruptcy courts, having brought and prosecuted many WARN Act claims (most of which were in bankruptcy cases) and that ***Class Counsel*** has provided and will provide adequate representation to the ***Class Members***;

WHEREAS, ***Class Counsel*** asserts, and, solely for purposes of this ***Settlement Agreement***, the ***Debtors*** agree, that the customary attorneys' fee in WARN matters is a one-third contingency fee payable from the recovery on such claims and the proposed fee provided herein is approximately thirty-three percent of the recovery of the ***Class***' ***WARN Act*** claims;

WHEREAS, ***Class Counsel*** asserts, and, solely for purposes of this ***Settlement Agreement***, the ***Debtors*** agree, that but for the legal services it provided, the ***Class Members*** would not have had any recovery on their ***WARN Act*** claims;

WHEREAS, ***Class Counsel*** asserts, and, solely for purposes of this ***Settlement Agreement***, the ***Debtors*** agree, that it has expended substantial time in prosecuting the ***WARN Act*** claims of the ***Class Members*** and the legal fee provided herein is fair and reasonable under the circumstances; and

WHEREAS, the Parties have agreed to fully and finally compromise, settle, and resolve any and all demands, claims, damages, and causes of action, present and future, arising from the ***WARN Action***, the Complaint, and any claims, including but not limited to, claims for severance

pay or benefits, arising out of the termination of the ***Class Members***' employment of whatever type or nature.

NOW, THEREFORE, as material consideration and inducements to the execution of this ***Settlement Agreement***, and in consideration of the mutual promises and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. This ***Settlement Agreement*** is subject to, and conditioned upon, issuance of a final order by the Bankruptcy Court approving the ***Settlement Agreement***, after notice and opportunity for hearing to creditors and parties in interest, in accordance with applicable law and local rules. The order shall be deemed final when 10 days have elapsed from entry of the Bankruptcy Court's order approving the settlement with no notice of appeal filed or after the Bankruptcy Court order approving the settlement is finally affirmed on appeal, whichever first occurs (hereinafter "***Final Order***"). Upon entry of the ***Final Order*** (in the form attached hereto as **Exhibit 2**, or in substantially similar form acceptable to the Parties) approving the ***Settlement Agreement***, and the execution of this ***Settlement Agreement*** by the Parties, this ***Settlement Agreement*** shall be final and binding. In the event that a ***Final Order*** approving this ***Settlement Agreement*** in a form acceptable to the Parties is not entered, (a) the ***Settlement Agreement*** and the recitals contained herein shall be without force or effect, and neither this ***Settlement Agreement***, nor any of the statements contained herein, shall be admissible in any proceeding involving the Parties; (b) neither the motions to obtain an order approving this ***Settlement Agreement*** nor any of the pleadings filed in support of the motions shall be admissible in any proceeding involving the Parties; and (c) none of the provisions hereof shall prejudice or impair any rights, remedies or defenses of any of the Parties.

2. Pursuant to the terms of this ***Settlement Agreement***, once (a) the ***Final Order*** is entered, (b) 10 calendar days thereafter pass without the filing of an appeal, and (c) the Parties execute this ***Settlement Agreement***, the ***Settlement Agreement*** shall become effective (the "***Effective Date***") and the ***Debtors*** shall pay $375,000.00 (the "***Settlement Payment***") as follows: (i) $125,000.00 to ***Class Counsel*** and a maximum of $250,000.00 to the ***Class Members,*** which shall be distributed pursuant to an allocation formula developed by ***Class Counsel*** and approved by ***Debtors***. The allocation formula will be based on a formula that accounts for each of the ***Class Members'*** regular hourly rate as of the ***Debtors'*** Bankruptcy petition date, or March 17, 2008. For the purposes of developing the allocation formula, the ***Debtors*** will provide to ***Class Counsel*** the current reasonably accessible data that the ***Debtors*** have available in good faith to develop the allocation formula.

3. The ***Class Representative*** is hereby recognized as the class representative and shall receive a one-time payment of $5,000.00 for the services he provided to the ***Class*** in connection with the prosecution of the ***WARN Action*** (the "***Service Payment***") which amount shall be paid from the ***Settlement Payment***.

4. To the extent administratively convenient, the payment to each ***Class Member,*** including the ***Service Payment*** to the ***Class Representative***, shall be made via a single check.

5. The ***Debtors*** shall make distributions from the ***Settlement Payment*** in the amounts required by this ***Settlement Agreement***, including the distribution of the ***Service Payment*** to the ***Class Representative***, within thirty (30) days following the Court's final Order approving settlement, and shall have the option to engage a third-party administrator acceptable to the Parties to issue all notices to the ***Class Members***, disbursement checks and 1099 Forms.

6. The ***Debtors*** shall bear the ultimate responsibility for the production and distribution of the notices to be required for the ***Class Members*** (the "***Class Notices***") and the settlement checks required pursuant to the terms of this ***Settlement Agreement***. The costs associated with the production and distribution of the ***Class Notices*** and the settlement checks shall be paid for out of the ***Settlement Payment,*** in an amount not to exceed $10,000. The ***Debtors*** shall bear the costs in excess of $10,000 associated with the production and distribution of the ***Class Notices*** and the settlement checks. The ***Debtors*** shall certify that such 1099 Forms have been properly mailed to all ***Class Members*** with the disbursements made pursuant to this ***Settlement Agreement***. The address of ***Class Counsel*** will be used as the return address with respect to the ***Class Notices*** and the checks mailed to the ***Class Members***.

7. The ***Debtors*** shall mail the ***Class Notices*** by first class mail to the ***Class Members*** listed on **Exhibit 1** hereto at their last known addresses no later than ten (10) business days after preliminary approval of this ***Settlement Agreement*** by the Bankruptcy Court. The ***Class Notice*** shall be in substantially the form annexed hereto as **Exhibit 3** or such substantially similar form as may be approved by the Bankruptcy Court. The ***Class Notice*** shall contain the following information:

- That each ***Class Member*** has the right to opt out of the ***Class*** and preserve all of her/his rights against the ***Debtors***, if any (all such opting out ***Class Members*** are hereafter referred to as the "***Opt-Outs***");

- That the ***Settlement Agreement*** shall become effective only if it is finally approved by the Bankruptcy Court;

- That the ***Settlement Agreement*** shall be effective as to all ***Class Members*** who do not opt-out of the ***Class***;

- That each ***Class Member*** has the right to object to the ***Settlement Agreement***, to retain counsel, and be heard at the Final Fairness Hearing;

- That all released ***Claims*** (as that term is defined herein) of a ***Class Member*** shall be waived, and that no person, including the ***Class Member***, shall be entitled to any further distribution thereon.

8. The ***Debtors*** represent that to the best of their knowledge, information and belief, their records contain the last-known addresses for the ***Class Members*** as of April 3, 2008.

9. A ***Class Member*** may object to this ***Settlement Agreement*** by sending timely written notice of such objection (a "***Notice of Objection***") to (a) ***Class Counsel***, Margolis Edelstein, Attn: James E. Huggett, Esquire, 750 Shipyard Drive, Floor 1, Wilmington, DE 19801 and (b) ***Debtors***' Counsel, Young Conaway Stargatt & Taylor, LLP, Attn: Kenneth J. Enos, Esquire, The Brandywine Building, 17th Floor, 1000 West Street, Wilmington, DE 19801 and filing such ***Notice of Objection*** with the Bankruptcy Court so that it is received by both ***Class Counsel*** **and** ***Debtors' Counsel*** no later than forty-five (45) days after the date of mailing identified on ***Class Notice***. Such objection shall clearly specify the basis for the objection, the relief sought, and the grounds for such objection and relief.

10. Any ***Class Member*** may opt-out of the ***Class*** by mailing to ***Class Counsel***, at the address noted above, the completed and executed Opt-Out Notice Form, attached to the ***Class Notice*** as **Exhibit A** thereto so that it is received by ***Class Counsel*** no later than forty-five (45) days after the date of mailing identified on ***Class Notice***. Upon the receipt of such timely notice by ***Class Counsel***, such Class Member shall be classified as an ***Opt-Out***. Within three (3) days of the expiration of the last day to opt-out, ***Class Counsel*** shall file a sworn statement with the Bankruptcy Court identifying the ***Class Members*** who have timely returned an Opt-Out Notice Form.

11. If a ***Class Member*** does not wish to be bound by this ***Settlement Agreement***, such ***Class Member*** must timely opt-out of the ***Class*** by returning a completed and executed Opt-Out Notice Form as described in the paragraph above. Otherwise, if and when the ***Settlement Agreement*** becomes effective, all ***Class Members*** who have not opted out shall be bound by the terms of this ***Settlement Agreement***.

12. Notwithstanding anything to the contrary in this ***Settlement Agreement***, nothing contained herein shall release or impair the rights and claims, if any, of the ***Opt-Outs***, nor shall anything contained herein affect the defenses and offsets that the ***Debtors*** and their estates, their respective subsidiaries, affiliates, successors or any of their present or former officers, directors, employees, agents, lawyers, consultants, stockholders or members of any thereof, may have against any such rights or claims.

13. ***Class Counsel*** is hereby recognized as class counsel for the ***Class Members***, in pursuing claims against Defendants for alleged violations of the ***WARN Act*** and in settling such claims and any claims, including but not limited to, claims for severance pay or benefits, arising out of the termination of the ***Class Members***' employment of whatever type or nature, and is entitled to attorneys' fees in the amount of $125,000 from the ***Settlement Payment*** as payment for their work in connection therewith.

14. The ***Class Members***, including the ***Class Representative***, agree that they have not relied on any advice from the ***Debtors***, or their attorneys, concerning the tax consequences of the payments made pursuant to this ***Settlement Agreement***, but are relying on their own judgment and the advice of ***Class Counsel*** and/or their own personal counsel. The payments made pursuant to this ***Settlement Agreement***, including the payment described in paragraph 12, will be reported by ***Debtors*** on IRS 1099 Forms. The ***Class Members***, including the ***Class Representative***, expressly acknowledge and warrant that they are, and shall be, solely

responsible for the payment of all federal, state, and local taxes which may result from the above payments, and they hereby warrant that the ***Debtors*** shall bear no responsibility for any such tax liabilities. The ***Class Members***, including the ***Class Representative***, further agree to indemnify and hold the ***Debtors*** and the ***Released Parties*** (as defined below) harmless in the event that the ***Debtors*** or the ***Released Parties*** are assessed with any taxes, fines, penalties, or interest by the IRS (or any other federal, state, or local government agency) relating to the payments made pursuant to this ***Settlement Agreement***.

15. The ***Class Members***, including the ***Class Representative***, are listed on **Exhibit 1** hereto. The ***Debtors*** believe that the ***Class Members*** include all of the employees of the ***Debtors*** that are alleged to be "affected" employees, by reason of the purported plant closing or mass layoff that allegedly took place on or about March 17, 2008, and include all ***Debtors***' employees terminated in connection therewith other than employees who are not entitled to participate in this ***Settlement Agreement*** because (i) the amount of severance pay that they received exceeds the amounts they would be entitled to under the ***WARN Act***; or (ii) they voluntarily resigned from their employment with the ***Debtors*** (collectively, the "***Ineligible Employees***").

16. Upon execution of this ***Settlement Agreement***, the Parties consent that a class shall be certified in connection with the ***WARN Act Litigation*** and the motion to approve this ***Settlement Agreement***, consisting of the individuals listed on **Exhibit 1** hereto; provided however that such class shall be certified for settlement purposes only pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure as made applicable by Rule 7023 of the Federal Rules of Bankruptcy Procedure.

17. If settlement checks issued to ***Class Members*** remain uncashed as of the 120th day after their distribution, or if any settlement checks are returned to *Debtors* or the settlement administrator as undeliverable (collectively, the "***Residual Funds***"), such ***Residual Funds*** shall revert to the ***Debtors***.

18. Except for the rights arising out of, provided for, or reserved in this ***Settlement Agreement***, upon the payment of the ***Settlement Payment*** to ***Class Counsel***, the ***Class Members***, for and on behalf of themselves, and their respective predecessors, successors assigns, affiliates and subsidiaries (collectively, the "***Releasing Parties***"), do hereby fully and forever release and discharge the ***Debtors***, the ***Debtors***' estates, their current and former parents, subsidiaries and affiliated entities, and their respective officers, directors, shareholders, agents, employees, partners, members, accountants, attorneys, representatives and all other agents, and all of their respective predecessors, successors and assigns (collectively, the "***Released Parties***"), of and from any and all claims, obligations, demands, rights, debts, liabilities, liens, actions and causes of action, costs, expenses, attorneys' fees and damages of whatever kind or nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal , state and/or local law, statute, ordinance, regulation, common law, or other source of law, whether known or unknown, and whether anticipated or unanticipated, suspected or disclosed, which the ***Releasing Parties*** may now have or hereafter may have against the ***Released Parties.*** (collectively, the "***Class Members' Released Claims***"). The ***Class Members Released Claims*** include, but are not limited to, any claims, obligations, demands, rights, debts, liabilities, liens,

actions and causes of action, costs, expenses, attorneys' fees and damages of whatever kind or nature, character, and description, which relate to or are based on the ***WARN Act*** or severance pay or other benefits arising from or dependent upon any and all applicable federal, state or local statute, regulation or common law theory arising out of the termination of the ***Class Members***' employment by the ***Debtors***, including, but not limited to:

(i) all claims asserted or that could have been asserted in the ***WARN Act Litigation***;

(ii) all individual ***WARN Act*** claims;

(iii) and any and all claims arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000(e) *et seq.*, the Civil Rights Act of 1871, 42 U.S.C. §1981, the Equal Pay Act, 29 U.S.C. §206(d), the Age Discrimination in Employment Act, 29 U.S.C. §621 *et seq.*; the Americans With Disabilities Act, 42 U.S.C. §12101 *et seq.*; the Employee Retirement Income Security Act, 29 U.S.C. §1001 *et seq.*; and

(iv) any other claims for severance pay or other benefits based on or arising out of any federal, state or local statute, ordinance or regulation; *provided, however, that the following claims and/or rights shall not be released*:

(a) any claims for continuation of health or medical coverage, at the ***Class Member's*** expense, or at the expense of a beneficiary or dependant of a ***Class Member***, to the extent allegedly required by the relevant provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("***COBRA***");

(b) any pre-petition claims for expense reimbursement;

(c) rights, if any, unrelated to the ***Class Members***' ***WARN Act*** claims, under the ***Debtors***' 401(k) plans; and

(d) any claims which the law clearly states may not be released by settlement. The claims released hereunder are referred to herein as the "***Claims.***"

The release of these claims shall be effective upon the ***Class Representative*** signing of this ***Settlement Agreement*** and the Court's entry of a ***Final Order*** approving this ***Settlement Agreement*** in a form acceptable to the Parties.

19. Upon the payment of the ***Settlement Payment*** to ***Class Counsel***, the ***Class Members*** agree that any claims that have been scheduled on behalf of, or filed by, the ***Class Representative*** or the ***Class Members*** in the ***Chapter 11 Cases***, on account of any alleged violation of the ***WARN Act*** or severance pay or benefits under any federal, state or local law or regulation, including, without limitation, and individual ***WARN Act*** claims filed by any ***Class***

Member are disallowed in their entirety and may be expunged from the ***Debtors***' schedules or claims register, as appropriate.

20. The ***Releasing Parties*** and ***Class Counsel*** acknowledge that they are familiar with, and/or, in the case of the ***Class Members***, have been informed by the ***Notice*** to the ***Class*** of the provisions of California Civil Code §1542, which provides as follows:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

With respect to the ***Claims*** being released hereunder, the ***Releasing Parties*** waive and relinquish, to the fullest extent that the law permits, the provisions, rights, and benefits of California Civil Code §1542 and other statutes, regulations or common law principles of similar effect. Such release, however, shall not release the ***Debtors***' obligations under this ***Settlement Agreement***. The ***Releasing Parties*** hereby agree and acknowledge that this waiver and relinquishment is an essential term of this ***Settlement Agreement***, without which the consideration provided to them would not have been given. In connection with such waiver and relinquishment, the ***Releasing Parties*** and ***Class Counsel*** acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true, with respect to the matters released herein. Nevertheless, it is the intent of the ***Releasing Parties*** and ***Class Counsel*** in executing this ***Settlement Agreement*** fully, finally, and forever to settle and release all such matters, and all claims relative thereto, which exist, may exist or might have existed (whether or not previously or currently asserted in any action or proceeding) which are the subject of the releases granted hereunder.

21. Approval of this ***Settlement Agreement*** by the Bankruptcy Court and payment of the ***Settlement Payment*** to ***Class Counsel***, shall operate as a full release of the ***Released Parties*** by the ***Releasing Parties***, including the ***Class Representative*** and each ***Class Member*** of all ***Claims***. Upon entry of the ***Final Order*** and payment of the ***Settlement Payment*** to ***Class Counsel***, all ***Claims*** are deemed settled, released and dismissed in their entirety, on the merits, with prejudice, and the Court shall simultaneously, or the Clerk of the Court shall, enter a ***Final Judgment*** to that effect in the form attached hereto as **Exhibit 4**, or in substantially similar form acceptable to the Parties.

22. The ***Debtors*** and ***Class Counsel*** shall cooperate to cause a joint motion to be filed with the Bankruptcy Court for an order approving this ***Settlement Agreement*** ("***Settlement Motion***"). ***Debtors*** shall give notice of this ***Settlement Agreement*** to parties in interest other than ***Class Members***.

23. If any ***Class Member***, timely and properly elects to opt-out of the proposed ***Class***, that ***Class Member's*** rights and obligations will be unaffected by this ***Settlement Agreement*** and that ***Class Member*** will have the same rights and obligations as he or she would have had if the ***WARN Action*** had never been filed and this ***Settlement Agreement*** had never

been executed. Any ***Class Member*** that elects to opt-out shall not have an allowed claim against the ***Debtors*** by reason of this ***Settlement Agreement*** and shall retain his or her rights against the ***Debtors***, if any. The ***Debtors*** reserve all rights against any ***Class Member*** that opts-out.

24. A dismissal with prejudice of the ***WARN Action*** shall be executed in a form agreeable to the Parties (the "***Dismissal***"). ***Class Counsel*** shall file the ***Dismissal*** with the Bankruptcy Court upon the occurrence of the ***Effective Date*** hereof. Dismissal of the ***WARN Action*** shall not abate or limit the effectiveness of the ***Final Order***, including the releases set forth herein and the terms and conditions of this ***Settlement Agreement***. The Parties agree that the Bankruptcy Court shall retain jurisdiction to enforce the terms and conditions of this ***Settlement Agreement***.

25. The Parties agree that they are compromising and settling disputed claims. Except as set forth herein, the Parties shall bear their own attorney's fees, expenses and court costs. The Parties agree they shall not commence or continue any contested matter, adversary proceeding, lawsuit, or arbitration which contests, disputes, or is inconsistent with any provision of this ***Settlement Agreement***.

26. Neither this ***Settlement Agreement*** nor any of its provisions, nor evidence of any negotiations or proceedings related to this ***Settlement Agreement***, shall be offered or received in evidence in the ***Chapter 11 Cases***, or any other action or proceeding, as an admission or concession of liability or wrongdoing of any nature on the part of any of the ***Released Parties***, or anyone acting on their behalf, and the Defendants specifically deny an such liability or wrongdoing. Nothing herein shall prevent any Party from seeking to offer this ***Settlement Agreement*** in evidence after the entry of the ***Final Order*** approving the ***Settlement Agreement*** by the Bankruptcy Court for the purpose of enforcing the terms of the ***Settlement Agreement***.

27. This ***Settlement Agreement*** shall be binding upon and shall inure to the benefit of the predecessors, successors and assigns of each of the Parties to the fullest extent under the law.

28. This ***Settlement Agreement*** shall be construed pursuant to the laws of the State of Delaware and the United States Bankruptcy Code.

29. This ***Settlement Agreement*** and the ***Exhibits*** hereto represent the entire agreement and understanding between the Parties as to the subject matter hereof and supersedes all previous agreements and discussions between the Parties as to the matters herein addressed. This ***Settlement Agreement*** can be amended or modified only in writing and signed by all the Parties hereto, subject to any necessary Bankruptcy Court or other approval.

30. This ***Settlement Agreement*** may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute but one agreement. This ***Settlement Agreement*** may be executed by facsimile, or PDF and such facsimile or PDF signature shall be treated as an original signature hereunder.

31. This ***Settlement Agreement*** has been prepared by the joint efforts of the respective attorneys for each of the Parties. Each and every provision of this ***Settlement Agreement*** shall be construed as though each and every party hereto participated equally in the drafting hereof. As a result of the foregoing, any rule that the document is to be construed against the drafting party shall not be applicable.

32. This ***Settlement Agreement*** is subject to and contingent upon the approval by the Bankruptcy Court. The Bankruptcy Court shall have exclusive jurisdiction to determine as a core proceeding any dispute or controversy with respect to the interpretation or enforcement of this ***Settlement Agreement***.

33. The Parties may not waive any provision of this ***Settlement Agreement*** except by a written agreement that all of the Parties have signed. A waiver of any provision of this ***Settlement Agreement*** will not constitute a waiver of any other provision. The Parties may modify or amend this ***Settlement Agreement*** only by a written agreement that all of the Parties have signed.

34. This ***Settlement Agreement*** is intended to settle and dispose of claims which are contested and denied. Nothing herein shall be construed as an admission by any Party of any liability of any kind to any other Party.

Dated:

MARGOLIS EDELSTEIN
ON BEHALF OF THE CLASS
REPRESENTATIVE AND THE CLASS
MEMBERS

By _____
James E. Huggett, Esquire
Class Counsel

Dated:

ON BEHALF OF THE
CLASS REPRESENTATIVE

By _____
Greg Henderson

Dated:

ON BEHALF OF THE DEBTORS

By _____
Kenneth J. Enos, Esquire
Counsel for the Debtors