

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re: ) Chapter 7  
 )  
PEREGRINE FINANCIAL GROUP, INC., ) Case No. 12-27488  
 )  
Debtor. ) Honorable Carol A. Doyle  
 )  
 ) **Hearing Date: November 6, 2019**  
 ) **Hearing Time: 10:00 a.m.**

**NOTICE OF MOTION**

**PLEASE TAKE NOTICE** that on **November 6, 2019**, at **10:00 a.m.**, the undersigned shall appear before the Honorable Judge Carol A. Doyle, in Courtroom 742, 219 South Dearborn Street, Chicago, Illinois, and then and there present the **TRUSTEE’S JOINT MOTION FOR ENTRY OF AN ORDER (I) PRELIMINARILY APPROVING SETTLEMENT RESOLVING WARN ACT CLAIMS AND CLAIMS UNDER THE ILLINOIS WAGE PAYMENT AND COLLECTION ACT AND THE IOWA WAGE PAYMENT COLLECTION ACT; (II) APPROVING THE FORM AND MANNER OF NOTICE TO CLASS MEMBERS OF THE PROPOSED SETTLEMENT; AND (III) SCHEDULING A FINAL FAIRNESS HEARING FOR APPROVAL OF THE SETTLEMENT UNDER FED R. BANKR. P. 9019 AND 7023**, at which time you may appear if you deem fit.

Dated: October 29, 2019

Respectfully submitted,

Ira Bodenstein, not personally, but as chapter 7 trustee for the estate of Peregrine Financial Group, Inc.

By           /s/ Allen J. Guon            
One of his attorneys

Robert M. Fishman (ARDC No. 3124316)  
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**CERTIFICATE OF SERVICE**

Allen J. Guon certifies that he caused to be served a true copy of the above and foregoing **NOTICE OF MOTION and TRUSTEE'S JOINT MOTION FOR ENTRY OF AN ORDER (I) PRELIMINARILY APPROVING SETTLEMENT RESOLVING WARN ACT CLAIMS AND CLAIMS UNDER THE ILLINOIS WAGE PAYMENT AND COLLECTION ACT AND THE IOWA WAGE PAYMENT COLLECTION ACT; (II) APPROVING THE FORM AND MANNER OF NOTICE TO CLASS MEMBERS OF THE PROPOSED SETTLEMENT; AND (III) SCHEDULING A FINAL FAIRNESS HEARING FOR APPROVAL OF THE SETTLEMENT UNDER FED R. BANKR. P. 9019 AND 7023**, upon the attached Electronic Mail Notice List through the ECF System and on the attached Service List in the manner so indicated on this 29th day of October, 2019.

*/s/ Allen J. Guon* \_\_\_\_\_

**Mailing Information for Case 12-27488**

**Electronic Mail Notice List**

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

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**UNITED STATES BANKRUPTCY COURT  
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In re: ) Chapter 7  
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PEREGRINE FINANCIAL GROUP, INC., ) Case No. 12-27488  
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) Honorable Judge Carol A. Doyle  
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**JOINT MOTION FOR ENTRY OF AN ORDER (I) PRELIMINARILY APPROVING SETTLEMENT RESOLVING WARN ACT CLAIMS AND CLAIMS UNDER THE ILLINOIS WAGE PAYMENT AND COLLECTION ACT AND THE IOWA WAGE PAYMENT COLLECTION ACT; (II) APPROVING THE FORM AND MANNER OF NOTICE TO CLASS MEMBERS OF THE PROPOSED SETTLEMENT; AND (III) SCHEDULING A FINAL FAIRNESS HEARING FOR APPROVAL OF THE SETTLEMENT UNDER FED R. BANKR. P. 9019 AND 7023**

Ira Bodenstein, not personally, but as chapter 7 trustee (“Trustee”) for the estate of Peregrine Financial Group, Inc. d/b/a PFG (“Estate”), on the one hand, and Ronald Kotulak, on behalf of himself and members for the class (“Class Representative,” and together with the Trustee, the “Parties”) certified by the *Consent Order Granting Motion of Representative Claimant pursuant to F.R.B.P. 9014 Seeking Application of F.R.B.P. 7023*, dated February 20, 2013 (“Class Certification Order”) [Dkt. No. 432], hereby file this joint motion to approve the settlement as to all claims asserted in the Class Proof of Claim No. 1235 (“Class Claim”) pursuant to the Settlement and Release Agreement dated October 29, 2019 (“Settlement Agreement” or “Settlement”), which is attached hereto as Exhibit 1.<sup>1</sup> In support of this motion, the Parties state as follows:

**I. INTRODUCTION**

1. The Trustee has engaged in extensive negotiations with the Class Representative

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<sup>1</sup> All Capitalized terms not defined herein shall have the meanings ascribed to them in the Settlement Agreement.

to resolve the Class Claim, the product of which is the Settlement that the Parties ask this Court to approve. In sum, the Parties have agreed to allow the Class Claim as an unsecured priority claim pursuant to 11 U.S.C. §§ 507(a)(4) and (5) in the amount of \$1,850,000 (“Allowed Class Claim”) which shall be paid to Class Members consistent with the terms of the Settlement Agreement. The Allowed Class Claim shall be in full and total satisfaction of all claims of the Class Members related to the allegations asserted in the Class Claim or the termination of the Class Members’ employment with the Estate Released Parties. For the reasons set forth herein, the Parties have determined that the compromise of the Class Claim, on the terms set forth in the Settlement, is in the best interests of the Estate and the Class Members and should be approved.

## **II. BACKGROUND**

### **A. The Debtor’s Bankruptcy Case**

2. On July 10, 2012 (“Petition Date”), Peregrine Financial Group, Inc. d/b/a PFG (“Debtor”) filed a voluntary petition for relief under chapter 7 of title 11 of the United States Code (“Bankruptcy Code”), thereby commencing the above-captioned case (“Case”).

3. On July 11, 2012, the Office of the United States Trustee appointed the Trustee as the successor chapter 7 trustee of the Estate.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334 and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a “core proceeding” within the meaning of 28 U.S.C. §§ 157(b)(2)(A), (B), (M) and (O).

### **B. Overview of the Debtor’s Business**

5. Prior to the Petition Date, the Debtor was registered as futures commission merchant (“FCM”) with the Commodity Futures Trading Commission (“CFTC”) and operated a

futures brokerage customer business pursuant to its FCM registration. The Debtor also had separate business lines for foreign exchange customers, physical precious metals customers and over-the-counter precious metals derivatives customers. As of the Petition Date, the Debtor had over 24,000 aggregate customer accounts over all of its lines of business, including approximately 17,000 futures customer accounts (“Future Customers”).

6. The CFTC filed a lawsuit in the United States District Court for the Northern District of Illinois (“District Court”) alleging that the Debtor and its founder, Russell Wasendorf, Sr., committed fraud, futures customer-funds violations and made false statements (“Lawsuit”). In connection with the Lawsuit, on July 10, 2012, the District Court entered an Order Appointing a Temporary Receiver. Shortly thereafter, the Debtor commenced this case – a commodity broker liquidation under subchapter IV of chapter 7 of the Bankruptcy Code.

7. The United States of America also instituted separate criminal proceedings against Wasendorf. In those proceedings, the governmental obtained a judgment against Wasendorf in the amount of \$212 million. The judgment represented the amount that Wasendorf misappropriated from the Debtor’s customer segregated account (“Customer Seg Account”). The Customer Seg Account is the bank account where the Debtor was required to hold the funds of 4d Customers<sup>2</sup> under the CFTC’s regulations.

8. In this Case, the aggregate amount of all 4d Customers’ allowed claims will exceed the sum of all amounts held in the Customer Seg. Account and all other customer property held by the Estate. The portion of the 4d Customers’ allowed claim that cannot be paid

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<sup>2</sup> The term “4d Customers” refers to the particular subset of the Debtor’s Futures Customers that opened accounts for the purpose of trading futures or options on futures on a U.S. futures exchange under Section 4d of the Commodity Exchange Act.



in full from customer property is referred to herein as the “Deficiency Claim.”<sup>3</sup>

9. The CFTC takes the position that since there is a shortfall of customer property, 7 C.F.R. § 190.08(a)(1)(ii)(J) requires that all other Estate assets are to be treated as customer property and must be paid to the 4d Customers (“Rule 190.08 Approach”). The Rule 190.08 Approach requires that 4d Customers’ receive a first priority position in all Estate property, other than with respect to certain administrative claims under § 766 of the Bankruptcy Code, until all allowed 4d Customer claims have been paid in full. Accordingly, the CFTC asserts that no claims, other than administrative claims, may be paid by the Estate because the allowed 4d Customer claims will not be paid in full.

10. A contrary approach to addressing the Deficiency Claim is informed by § 766(j)(2) of the Bankruptcy Code (“Section 766 Approach”). Section 766(j)(2) of the Bankruptcy Code, which governs the treatment of customer property, provides that “if a customer is not paid the full amount of such customer’s allowed net equity claim from customer property, the unpaid portion of such claim is a claim entitled to distribution under section 726. 11 U.S.C. § 726(j)(2); *see also In re Griffin Trading Co.*, 245 B.R. 291 (Bankr. N.D. Ill. 2000) vacated 270 B.R. 882 (N.D. Ill. 2001). The Section 726 Approach requires that Deficiency Claims are treated as general unsecured claims, and must be paid *pari pasu* with all other general unsecured claims.

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<sup>3</sup> Section 766(h) of the Bankruptcy Code provides that the trustee in a commodity broker liquidation proceeding “shall distribute *customer property* ratably to *customers* on the basis and to the extent of such customers’ allowed *net equity claims*, and in priority to all other claims” except for certain administrative expenses. *See* 11 U.S.C. § 766(h) (emphasis added). Pursuant to the Commodity Exchange Act, Congress authorized the CFTC to enact regulations to implement commodity broker liquidations under subchapter IV of chapter 7. *See* 7 U.S.C. § 24. The CFTC enacted those regulations in 17 C.F.R. §§ 190.01 *et seq.* (“Part 190 Rules”). A full discussion of the applicable Part 190 Rules is beyond the scope of this motion. However, a more precise definition of the Deficiency Claim in this Case under the Part 190 Rules is that the aggregate amount of all 4d Customers’ allowed net equity claims will exceed the sum of all customer property held by the Estate.

11. The appropriate treatment of Deficiency Claims remains an unresolved legal issue (“Deficiency Claim Dispute”).

**C. The Class Claim**

12. The Class Representative and other Class Members were all employees of the Debtor and/or its affiliates prior to the Petition Date. On or about July 11, 2012, the Class Representative filed a class-action adversary complaint in the Court commencing an adversary proceeding (“WARN Action”) against the Debtor, on behalf of himself and the Class Members, alleging that the Debtor violated the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101 *et seq.* (“WARN Act”), by ordering a mass layoff on or about July 9, 2012 without providing sixty (60) days advance notice thereof.

13. The Class Representative further asserted that, as a consequence of this alleged failure, the Class Members have a priority administrative expense claim, pursuant to 11 U.S.C. § 503(b)(1)(A), or alternatively, priority status, under 11 U.S.C. § 507(a)(4) and (5), up to the \$11,725 priority cap as of the Petition Date, with the balance, if any, being a general unsecured claim against the Debtor for damages for the alleged sixty (60) day violation period. The WARN Action is entitled *Kotulak v. Peregrine Financial Group, Inc.*, Adv. No. 12-01088 (Bankr. N.D. Ill.).

14. On October 1, 2012, the Class Representative voluntarily dismissed the WARN Action and filed the Class Claim. The Class Claim contains allegations substantially similar to those asserted in the WARN Action regarding the purported violation of the WARN Act, as well as violations of the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 *et seq.* (“Illinois Wage Act”) and the Iowa Wage Payment Collection Act, IA Code § 91A.1 *et seq.* (“Iowa Wage Act,” and together with the Illinois Wage Act, the “Wage Acts”).

15. On February 20, 2013, the Court entered the Class Certification Order. Pursuant to the Class Certification Order, the Court certified a class comprised of former employees of the Debtor who either (1) allege that they were terminated without cause as part of, or as the result of, a mass layoff ordered by the Debtor on or about July 9, 2012, and within thirty (30) days of that date, and thereafter, and who were not provided 60 days advance written notice of their terminations by the Debtor, and/or (2) did not received their final paychecks alleged violation of the Wage Acts; and (3) who have not filed a timely request to opt-out of the class (collectively, the “Class”). In addition, the Court appointed Outten & Golden LLP and Fisher Cohen Waldman Shapiro LLP as class counsel (collectively, “Class Counsel”) and Ronald Kotulak as the Class Representative.

16. On March 23, 2013, Class Counsel mailed Notice of the Class Action to the putative class and filed a Declaration of No Opt-Outs on March 6, 2013 [Dkt. Nos. 606, 608].

**D. Discovery and the Settlement Negotiations**

17. The Trustee disputes the Estate’s liability under the WARN Act and asserts that the majority of the Class Claim is neither entitled to administrative expense claim, pursuant to 11 U.S.C § 503(b)(1)(A), nor priority status, under 11 U.S.C. § 507(a)(4) and (5).

18. The Parties have engaged in extensive informal discovery in this matter, including the exchange and review and analysis of payroll records for issues regarding inclusion in the certified class and damages, and the exchange of damage calculations and theories of the case.

19. The complexity of the factual and legal issues, the uncertainty of a specific result, along with the inherent delay and substantial expense of litigation, led the Parties to conclude that it is in their respective best interests to resolve the Class Claim through a comprehensive compromise.

### **III. RELIEF REQUESTED**

20. After extensive analysis and negotiations, the Trustee has concluded in the exercise of his business judgment that the proposed compromise set forth in the Settlement is in the best interest of the Estate. Similarly, the Class Representative has determined that the proposed compromise set forth in the Settlement is in the best interest of the Class Members. Accordingly, the Parties request that the Court approve the Settlement and authorize them to enter into a compromise of the Class Claim on the terms set forth in the Settlement.

21. The Parties request a two-step approval process to facilitate notice to Class Members and approval of the Settlement. First, the Parties seek preliminary approval of the Settlement Agreement and the form of Notice of the Proposed Settlement of Class Claim and Fairness Hearing (“Class Notice”), which is attached hereto as Exhibit 2. Second, after service of the Class Notice, the Parties request that the Court hold a fairness hearing (“Fairness Hearing”) and finally approve the Settlement.

22. As set forth more fully below, the Parties submit that the Court should approve the Settlement and the procedures proposed in this motion.

### **IV. THE PROPOSED SETTLEMENT**

#### **A. The Material Proposed Settlement Terms**

23. Subject to Court approval, the material terms of the Settlement Agreement are as follows:<sup>4</sup>

a. The Allowance and Payment of the Class Claim: The Class shall be awarded an allowed unsecured priority claim pursuant to 11 U.S.C. §§ 507(a)(4) and (5) in the amount of \$1,850,000.00 against the Estate (i.e., the Allowed Class Claim). The Allowed Class Claim shall be satisfied in full by a payment from the Estate in the amount of \$1,850,000.00 (“Settlement Payment”) from which the Class Representative Service

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<sup>4</sup> This motion merely summarizes the terms of the Settlement. The Trustee and Class Representative refer the Court and all parties to the Settlement Agreement (attached as Exhibit A) for the complete Settlement terms and conditions.

Payment and Class Counsel' Fees and Class Counsel's Expenses shall be paid, to the extent approved by the Court. All distributions made by the Trustee on account of the Allowed Class Claim shall be referred to herein as the "Class Claim Distributions" and the Settlement Payment to be distributed pursuant to this Agreement shall be referred to herein as the "Settlement Fund." For the avoidance of any doubt, the Estate shall be responsible for the payment of the employer's share of applicable taxes and those administrative costs of the settlement set forth in Section 6(a) of the Agreement (i.e., the costs associated with disbursement of the Settlement Fund payments), which are the only payments of the Estate under the Settlement that shall not be paid from the Settlement Fund on account of the Allowed Class Claim.

b. Distribution of Settlement Fund: The Class Claim Distributions, after being first reduced by (i) the Class Representative Service Payment, (ii) Class Counsel's Fees, and (iii) Class Counsel's Expenses, shall be allocated to each Class Member on a pro rata basis based on the relationship that such Class Member's potential damages under the WARN Act and the Wage Acts bears to the aggregate potential damages of all Class Members under the WARN Act and the Wage Acts, and shall be made directly to Class Members ("Class Members' Pro Rata Share").

c. Disallowance of Class Members' Claims. The Settlement Order will provide that all other proofs of claim filed in the Case by Class Members for any all claims, asserted or assertible, arising out of or related to the allegations asserted in the Class Claim, including the termination of their former employment with the Estate Released Parties are disallowed, including, but not limited to the proofs of claim identified in Exhibit A to the Settlement Agreement.

d. Payment to Class Representative: The Class Representative will be entitled to a one-time payment of \$15,000, payable from the Settlement Fund as compensation for his services to the Class, in addition to his pro rata share of the Settlement Fund ("Class Representative Service Payment").

e. Class Counsel's Fees and Expenses: Class Counsel will be entitled to a payment in the amount of one-third of the Settlement Amount ("Class Counsel's Fees"), net of litigation expenses (including the costs associated with the production and mailing of the class notice to the Class) not to exceed \$15,000 ("Class Counsel's Expenses"), and the Class Representative's Service Payment.

f. Released Claims of Class Members: Except for the rights arising out of, provided for, or reserved in the Agreement, upon the Effective Date, the Class Members, for and on behalf of themselves, and their respective predecessors, successors, assigns, heirs, personal representative and estates (collectively, the "Releasing Parties"), do hereby fully and forever release and discharge (i) the Trustee, the Estate, the Debtor, Best Direct Securities, LLC, Peregrine Asset Management, Inc., Peregrine Financial Group Canada, Inc., Peregrine Capital Advisor, Inc., CHI FX, Inc., BestDirect Australia, Pty Ltd., PFG Depository, Ltd., Best Kids, LLC, Peregrine Diversified Investment Services Corp. and Peregrine Charities, Inc. and (ii) for each of the persons and entities listed in (i), their current and former shareholders, officers, directors, employees, accountants,

attorneys, representatives and other agents, and all of their respective predecessors, successors and assigns (collectively, the “Released Parties”), of and from any and all claims, demands, debts, liabilities, obligations, liens, actions and causes of action, costs, expenses, attorneys’ fees and damages of whatever kind or nature, at law, in equity and otherwise, whether known or unknown, anticipated, suspected or disclosed, which the Releasing Parties may now have or hereafter may have against the Released Parties, which relate to or are based on the WARN Act, the Wage Acts, or back- or severance pay or benefits under any federal, state or local law or regulation arising out of the termination of the Class Members’ employment by any Released Party, including, but not limited to: (a) all claims asserted or that could have been asserted as part of the WARN Action or Class Claim filed on behalf of the Class Members; (b) all individual WARN Act claims; (c) all individual Wage Act claims; (d) any other claims for wages, salaries, bonuses, expense reimbursements, back pay, severance pay or other benefits based on or arising out of any contract or any federal, state or local statute, ordinance or regulation; and (e) rights, if any, under the Debtor’s 401(k) plan or other benefit plans of any type whatsoever (collectively, the “Released Claims”); provided, however, any claims for continuation of health or medical coverage, at the Class Member’s expense, or at the expense of a beneficiary or dependent of a Class Member, to the extent allegedly required by the relevant provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 are not Released Claims.

g. Residual Funds: In the event that there are any Settlement Funds remaining for any reason, including Settlement checks which are not deposited, endorsed or negotiated, within ninety (90) days of their issuance, such residual funds shall be held another sixty (60) days (“Residual Fund Waiting Period”) to be used to make distributions to any individual who is subsequently determined to have been eligible to receive a distribution as a Class Member but was not on the Class Member distribution list. Undistributed funds remaining after the Residual Fund Waiting Period, shall become property of the Estate, free and clear of any and all claims and interests of the Class Members, but subject to further redistribution in accordance with the Bankruptcy Code.

## V. PROPOSED PRELIMINARY APPROVAL AND NOTICE PROCEDURES

24. The Parties initially seek the entry of an order (“Preliminary Approval Order”) preliminarily approving the Settlement, approving the form of Class Notice, and scheduling a Fairness Hearing. After the entry of the Preliminary Approval Order, Trustee will serve notice of the proposed Settlement and the Fairness Hearing (“Notice of Hearing”) on the Office of the United States Trustee and all parties requesting notice of proceedings in the chapter 7 case. The Trustee will also post the Notice of Hearing on the Case website.

25. Class Counsel will serve the Class Notice on the Class Members by first class

mail to each Class Member's last known address no later than five (5) business days after the Court's entry of the Preliminary Approval Order. The Class Notice shall contain the following information, which shall be individualized for each Class Member: (i) that the Settlement shall become effective only if it is finally approved by the Court under Fed. R. Bankr. P. 7023 and 9019; (ii) that, if so approved, the Settlement shall be effective as to all Class Members; (iii) that such Class Member has the right to object to the Settlement either in person or through counsel and be heard at the Fairness Hearing; and (iv) that all Released Claims (defined below) of a Class Member (other than those claims to be paid under the terms of this Settlement) shall be waived and released, and that no person, including the Class Member, shall be entitled to any further distribution thereon.

26. Although no rigid standards govern the contents of notice to Class Members, the notice must be the best practicable, reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Zolkos v. Scriptfleet, Inc.*, No. 12-cv-8230; 2014 WL 7011819 at \*6 (N.D. Ill. Dec. 12, 2014); *Grunin v. International House of Pancakes*, 513 F.2d 114, 122 (8th Cir.) *cert. denied* 423 U.S. 864, 96 S. Ct. 124 (1975) *quoting Philadelphia Hous. Auth. v. American Radiator & Standard Sanitary Corp.*, 323 F. Supp. 364, 378 (E.D. Pa. 1970), *aff'd sub nom, Ace Heating & Plumbing Co. v. Crane Co.*, 453 F.2d 30 (3rd Cir. 1971). Further, mailing the Class Notice to each Class Member's last known address and posting the Class Notice on the Case website. is appropriate notice of a Fairness Hearing. *Zolkos v. Scriptfleet, Inc.*, 2014 WL 7011819 at \*6; *In re AT&T Mobility Wireless Data Svcs. Sales Litig.*, 270 F.R.D. 330, 352 (N.D. Ill. 2010).

27. Here, the contents of the proposed Class Notice are sufficient. The Class Notice (i) summarizes the Class Claim and appraises the Class Members of the terms of the Settlement,

(ii) informs Class Members that complete information regarding the Settlement is available upon request from Class Counsel, (iii) provides that any Class Member may object to the proposed Settlement Agreement, and (iv) states that any Class Member may appear at the Fairness Hearing in person or by his or her own counsel.

28. Moreover, although Fed. R. Civ. P. 23, as incorporated by Fed. R. Bankr. P. 7023, does not impose a minimum notice period, the Parties will provide at least 21 days' notice of the Fairness Hearing, as required under Fed. R. Bankr. P. 2002(a)(3), on all parties that requested notice in this Case and all Class Members.

29. In short, the proposed service of the Class Notice satisfies all the requirements of Fed. R. Civ. P. 23(c)(2)(B). In light of the nature of the relief requested, the Parties submit that no other or further notice need be given.

## **VI. BASIS FOR APPROVAL OF THE SETTLEMENT**

30. In addition to the Preliminary Relief, the Parties seek the Court's final approval of the Settlement pursuant to 11 U.S.C. § 363(b) and Fed. R. Bankr. P. 9019(a).

### **A. The Legal Standards**

31. The Trustee is authorized to compromise claims against the Estate as set forth in the Settlement pursuant to 11 U.S.C. § 363(b). Section 363(b) provides that a trustee "may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). The settlement of claims involves the use of estate property outside the ordinary course of business and requires court approval under § 363(b). *In re Resource Technology Corp.*, 356 B.R. 435, 444 (Bankr. N.D. Ill. 2007); *In re Telesphere Communications, Inc.*, 179 B.R. 544, 551 (Bankr. N.D. Ill. 1994) ("The settlement of a cause of action held by the estate is plainly the equivalent of a sale of that claim."). Fed. R. Bankr. P. 9019(a) authorizes the court, after a



hearing on such notice as the court directs, to approve a compromise or a settlement. Fed. R. Bankr. P. 9019(a).

32. The use, sale, or lease of property of the estate, other than in the ordinary course of business, is authorized when “the transaction makes good business sense” and “preserves the priorities among creditors.” *See, e.g. United Retired Pilots Benefits Protection Assn. v United Airlines, Inc. (In re UAL Corp.)*, 443 F.3d 565, 572 (7th Cir. 2006) (“the criteria for approval [under § 363(b)(1) is] whether the transaction makes good business sense and does not disturb creditors’ rights”); *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) (sale under § 363 involves exercise of fiduciary duty and requires an “articulated business justification”).

33. Compromises are tools for expediting the administration of the case and reducing administrative costs and are favored in bankruptcy. *See Fogel v. Zell*, 221 F.3d 955, 960 (7th Cir. 2000). The central issue in approving a bankruptcy settlement is whether the settlement is in the “best interests of the estate.” *In re Energy Co-op., Inc.*, 886 F.2d 921, 927-29 (7th Cir. 1989); *LaSalle Nat’l Bank v. Holland (In re Am. Reserve Corp.)*, 841 F.2d 159, 161 (7th Cir. 1987). In order to make that determination, a court must compare “the value of the settlement with the probable costs and benefits of litigating.” *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007). Among the factors that the Court should consider in its analysis are (i) the litigation’s probability of success, (ii) the litigation’s complexity, (iii) the litigation’s attendant expense, inconvenience and delay (including the possibility that disapproving the settlement will cause wasting of assets). *See, e.g. Doctors Hosp.*, 474 F.3d at 426; *Energy Co-op., Inc.*, 886 F.2d at 927.

34. Based on the foregoing analysis, the Court must determine whether the settlement falls within the reasonable range of possible litigation outcomes. *Doctors Hosp.*, 474 F.3d at 426.

Since litigation outcomes cannot be precisely determined, the Trustee's decision should not be disturbed unless the settlement "fall[s] below the lowest point in the range of reasonableness." *See, e.g., Energy Co-op.*, 886 F.2d at 929; *In re Commercial Loan Corp.*, 316 B.R. 690, 698 (Bankr. N.D. Ill. 2004). The approval of a settlement is committed to the sound discretion of the bankruptcy court. *Commercial Loan Corp.*, 316 B.R. 697, 698 (Bankr. N.D. Ill. 2004) *citing In re Andreuccetti*, 975 F.2d 413, 421 (7th Cir. 1992).

35. Further, 11 U.S.C. § 105(a) 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). Section 105(a) grants bankruptcy courts broad statutory authority to enforce the Bankruptcy Code's provisions either under the specific statutory language of the Bankruptcy Code or under equitable common law doctrines. *In re Fesco Plastics Corp., Inc.*, 996 F.2d. 152 (7th Cir. 1993); *In re Linc Capital, Inc.*, 296 B.R. 474 (Bankr. N.D. Ill. 2003).

*I. The Settlement Agreement is in the Best Interests of the Estate*

36. After extensive negotiations, the Trustee submits that the proposed compromise constitutes the best opportunity under existing circumstances to (a) avoid expensive and time consuming litigation of the Class Claim, (b) expedite final distributions to holders of allowed claims, and (c) enable the Trustee to take other necessary steps to conclude this Case. This proposed settlement also takes into account (i) the probability of success on the Class Claim, (ii) the complexity of the litigation, and (iii) the expected attorneys' fees, costs, expenses and delay associated with litigating the Class Claim.

37. Under the Settlement, the Class Claim will be allowed in the amount of \$1,850,000.00 pursuant to 11 U.S.C. §§ 507(a)(4) and (5) and the Settlement Fund will be distributed to the Class Members, the Class Representative and Class Counsel pursuant to the

terms of the Settlement Agreement. In exchange, the Estate Released Parties will receive a release of all Class Members' claims arising out of or related to the allegations asserted in the Class Claim or the termination of their former employment.

38. While the Trustee believes he has a significant likelihood of success in litigating the WARN Act claims, the Trustee acknowledges that a portion of the Allowed Class Claim is for unpaid wages and benefits owed to former employees who did not receive their final paychecks from the Debtor prior to the Petition Date. Thus, the resolution of the Class Claim will enable former employees to promptly receive their wages and have the added benefit of immediately resolving hundreds of remaining priority wage claims.

39. Further, the WARN Act claims are complex and would require the expenditure of a significant amount of time, expense and resultant delay if litigated to conclusion. A trial on the applicability of the WARN Act and whether Debtor violated the law would require both sides to engage in extensive expert and non-expert discovery at significant expense and with inherently uncertain results at trial. This Settlement will avoid the need to expend significant resources on protracted litigation and related appeals that will delay and potentially diminish the distribution to 4d Customers. *See In re Teknek*, 402 B.R. 257, 261 (Bankr. N.D. Ill. 2009) (best interests of the estate satisfied where “[e]ven though the likelihood of success on the merits is high, the Trustee notes the additional time and expense that may be incurred by further [litigation]”). The resolution of the Class Claim will also expedite the final resolution and closing of this Case.

40. Moreover, if the Court found that Class Members were entitled to even one more day of notice than they were provided, then Class Members contend that they would be the prevailing parties entitled to not only their damages, but their attorneys' fees and expenses, risking further depletion of the Estate's resources. The proposed Settlement thus provides a cost-

effective global resolution of the Class Claim. Additionally, litigation over the issue of whether Class Members' claims are entitled to administrative expense priority status will add another layer of time and expense to the proceedings.

41. Importantly, the CFTC has indicated that it has no objection to the Settlement. If the Class was to prevail on its Class Claim in this litigation, however, the CFTC has indicated that it would take the position that none of the Estate's assets could be used to satisfy the Class Claim because the Trustee must first satisfy the Deficiency Claims of the 4d Customers under the Rule 190.08 Approach. If that were to happen, the ancillary litigation between the Class and the CFTC regarding the Deficiency Claim Dispute could further delay distributions and closing of this Case by a number of years.

42. The complexity and risks (both legal and practical) of the litigation over the Class Claim has caused the Trustee and the Class Representative to negotiate at arms-length a compromise that is in the best interests of holders of claims against the Estate. The Trustee has determined, in the exercise of his business judgment, that the compromises reflected in the Settlement are in the best interests of the Estate's beneficiaries because they will enable prompt distribution to the Class and 4d Customers. The compromise clearly falls within the reasonable range of litigation possibilities and the Court should approve the relief set forth herein pursuant to 11 U.S.C. § 363(b) and Fed. R. Bankr. P. 9019(a)<sup>5</sup>

*2. The Settlement Should Be Preliminarily and Finally Approved as Fair, Reasonable And Adequate To The Class*

43. Approval of a settlement after a class has been certified generally requires two

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<sup>5</sup> In the event that the Settlement Agreement is not approved by the Court or the Settlement Agreement does not become binding and enforceable for any reason, the Parties reserve all their rights and nothing in this motion or in the Settlement Agreement shall be deemed or construed as an admission of any fact, liability, stipulation, or waiver, but rather as a statement made in furtherance of settlement discussions.

hearings: one preliminary approval hearing and one final “fairness” hearing. MANUAL FOR COMPLEX LITIGATION § 21.632 (Fourth) (2004). Pursuant to the Fed. R. Civ. P. 23(e)(1)(A), “[t]he court must approve any settlement, voluntary dismissal, or compromise of the claims, issues, or defenses of a certified class.” Fed. R. Civ. P. 23(e)(1)(A). Accordingly, the Court has authority to conduct a preliminary fairness review of a proposed class action settlement. *See* MANUAL FOR COMPLEX LITIGATION (Fourth) § 21.632 (2004). As part of a preliminary fairness review, the Court must make a determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the proposed settlement, and date of the final fairness hearing

44. At the preliminary approval stage, the Court’s task is to evaluate whether the Settlement is within the range of reasonableness. 4 Newberg § 11.26. Preliminary approval is appropriate where the proposed settlement is the result of the parties’ good faith negotiations by experienced counsel, where there are no obvious deficiencies and the settlement falls within the range of reason. *Zolkos*, 2014 WL 7011819 at \*2.

45. Here, the Settlement has no obvious deficiencies and falls within the range of reason. First, the Settlement is the result of good-faith, arm’s length negotiations between capable adversaries. The Parties have been in discussions with respect to the Class Claim since the Class Representative filed the Class Claim. The Parties engaged in several months of informal discovery and more than one year of settlement negotiations. Information regarding the facts leading to the mass layoff were explored and discussed between the Parties, the Trustee shared payroll information, and the Parties exchanged damages analysis with one another.

46. The Class is represented by counsel with extensive experience and expertise in WARN Act matters, including the litigation of WARN claims in bankruptcy. Class Counsel has

been appointed class counsel and prosecuted more than one hundred WARN Act cases, a majority of which were litigated in bankruptcy courts. Class Counsel has the experience and skill to both vigorously litigate WARN Act claims and to determine when and to what extent settlement is appropriate. Class Counsel has exercised that judgment in this case with respect to the Settlement Agreement.

47. Accordingly, the Court should preliminarily approve the Settlement as reflected in the Settlement Agreement.

*3. The Settlement Should Be Given Final Approval at the Fairness Hearing*

48. The Court should set a Fairness Hearing at which time the Court should finally approve the Settlement. *Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998) (internal quotation mark omitted) (noting that at the final fairness hearing, the court will “adduce all information necessary to enable [it] intelligently to rule on whether the proposed settlement is ‘fair, reasonable, and adequate’”), *citing* Manual for Complex Litigation § 1.46, at 57 (West 1977).

49. Federal Rule of Civil Procedure 23(e)(1)(C) provides that,

The court may approve a settlement, voluntary dismissal, or compromise that would bind class members only after a hearing and on finding that the settlement, voluntary dismissal, or compromise is fair, reasonable, and adequate.

50. The Parties submit that the Settlement should be approved as fair, reasonable and adequate to the Class for the following reasons:

- The risks of being unable to establish liability and damages were significant because of affirmative defenses available to the Trustee. The Settlement provides meaningful relief to the Class without further litigation, trial and possible appeals.
- The terms of the Settlement are well within the range of possible recovery and well within the range of reasonableness given the uncertainty of establishing liability and the ability for any meaningful recovery from the Estate. Class Counsel believes that the Settlement provides for

approximately a 65% recovery of the Class' maximum priority claim, with a distribution to the Class to occur this year.

- Continued litigation would have been complicated, protracted and expensive, requiring depositions, pretrial motions, trial and possible appeals (plus ancillary litigation regarding the Deficiency Claim Dispute), thereby depleting Estate and delaying and diminishing distributions to the creditors, including Class Members.
- The Settlement was agreed to after the essential facts had been thoroughly investigated by Class Counsel through formal and informal discovery.
- Class Counsel and the Class Representative support the Settlement Agreement and Class Counsel believes that the majority of the Class Members will have a favorable reaction to the Settlement and will not object. Class Counsel, who has extensive experience in complex class action litigation, negotiated the proposed Settlement at arms' length. The Trustee also supports the Settlement.

51. For all these reasons, the Settlement should be approved as fair, reasonable and adequate to the Class.

#### 4. *Payment to the Class Representative Should be Approved*

52. The Settlement provides, subject to Court approval, that the Class Representative receive a service payment in the amount of \$15,000 to compensate him for his service to the Class.<sup>6</sup>

53. Courts acknowledge that named plaintiffs in class and collective actions play a crucial role in bringing justice to those who would otherwise be hidden from judicial scrutiny. *In re AT&T Mobility Wireless Data Services Sales Tax Litig.*, 792 F.Supp. 2d 1028, 1030 (N.D. Ill. 2011) (“With respect to incentive payments, the Seventh Circuit has explained that such “awards are justified when necessary to induce individuals to become named representatives”), *citing In re Synthroid Mktg. Litig.*, 264 F.3d 712, 722 (7th Cir. 2001); *In re. Synthroid Mktg. Litig.*, 264 F.3d 712, 722-723 (7th Cir. 2001) (“Incentive awards for class representatives are

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<sup>6</sup> In addition to the service payment, the Class Representative will be authorized to participate in the settlement as a Class Member.

fairly common”).

54. Here, the Class Representative should be awarded a service payment for the work he undertook on behalf of over 250 former employees. The Class Representative filed a federal lawsuit that is searchable on the Internet and may become known to prospective employers when evaluating the person. The Class Representative retained Outten & Golden LLP to commence the WARN Action at a point when he had been terminated from his employment. He agreed to initiate the Class Action as a named plaintiff at a point when his future was uncertain and employment prospects potentially dimmed by suing his former employer.

55. In addition to incurring the risks inherent in serving as the sole named plaintiff, he has assisted in pursuing the Class Claim for over six years. He provided information during several interviews regarding the events surrounding his termination. He provided Class Counsel with valuable information, expended time and effort to assist with the preparation of the adversary proceeding complaint, the Class Claim, and the seeking of class certification. He also provided counsel with relevant documents in his possession and assisted counsel in the investigation of the Wage Act claims. Courts recognize the important factual knowledge that named plaintiffs bring to employment class actions, including information about employer policies and practices that affect compensation.

56. The amount of the requested service payment is within the range approved by other courts in the Seventh Circuit. *Chesmore v. Alliance Holdings, Inc.*, No. 09-cv-413, 2014 WL 4415919 (W.D. Wis. Sept. 5, 2014) (“district courts in this circuit have awarded incentive fee awards ranging from \$5,000 to \$25,000.”); *see also* Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L.Rev. 1303, 1308 (2006) (empirical study of incentive awards found that the average award was \$15,992).



57. The amount of the requested service payment is also reasonable given awards approved by bankruptcy courts in other WARN Act class actions. See e.g., *Conn v. Dewey & Lebeouf LLP*, Adv. Pro. No. 12-01672 (MG) (Bankr. S.D.N.Y. Aug. 20, 2014) [ECF No. 57] (\$15,000 service award to class representative in WARN settlement); *Jones v. Alliance Bancorp.*, Adv. Proc. No. 07-51799 (CSS) (Bankr. D. Del. Mar. 1, 2011) [ECF No. 112] (\$15,000 service award in \$1 million settlement); *Aguiar v. Quaker Fabric Corp.*, Adv. Pro. No. 07-51716 (KG) (Bankr. D. Del. Aug. 27, 2008) [ECF No. 46] (\$15,000 service payment to class representative on behalf of a certified class of 900 for \$1 million);<sup>7</sup>

58. In this case, Class Counsel submits that the Class Representative performed important services for the benefit of the Class for over six years. Accordingly, the \$15,000 proposed service payment is justified in light of his services to and risks taken on behalf of the Class. Moreover, Trustee does not oppose this proposed service award.

5. *Under the Settlement Agreement, Class Counsel Requests a Reasonable Fee of One Third of the Distribution with Respect to the Common Fund*

59. As part of the Settlement Agreement, Class Counsel is requesting a fee of one-

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<sup>7</sup> See also *Miller v. Columbus Steel Casting Co.*, Adv. Pro. No. 16-50997 (CSS) (Bankr. D. Del. Sept. 27, 2017)[ECF No. 69] (\$10,000 service payment to class representative on behalf of a certified class of 666 for \$2.1 million); *Zaikowski v. Dowling College*, Case No. 16-8187 (REG) (Bankr. E.D.N.Y.) [ECF No. 35] (\$11,500 service award in \$1.3 million settlement); *Austen v. Archway Cookies*, Adv. Pro. No. 08-51530 (CSS) (Bankr. D. Del. Apr. 18, 2012) [ECF No. 73] (\$10,000 service award to two class representatives in \$4 million settlement); *Kohlstadt v. Solyndra, LLC.*, Adv. Pro. No. 11-53155 (MFW) (Bankr. D. Del. Oct. 16, 2012) [ECF No. 51] (\$20,000 combined service award to two class representatives in \$3.5 million settlement); *Capizzi et al v. AWTR Liquidation, Inc.*, Adv. Pro. No. 2:13-ap-01209-NB (Bankr. C.D. Cal. Dec. 13, 2013) [ECF No. 89] (\$10,000 service award to each of two class representatives in WARN Act settlement of \$1 million); *Guippone v. BH S & B Holdings, LLC*, Case No. 09-cv-01029-CM (S.D.N.Y. Sept. 23, 2016) [ECF No. 122] (\$10,000 service award to class representative in WARN Act settlement of \$900,000 for a class of about 300 members); *Binford v. First Magnus Capital, Inc.*, Case No. 08-01494 (GBN) (Bankr. D. Ariz. 2010) (awarding eight class representatives service payments of \$7,500, totaling \$60,000, from settlement fund of \$2.6 million cash plus \$2.9 million contingent proceeds); *Bridges v. Continental AFA Dispensing Co.*, Adv. Proc. No. 08-45921 (KSS) (Bankr. E.D. Mo. Aug. 14, 2009) [ECF No. 108] (awarding \$10,000 service payment to class representative in a class settlement of \$1.5 million for approximately 325 employees).

third of the common fund, net of expenses and the Class Representative's service payment.<sup>8</sup> "Lawyers who recover a common fund are entitled to reasonable attorneys' fees from the fund they created." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (the Supreme Court has consistently recognized the common fund doctrine to permit attorneys who obtain a recovery for a class to be compensated from the benefits achieved as a result of their efforts).

60. Here, Class Counsel negotiated a contingency fee of one third early on with the Class Representative. This percentage is in line with other common fund settlements. *McKinnie v. JP Morgan Chase Bank*, 678 F.Supp. 2d 806, 812 (E.D. Wis. 2009) (attorneys' fees of approximately 30% approved as "common among contingency fee arrangements and is not facially unreasonable).

61. Parties to a class action may negotiate attorneys' fees based on a percentage of the entire common fund. *Id.*; *City of Greenville v. Sygenta Crop Protection, Inc.*, 904 F.Supp. 2d 902, 908 (S.D. Ill. 2012)("[w]here the market for legal services in a class action is only for contingency fee agreements, and there is a substantial risk of nonpayment for the attorneys, the normal rate of compensation in the market is 33.33% of the common fund recovered.") *citing Will v. General Dynamics Corp.*, No. 06-cv-698-GPM, 2010 WL 4818174 at \*2 (S.D. Ill. Nov. 22, 2010).

62. Class Counsel undertook this Class Claim on a contingency fee basis with no assurance of recovery for its time, let alone reimbursement of its out of pocket expenses. Class Counsel has received no compensation during the course of this litigation. Class Counsel filed

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<sup>8</sup> Class Counsel has incurred approximately \$9,600 in expenses through September 30, 2019, and anticipates incurring additional expenses totaling up to \$15,000 in finalizing the Settlement, participating in the hearings for preliminary and final approval of the Settlement, serving the Class Notice, responding to Class Members' inquiries regarding the Settlement, and assisting in the distribution of the Settlement Fund, including expenses incurred in searching for Class Members' updated addresses via a national database.

the WARN Action and the Class Claim on behalf of a putative class against an Estate on an entirely contingent basis. Both liability and damages were contested by the Trustee and there was no guarantee of (1) class certification; (2) a favorable judgment; or (3) collectability of an award from to the Estate. Class Counsel was successful in obtaining class certification and able to achieve a recovery for the Class. However, none of those results were foreseeable at the outset. Had Class Counsel recovered nothing for the Class, it would not have been entitled to any fee at all. Thus, the substantial risk of litigation justifies the fee requested.

63. WARN Act cases by their very nature, are complicated and time-consuming. Any lawyer undertaking representation of large numbers of affected employees in WARN Act actions inevitably must be prepared to make a tremendous investment of time, energy and resources. Due also to the contingent nature of the customary fee arrangement, Class Counsel made this investment with the very real possibility of an unsuccessful outcome and no fee of any kind. Given Debtor's bankruptcy, there was an overarching and very real possibility that Class Counsel would prevail on liability, be awarded an allowed claim, which would be uncollectible from the Estate. The demands and risks of this type of litigation overwhelm the resources – and deter participation – of many traditional claimants' firms.

64. Class Counsel submits that the award of a fee of one-third of the common fund, net of the service payments and expenses, is fully warranted based on awards of this kind. As to fees in similar cases, Class Counsel has consistently been awarded by bankruptcy courts fees of one-third of the class recovery in WARN cases. *See, McCullough v. Westside Community Hospital Inc.*, 13-00954 (Bank. N.D. Ill. 2013) (awarding attorneys' fees of 33⅓% of \$360,000); *Miller v. Columbus Steel Casting Co.*, Adv. Proc. No. 16-50997 (CSS) (Bankr. D. Del. Sept. 27, 2017) (awarding attorneys' fees of 33⅓% of \$2.1 million settlement); *Chenault v. CS Mining*,

LLC, Case No. 16-2095 (Bankr. D. Utah) (awarding attorneys' fees of 33⅓% of a settlement of \$1.1 million); *Capizzi, et al. v. AWTR Liquidation, Inc. f/k/a Rhythm and Hues, Inc.*, Case No. 13-01463 (Bankr. C.D. Cal.) (awarding attorneys' fees of 33⅓% of \$1 million).<sup>9</sup>

65. Class Counsel has substantial experience in prosecuting large scale class and collective actions on behalf of employees and, specifically, WARN Act class actions such as this one. Jack A. Raisner, a partner in the New York-based firm of Outten & Golden LLP, a member of the firm's Class Action Practice Group and co-chair of the firm's WARN Act Class Action Practice Group, has extensive experience litigating plaintiff's employment rights matters, with a focus on the prosecution of class action and impact litigation of employment discrimination and wage and hour claims. René S. Roupinian, a partner of Outten & Golden LLP and co-chair of the firm's WARN Act Class Action Practice Group and a member of its Class Action Practice Group, has represented tens of thousands of former employees in more than 100 WARN Act class actions, many of which were litigated in bankruptcy court.

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<sup>9</sup> See also *Schuman v. The Connaught Group, Ltd.*, Case No. 12-01051 (Bankr. S.D.N.Y.) (awarding attorneys' fees of 33⅓% of settlement of approximately \$675,000); *Wojciechowski v. Clearedge Power Inc.*, 14-04152 (Bank. N.D. Cal. 2014) (awarding attorneys' fees of 33⅓% of about \$1.3 million); *Capizzi and Barcelo AWTR Liquidation, Inc.*, Case No. 13-01209 (Bankr. C.D. Cal. 2012) (awarding attorneys' fees of 33⅓ % of settlement of approximately \$1 million); *Callahan. v. Taylor Bean & Whitaker, et al.*, Adv. Proc. No. 09-00439 (JAF) (Bankr. M.D. Fla. 2010) (awarding attorneys' fees of 33⅓ % of \$15 million settlement); *Johnson v. First NLC Financial Services, LLC*, Case No. 08-01130 (Bankr. S.D. Fla. 2008) (awarding attorneys' fees of 33⅓ % of \$400,000 settlement); *Jackson v. Qimonda North America, Corp.*, 09-50912-MFW (Bankr. D. Del. 2009) (awarding attorneys' fees of 33⅓ % of up to \$35 million Settlement Amount); *Mochnal v. EOS Airlines, Inc.*, Case No. 08-08279 (Bankr. S.D.N.Y. 2008) (awarding attorneys' fees of 33⅓ % of settlement of approximately \$1.7 million); *Rasheed v. American Home Mortgage Corp.*, Case No. 07-51688 (Bankr. D. Del. 2007) (awarding undersigned co-class counsel a fee of 33⅓ % of the Settlement Amount of \$6.5 million); *Binford, et al v. First Magnus Capital, Inc.*, 08-bk-01494-GBN (Bankr. D. Ariz. 2010)(despite Ninth Circuit attorneys' fees benchmark of 25%, awarding attorneys' fees of 33⅓ % of settlement of \$2.6 million case and \$2.9 million contingent proceeds); *Updike v. Kitty Hawk Cargo, Inc.*, Case No. 07-04179 (Bankr. N.D. Tex. 2007) (awarding attorneys' fees of 33⅓ % of \$1.4 million settlement); *Bridges v. ContinentalAFA Dispensing Co.*, Case No. 08-45921 (Bankr. E.D. Mo. 2008)(awarding attorneys' fees of 33⅓ % of \$1.5 million settlement);and *Aguiar v. Quaker Fabric Corporation*, Case No. 07-51716 (Bankr. D. Del. 2007) (awarding attorneys' fees of 33⅓ % of \$1 million settlement). ). See also *Thielmann v. MF Global Holdings, Ltd.*, Case No. 11-02880 (awarding attorney's fees of 40% of \$5 Million)

66. Class Counsel was retained by the Class Representative based on the firm's experience, expertise, and willingness to expend the time necessary to effectively litigate the Class Claim. Outten & Golden LLP has been consistently retained in other WARN class actions by thousands of plaintiffs. The paucity of expert WARN Act counsel implies few, if any, other counsel have the skill, experience and expertise required to handle such cases. These facts amply support a finding that this factor is satisfied.

67. Here, the monetary result achieved on behalf of the Class is significant taking into consideration the assets available in the estate to pay creditor claims. The Settlement provides for wage priority status, which increases the likelihood that the claims will be paid out. But for the Settlement, the likelihood of any members of the class receiving any recovery would have been in jeopardy. The fact that these amounts are available to Class Members without the uncertainty of trial and are being delivered through the settlement process rather than years of litigation and appeals, qualifies the results of this settlement as excellent under any reasonable assessment.

68. Class Counsel provided legal services with considerable skill in the face of the difficult liability issues. The services were rendered with efficiency, in light of the complexity of the issues and the need for informal discovery. Class Counsel has developed special expertise in prosecuting WARN Act claims. Class Counsel's representation in this case is directly responsible for bringing about the Settlement and weighs in favor of granting the requested fees. The Class Representative supports the settlement and Class Counsel believes that few, if any, Class Members will object and that those objections, if any, will not be substantial or merited.

## **VII. NOTICE**

69. The Parties have provided notice of the hearing on this motion to the Office of the United States Trustee and to those parties that requested notice in the Case. In addition, the

Trustee posted this motion on the Case website, which many creditors are aware of and regularly check to obtain updates on the Case. In light of the relief requested, the Trustee submits that no party in interest will be prejudiced by the limited notice of the motion. Moreover, the cost of sending notice to all of the Estate's creditors and other parties that might be entitled to notice under Fed. R. Bankr. P. 2002(a)(3) would be prohibitive. Accordingly, the Trustee requests that the Court find, pursuant to Fed. R. Bankr. P. 2002(a)(3) and 9007, that cause exists to limit notice to that already given.

WHEREFORE, the Parties respectfully request that the Court: (i) preliminarily approve the Settlement attached as Exhibit 1; (ii) approve the form of the Class Notice and manner service to the Class, attached as Exhibit 2; (iii) enter an Order granting the Preliminary Relief in substantially the same form as that attached as Exhibit 3 setting a Fairness Hearing to finally approve the Settlement; (iv) following the Fairness Hearing enter an Order in substantially the same form as that attached as Exhibit 4 giving final approval to the Settlement; and (v) grant such other and further relief that it deems just and equitable.

Dated: October 29, 2019

Respectfully submitted,

Ronald Kotulak, on behalf of himself and members for the certified class

/s/ René S. Roupinian

René S. Roupinian, Esq. (admitted pro hac vice)

Jack A. Raisner, Esq. (admitted pro hac vice)

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*Attorneys for Plaintiff and the certified class*

Ira Bodenstein, not personally, but as chapter 7 trustee for the estate of Peregrine Financial Group, Inc. d/b/a PFG

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*Attorneys for the Trustee*

102856100.v3

# EXHIBIT 1



## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement, dated as of October 29, 2019 (this “Agreement” or “Settlement”), is entered into by and between Ira Bodenstein, not personally, but as chapter 7 trustee (“Trustee”) for the estate of Peregrine Financial Group, Inc. d/b/a PFG, on the one hand, and Ronald Kotulak (“Class Representative”), on behalf of himself and members of the certified Class (together with the Class Representative, but excluding the Opt-Outs (as defined below), the “Class Members” or “Class”), on the other hand. The Trustee and the Class Members are collectively referred to herein as the “Parties,” or, as to each, a “Party.”

### RECITALS

A. On July 10, 2012 (“Petition Date”), Peregrine Financial Group d/b/a PFG (“Debtor”) filed a voluntary petition for relief in the United States Bankruptcy Court for the Northern District of Illinois (“Bankruptcy Court”) under chapter 7 of title 11 of the United States Code (“Bankruptcy Code”). The filing of the Debtor’s chapter 7 petition commenced a bankruptcy case pending before the Bankruptcy Court and styled *In re Peregrine Financial Group, Inc.*, Case No. 12-27488 (“Case”).

B. On July 11, 2012, the Office of the United States Trustee appointed the Trustee as the chapter 7 trustee of the Debtor’s bankruptcy estate (“Estate”).

C. Prior to the Petition Date, the Debtor employed certain employees, including the Class Members, in its business operations.

D. On or about July 11, 2012, the Class Representative filed with the Bankruptcy Court a class-action adversary complaint commencing an adversary proceeding (“WARN Action”) against the Debtor, on behalf of himself and the Class Members, alleging that (i) the Debtor violated the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101 *et seq.* (“WARN Act”), by ordering a mass layoff on or about July 9, 2012 without providing sixty (60) days advance notice thereof. The Class Representative further asserted that, as a consequence of this alleged failure, the Class Members have a priority administrative expense claim, pursuant to 11 U.S.C. § 503(b)(1)(A), or alternatively, priority status, under 11 U.S.C. § 507(a)(4) and (5), up to the \$11,725 priority cap, with the balance, if any, being a general unsecured claim against the Debtor for damages for the alleged sixty (60) day violation period. The WARN Action is entitled *Kotulak v. Peregrine Financial Group, Inc.*, Adv. No. 12-01088 (Bankr. N.D. Ill.).

E. On October 1, 2012, the Class Representative voluntarily dismissed the WARN Action and filed a Class Proof of Claim (Claim No. 1235) (“Class Claim”). The Class Claim contains allegations substantially similar to those asserted in the WARN Action regarding the purported violation of the WARN Act, as well as violations of the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 *et seq.* (“Illinois Wage Act”) and the Iowa Wage Payment Collection Act, IA Code § 91A.1 *et seq.* (“Iowa Wage Act,” and together with the Illinois Wage Act, the “Wage Acts”).

F. On February 20, 2013, the Bankruptcy Court entered the *Consent Order Granting*

*Motion of Representative Claimant pursuant to F.R.B.P. 9014 Seeking Application of F.R.B.P. 7023*, dated February 20, 2013 [Dkt. No. 432] (“Class Certification Order”). Pursuant to the Class Certification Order, the Bankruptcy Court certified a class comprised of former employees of the Debtor who (1) allege that they were terminated without cause as part of, or as the result of, a mass layoff ordered by the Debtor on or about July 9, 2012, and within thirty (30) days of that date, and thereafter; (2) who were not provided their final paychecks in alleged violation of the Wage Acts; and (3) who have not filed a timely request to opt-out of the class. In addition, the Bankruptcy Court appointed Outten & Golden LLP and Fisher Cohen Waldman Shapiro LLP as class counsel (collectively, “Class Counsel”) and Ronald Kotulak as the Class Representative. All former employees who timely filed a request to opt-out of the Class are collectively referred to as the “Opt-Outs.”

G. On March 23, 2013, Class Counsel mailed Notice of the Class Action to the putative class and filed a Declaration of No Opt-Outs on March 6, 2013 [Dkt. Nos. 606, 608].

H. The Trustee asserts that all of the terminations made were in compliance with all applicable laws, including the WARN Act.

I. Beginning on or about August 2018, the Parties began good-faith arms-length settlement discussions, which culminated in a settlement, subject to Court approval.

J. The Parties recognize that the outcome of the Class Claim is uncertain and that recoveries to Class Members and other creditors of the Estate can best be maximized by resolving the Class Claim in a consensual manner and avoiding extensive, costly and uncertain litigation.

### **AGREEMENT**

In consideration of the mutual undertakings set forth below, the Parties agree as follows:

1. **Recitals**. The recitals and prefatory phrases and paragraphs set forth above are hereby incorporated in full and made a part of this Agreement.

2. **Settlement Filings**. The Parties shall file a joint motion in the Case under Fed. R. Bankr. P. 9019 and 7023 for approval of this Agreement through a bifurcated hearing process (“Settlement Motion”). The Settlement Motion shall request an initial hearing at which time the Parties shall seek entry of an order of the Bankruptcy Court preliminarily approving the Settlement, and approving the form and manner of notice to the Class Members of the Settlement, including, among other things, the Class Members’ right to object to the Settlement in person or to appear by counsel. The Parties shall also request a date for a fairness hearing (“Fairness Hearing”). At the Fairness Hearing, the Bankruptcy Court shall consider final approval of the Settlement. The Settlement is subject to and conditioned upon the entry of an order of the Bankruptcy Court granting final approval of this Agreement under Fed. R. Bankr. P. 9019 and 7023, after notice and hearing to creditors and parties in interest, in accordance with applicable law and local rules (“Settlement Order”).

3. **Effective Date**. The “Effective Date” of this Agreement is the date that the Settlement Order becomes a Final Order. For purposes of this Agreement, the term “Final Order” means an order of the Bankruptcy Court that has not been vacated, stayed, amended, reversed or

modified and that is no longer subject to any further appeals, either because the time to appeal has expired without an appeal being filed, or because it has been affirmed by any and all courts with jurisdiction to consider any appeals therefrom; provided, however, that no order shall fail to be a Final Order solely because of the possibility that a motion pursuant to Fed. R. Civ. P. 59 or 60 or any similar local rule may be filed with respect to such order. In the event that the Effective Date does not occur: (a) this Agreement and the recitals contained herein shall be without force or effect, and neither this Agreement, nor any of the statements contained 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 hereof shall prejudice or impair any rights, remedies or defenses of any of the Parties.

4. **The Allowed Class Claim.**

(a) Upon the Effective Date, the Class shall be awarded an allowed unsecured priority claim pursuant to 11 U.S.C. §§ 507(a)(4) and (5) in the amount of One Million Eight Hundred Fifty Thousand Dollars and No Cents (\$1,850,000.00) against the Estate (“Allowed Class Claim”). The Allowed Class Claim shall be satisfied in full by a payment from the Estate in the amount of One Million Eight Hundred Fifty Thousand Dollars and No Cents (\$1,850,000.00) (“Settlement Payment”) to be distributed in accordance with the terms set forth below within fourteen (14) days following the Effective Date, unless otherwise agreed by the Parties. All distributions made by the Trustee on account of the Allowed Class Claim shall be referred to herein as the “Class Claim Distributions” and the Settlement Payment to be distributed pursuant to this Agreement shall be referred to herein as the “Settlement Fund.”

(b) The Allowed Class Claim shall be allowed against the Estate in favor of the Class in full and total satisfaction of all actual and potential Released Claims against the Released Parties (each defined below). All amounts to be paid to the Class Representative, Class Counsel’s Fees and Class Counsel’s Expenses,<sup>1</sup> and the Class Members’ share of applicable taxes shall be paid solely from the Settlement Fund. For the avoidance of any doubt, the Estate shall be responsible for the payment of the employer’s share of applicable taxes and those administrative costs of the settlement set forth in Section 6(a) of this Agreement, which are the only payments of the Estate under this Settlement that shall not be paid from the Settlement Fund on account of the Allowed Class Claim.

(c) The Settlement Order will provide that all other proofs of claim filed in the Case by Class Members for any all claims, asserted or assertible, arising out of or related to the allegations asserted in the Class Claim, including the termination of their former employment with the Released Parties are disallowed, including, but not limited to the proofs of claim identified in the attached Exhibit A.

(d) Notwithstanding anything to the contrary in this Agreement, the Trustee will retain his right to object to (i) the non-employment related claims, if any, of any Class Member and (ii) the claims of any Class Member that elects to opt-out of the Settlement.

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<sup>1</sup> The terms Class Representative Service Payments, Class Counsel’s Fees and Class Counsel’s Expenses are defined in Section 6(b) and (c) below.

5. **Responsibilities of Class Counsel.** Class Counsel shall be responsible for the production and mailing of all notices required to be provided to the Class Members (“Class Notices”). The address of Class Counsel will be used as the return address for the Class Notices and Class Counsel will respond to all inquiries of the Class Members arising from or related to this Settlement. Subject to the Trustee’s review and approval, Class Counsel shall be responsible for calculating the allocation of each Class Member’s net share of the Allowed Class Claim as set forth in Paragraph 6(d) below.

6. **The Allocation of the Settlement Fund and Disbursement of the Net Settlement Fund to Class Members.**

(a) **Disbursement of Settlement Fund Payments.** The Trustee shall be responsible for (i) the preparation and mailing of the individual settlement checks to Class Members, (ii) withholding and paying all applicable taxes, (iii) remitting Class Counsel’s Fees and Class Counsel’s Expenses as approved by the Settlement Order, (iv) preparing all tax forms required in connection with this Settlement in accordance herewith, and (v) compliance with any other orders of the Bankruptcy Court. The Estate will bear the expense for the preparation and mailing of the settlement checks and tax forms.

(b) **Class Counsel’s Fees and Class Counsel’s Expenses.** Subject to Bankruptcy Court approval, Class Counsel is entitled to attorneys’ fees (“Class Counsel’s Fees”) in the amount of one-third of the Settlement Fund, net of (a) litigation expenses (including costs associated with the production and mailing of the class notice) not to exceed Fifteen Thousand Dollars (\$15,000.00) (“Class Counsel’s Expenses”), and (b) the Class Representative Service Payment (defined below). Class Counsel’s Fees and Class Counsel’s Expenses will be distributed to Class Counsel (according to instructions to be supplied by Class Counsel) and shall be payment in full for Class Counsel’s work and expenses incurred in connection with this matter. For the avoidance of doubt, the Parties agree that Class Counsel’s Fees and Class Counsel’s Expenses shall be payable solely from the Settlement Fund and from no other source. Class Counsel shall be issued a Form 1099 by the Trustee for Class Counsel’s Fees and Class Counsel’s Expenses. Class Counsel shall submit to the Trustee a completed W-9 form prior to the Trustee’s payment of Class Counsel’s Fees and Class Counsel’s Expenses.

(c) **Service Payments to Class Representative.** The Class Representative shall receive a one-time payment of Fifteen Thousand Dollars (\$15,000.00) as compensation for his service in this matter (“Class Representative Service Payment”). The Trustee shall distribute this payment to the Class Representative in addition to his individualized Class Claim Distributions and Class Counsel’s Fees shall not be deducted from the Class Representative Service Payment. For the avoidance of doubt, the Parties agree that the Class Representative Service Payment shall be payable solely from the Settlement Fund and from no other source. The Class Representative Service Payment shall be characterized as non-employee compensation to the Class Representative and shall be reported to any applicable taxing authorities on behalf of the Class Representative on a Form 1099 issued to the Class Representative with his taxpayer identification number. The Class Representative shall submit to the Trustee a completed W-9 form prior to the Trustee’s payment of the Class Representative Service Payment.

(d) Allocation of the Settlement Fund to Class Members. The Class Claim Distributions, after being first reduced by (i) the Class Representative Service Payment, (ii) Class Counsel's Fees, and (iii) Class Counsel's Expenses, shall be allocated to each Class Member on a pro rata basis based on the relationship that such Class Member's potential damages under the WARN Act and the Wage Acts bears to the aggregate potential damages of all Class Members under the WARN Act and the Wage Acts, and shall be made directly to Class Members ("Class Members' Pro Rata Share"). The Class Claim Distributions made to individual Class Members shall be characterized as when they were actively employed; as compensation reported to any applicable taxing authorities on a Form W-2 or 1099 issued by the Trustee to such Class Member with his or her taxpayer identification number. Each Class Member's total allowed priority claim under 11 U.S.C. § 507(a) against the Estate shall be reduced by the Class Members' Pro Rata Share after reduction for the (i) the Class Representative Service Payment, (ii) Class Counsel's Fees and (iii) Class Counsel's Expenses. A list of each Class Member's pro rata share of the Settlement Fund, as determined by Class Counsel based on the Debtor's books and records, will be made available on the Trustee's case website as soon as reasonably practical.

7. Settlement Checks. Following the Class Claim Distributions, upon Class Counsel's written request, including by email or otherwise, the Trustee shall provide Class Counsel with the names of those Class Members whose settlement checks have been (i) returned as undeliverable or (ii) remain uncashed or unnegotiated. Upon Class Counsel's written notice of a Class Member's updated correct address for any returned settlement checks, the Trustee shall, within 10 days of receipt of said notice from Class Counsel, mail the returned settlement check to the Class Member at such corrected address. Upon Class Counsel's written notice of a Class Member's need for a "stop payment" on their settlement check and reissuance, the Trustee shall, within five (5) business days of receipt of said notice from Class Counsel, stop payment on the settlement check and reissue it, as requested. The Trustee shall deduct the cost of any "stop payment" charge from the reissued check to any Class Member. Trustee shall deduct a wire transfer fee of \$25.00 if the Class Member requests payment of its Class Claim Distribution by wire transfer. In the event that there are any Settlement Funds remaining for any reason, including Settlement checks which are not deposited, endorsed or negotiated, within ninety (90) days of their issuance, such residual funds shall be held another sixty (60) days ("Residual Fund Waiting Period") to be used to make distributions to any individual who is subsequently determined to have been eligible to receive a distribution as a Class Member but was not on the Class Member distribution list. Undistributed funds remaining after the Residual Fund Waiting Period, shall become property of the Estate, free and clear of any and all claims and interests of the Class Members, but subject to further redistribution in accordance with the Bankruptcy Code.

8. The Class Notice. Class Counsel shall bear the responsibility of the preparation of the Class Notices. Class Counsel's address will be used as the return address for the Class Notices so that any returned Class Notices will be returned to Class Counsel. Class Counsel, at its expense, shall mail the Class Notices by first class mail to the Class Members no later than three (3) days after preliminary approval of this Settlement by the Bankruptcy Court. In the event that a Class Notice is returned as undeliverable, Class Counsel shall mail the Class Notice to the corrected address of the intended Class Member recipient as may be determined by Class Counsel through a search of a national database or as may otherwise be obtained by the Parties.

9. **Contents of the Class Notice.** The Class Notice shall contain the following information, which shall be individualized for each Class Member:

- That the Settlement shall become effective only if it is finally approved by the Bankruptcy Court under Fed. R. Bankr. P. 7023 and 9019;
- That, if so approved, the Settlement shall be effective as to all Class Members;
- That such Class Member has the right to object to this Settlement either in person or through counsel and be heard at the Fairness Hearing; and
- That all Released Claims (defined below) of a Class Member (other than those claims to be paid under the terms of this Settlement) shall be waived and released, and that no person, including the Class Member, shall be entitled to any further distribution thereon.

10. **Objection to Settlement Procedures.** At or before such time as may be fixed by the Bankruptcy Court for final approval of this Settlement at the Fairness Hearing, a Class Member may object to this Settlement by sending timely written notice of such objection (“Notice of Objection”) to Class Counsel and counsel to the Trustee at the addresses set forth in Paragraph 26 below and filing such Notice of Objection with the Bankruptcy Court. Such objection shall clearly specify the relief sought and the grounds for such relief. In addition:

(a) To be effective, the Notice of Objection must be postmarked no later than the date fixed by the Bankruptcy Court. Class Counsel shall provide the Trustee with copies of each Notice of Objection received from Class Members within one (1) business day following receipt thereof.

(b) Any Class Member whose objection has not been withdrawn or resolved prior to the Fairness Hearing and has been sustained by the Bankruptcy Court shall not have an allowed claim against the Estate by reason of this Agreement and shall retain his or her rights against the Estate, if any. The Trustee reserves all rights against any Class Member who is excluded from this Settlement including the right to assert that such Class Member did not file a timely proof of claim in the Case.

(c) Notwithstanding anything to the contrary in this Settlement, nothing contained herein shall release or impair the rights and claims, if any, of any Class Member who does not participate in this Settlement, nor shall anything contained herein affect the defenses and offsets that Trustee, the Debtor, its Estate, its respective subsidiaries, its respective affiliates, any successors or assigns thereto, or any of the present or former officers, directors, employees, agents, attorneys, consultants, stockholders or members of any thereof may have against any such rights or claims.

11. **The Waiver and Release of any Released Claims by All Class Members if the Settlement Becomes Effective.**

(a) **Released Claims of Class Members.** Except for the rights arising out of, provided for, or reserved in this Agreement, upon the Effective Date, the Class Members, for and on behalf of themselves, and their respective predecessors, successors, assigns, heirs, personal representative and estates (collectively, the “Releasing Parties”), do hereby fully and forever release and discharge (i) the Trustee, the Estate, the Debtor, Best Direct Securities, LLC, Peregrine Asset Management, Inc., Peregrine Financial Group Canada, Inc., Peregrine Capital Advisor, Inc., CHI FX, Inc., BestDirect Australia, Pty Ltd., PFG Depository, Ltd., Best Kids, LLC, Peregrine Diversified Investment Services Corp. and Peregrine Charities, Inc. and (ii) for each of the persons and entities listed in (i), their current and former shareholders, officers, directors, employees, accountants, attorneys, representatives and other agents, and all of their respective predecessors, successors and assigns (collectively, the “Released Parties”), of and from any and all claims, demands, debts, liabilities, obligations, liens, actions and causes of action, costs, expenses, attorneys’ fees and damages of whatever kind or nature, at law, in equity and otherwise, whether known or unknown, anticipated, suspected or disclosed, which the Releasing Parties may now have or hereafter may have against the Released Parties, which relate to or are based on the WARN Act, the Wage Acts, or back- or severance pay or benefits under any federal, state or local law or regulation arising out of the termination of the Class Members’ employment by any Released Party, including, but not limited to: (a) all claims asserted or that could have been asserted as part of the WARN Action or Class Claim filed on behalf of the Class Members; (b) all individual WARN Act claims; (c) all individual Wage Act claims; (d) any other claims for wages, salaries, bonuses, expense reimbursements, back pay, severance pay or other benefits based on or arising out of any contract or any federal, state or local statute, ordinance or regulation; and (e) rights, if any, under the Debtor’s 401(k) plan or other benefit plans of any type whatsoever (collectively, the “Released Claims”); provided, however, any claims for continuation of health or medical coverage, at the Class Member’s expense, or at the expense of a beneficiary or dependent of a Class Member, to the extent allegedly required by the relevant provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 are not Released Claims.

(b) The Released Parties expressly reserve the right to object to, offset or oppose any and all claims, obligations, or causes of action, of any type, except those claims expressly allowed hereunder. On the Effective Date, in accordance with this Agreement, the Class Members agree that any claims that have filed on behalf of, or filed by, the Class Representative or the Class Members in the Case, on account of any Released Claims are hereby disallowed in their entirety. In addition, each Releasing Party shall be deemed as of the Effective Date to have released the Class Representative from any and all claims whether liquidated or unliquidated, contingent or non-contingent, asserted or unasserted, fixed or not, matured or unmatured, disputed or undisputed, legal or equitable, known or unknown that he or she may have against the Class Representative, any successors or assignees to their legal interests, or any of their present or former agents, attorneys or consultants arising out of any Released Claim or the terms of this Agreement.

12. **No Litigation.** Except as may be necessary to enforce the terms of this Settlement, the Trustee, the Class Representative, Class Counsel, the Releasing Parties, and any other person who accepts payment hereunder agree that he or she will not commence or proceed with any action,

claim, suit, proceeding or litigation on the Released Claims, or take any action inconsistent with the terms of this Settlement.

13. **Representations and Warranties.** The Parties warrant and represent to each other that: (a) each Party will act in good faith seeking to accomplish the purpose of this Agreement; (b) each Party has not relied upon any promises, agreements, representations, statements or warranties in entering into this Agreement, except those that are expressly set forth herein; (c) upon entry of the Settlement Order, each signatory to this Agreement warrants that he, she or it has the authority to execute this Agreement and to bind the Party or Parties for which he, she or it signs.

14. **Further Assurances.** The Parties shall cooperate fully and shall execute and deliver any and all supplemental papers, documents, instruments and other assurances and shall do any and all acts that may be reasonably necessary or appropriate to give full force and effect to the terms and intent of this Settlement.

15. **Binding on Successors, Assigns and Others.** On the Effective Date, this Agreement will be binding upon: (a) the officers, directors, successors, heirs and beneficiaries and assigns of each Party; (b) each past, present, direct or indirect parent, subsidiary, division or affiliated entity of each Party; and (c) each past or present agent, representative or shareholder of each Party.

16. **Document Preparation.** The Parties shall jointly be deemed to be the drafters of this Agreement; the rule that any ambiguity in a contract shall be construed against the drafter of the contract shall not apply to this Agreement.

17. **No Third Party Beneficiaries.** This Agreement does not constitute a contract for the benefit of any third party, other than the Class Representative and the Class Members in relation to the provisions of this Agreement. This Agreement shall not inure to the benefit of any third-party purchasers who purport to obtain claims of the Class Representative or the Class Members through assignment, transfer or otherwise. Absent an order from the Court, neither Class Counsel nor the Trustee, shall be under any obligation to distribute payments from the Settlement Fund or otherwise, except to the Class Representative and the Class Members themselves in accordance with this Agreement.

18. **Governing Law and Retention of Jurisdiction.** This Agreement shall be governed by the laws of the United States of America as to matters of federal law and otherwise by the laws of the State of Illinois. With respect to matters governed by Illinois law, this Agreement shall be construed and interpreted in accordance with its laws, notwithstanding its conflict of law principles or any other rule, regulation or principle that would result in the application of any other state's law. Furthermore, the Parties agree that the Bankruptcy Court shall retain exclusive jurisdiction over all matters relating to this Agreement.

19. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties with regard to all matters addressed in this Agreement. This Agreement supersedes and replaces all prior commitments, negotiations, and all agreements proposed or otherwise, if any, whether written or oral, concerning the subject matters contained in this Agreement. The Parties expressly acknowledge that they have not relied on any prior or



contemporaneous oral or written representations or statements by another Party in connection with the subject matter of this Agreement, except as expressly set forth herein.

20. **Modification.** This Agreement may only be modified by a writing signed by all Parties.

21. **Waiver.** No waiver of any right, obligation, or duty imposed by or under this Agreement will be effective unless such waiver is reflected in a writing duly executed by all Parties hereto. No waiver will be effective based on conduct or oral statements. Waiver by any Party of any breach of this Agreement will not be a waiver by such Party of any other breach of this Agreement.

22. **Time.** Time shall be of the essence as to all dates and time periods specified in this Agreement.

23. **Fees and Costs Previously Incurred.** The Parties will each be responsible for their own attorneys, experts and consultants' fees, costs and expenses incurred in connection with the negotiating, drafting, editing and finalizing of this Agreement.

24. **Further Assurances.** The Parties will cooperate fully and execute all supplementary documents and take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

25. **Severability.** In the event that any one or more provisions contained in this Agreement will, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect the enforceability, construction and/or interpretation of any other provision contained in this Agreement, and this Agreement will be construed as if the provision deemed invalid, illegal or unenforceable had never been contained herein.

26. **Notices.** Any and all notices required or permitted under or pursuant to this Agreement will be in writing and delivered by: (a) hand delivery; (b) e-mail; (c) registered or certified mail, return receipt requested; (d) facsimile; or (e) express overnight delivery service (and will be deemed to have been delivered upon (i) receipt, if hand delivered; (ii) transmission, if delivered by facsimile or e-mail (provided such transmission by facsimile or e-mail is followed by express overnight delivery); and (iii) the next business day, if delivered by express overnight delivery service); and will be delivered or transmitted to, the following addresses (each a "Notice Address") or to such other addresses as either Party may direct in writing:

*If to the Trustee:*

Allen J. Guon  
Fox Rothschild LLP  
321 N. Clark Street, Suite 1600  
Chicago, IL 60654  
[aguon@foxrothschild.com](mailto:aguon@foxrothschild.com)

and

Ira Bodenstein  
Fox Rothschild LLP  
321 N. Clark Street, Suite 1600  
Chicago, IL 60654  
[ibodenstein@foxrothschild.com](mailto:ibodenstein@foxrothschild.com)

*If to Class Counsel:*

Jack A. Raisner  
René S. Roupinian  
Outten & Golden LLP  
685 Third Ave., 25th Floor  
New York, NY 10017  
[rsr@outtengolden.com](mailto:rsr@outtengolden.com)  
[jar@outtengolden.com](mailto:jar@outtengolden.com)

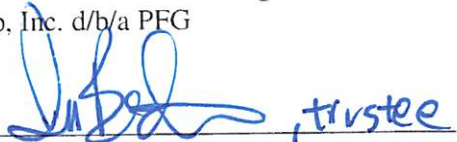
27. **Execution in Counterparts; Facsimile Signatures.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original but all of which together will constitute one in the same instrument. Facsimile and e-mailed PDF signatures will be deemed to have the same effect as original signatures.

28. **Headings.** The paragraph headings used in this Agreement are included for the purpose of convenience only and will not affect the construction and/or interpretation of any of the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first written above.


Ira Bodenstein, not personally, but as chapter 7 trustee for the estate of Peregrine Financial Group, Inc. d/b/a PFG

By:

  
Ira Bodenstein, Trustee

Outten & Golden LLP on behalf of the Class Representative and Class Members

By:

  
Jack A. Raisner  
René S. Roupinian  
Class Counsel

**EXHIBIT A - List of Disallowed Employee Claims<sup>1</sup>**

	<b>Claim No.</b>	<b>Creditor</b>
1	<b>3727</b>	AARON PARKS
2	<b>11538</b>	ABBYE VAN CLEAVE
3	<b>7768</b>	ADAM MOEHN
4	<b>7769</b>	ADAM MOEHN
5	<b>5880</b>	ADRIAN MLODKOWSKI
6	<b>2330</b>	ALAN CIRCLE
7	<b>5323</b>	ALEXANDER POLUMEYV
8	<b>9010</b>	ALEXANDER POLUMEYV
9	<b>7680</b>	ALLISON VAALA
10	<b>9333</b>	ALLISON VAALA
11	<b>11663</b>	ANDREW G. WILSON
12	<b>11669</b>	ANDREW G. WILSON
13	<b>5236</b>	ANGELA KAYE JORGENSON
14	<b>13500</b>	ANTOINETTE KOESTNER
15	<b>6688</b>	ANTOINETTE M. KOESTNER
16	<b>7790</b>	ANTOINETTE M. KOESTNER
17	<b>7793</b>	ANTOINETTE M. KOESTNER
18	<b>11645</b>	ANTONIO J. ALANIZ
19	<b>13577</b>	ARMEKA HOLMES
20	<b>13593</b>	ARMEKA HOLMES
21	<b>251</b>	ASSETDYNAMICS ALTERNATIVES LLC
22	<b>6380</b>	BARRY ISAACSON
23	<b>6382</b>	BARRY ISAACSON
24	<b>12153</b>	BEN DAVIDSON
25	<b>6401</b>	BEN KOTULAK
26	<b>814</b>	BENJAMIN JAMES KUTZ
27	<b>5262</b>	BOSCO CHING
28	<b>13487</b>	BRANDI WELLS
29	<b>3920</b>	BRENDA CUYPERS
30	<b>3941</b>	BRENDA CUYPERS
31	<b>403</b>	BRIAN CONNELLY
32	<b>4872</b>	BRIAN ELLISON
33	<b>6371</b>	BRIAN ELLISON
34	<b>5681</b>	BRIAN ZAJAC
35	<b>5779</b>	BRITTANY HEARD
36	<b>5781</b>	BRITTANY HEARD
37	<b>5295</b>	BRUCE POLLACK
38	<b>5302</b>	BRUCE POLLACK
39	<b>13642</b>	CERIDIAN BENEFITS SERVICES, INC
40	<b>7833</b>	CHARLES SCIAMETTA
41	<b>7834</b>	CHARLES SCIAMETTA
42	<b>6302</b>	CHENG HONG
43	<b>6303</b>	CHENG HONG
44	<b>9514</b>	CHRISTIAN THOMAS KELLER
45	<b>4373</b>	CHRISTINE G. BERGER
46	<b>4376</b>	CHRISTINE G. BERGER
47	<b>9871</b>	CHRISTOPHER P. PAOLETTI

<sup>1</sup>This list does not include any claims that were previously disallowed by the Court.

**EXHIBIT A - List of Disallowed Employee Claims<sup>1</sup>**

	<b>Claim No.</b>	<b>Creditor</b>
48	<b>10975</b>	CHRISTOPHER P. PAOLETTI
49	<b>10979</b>	CHRISTOPHER P. PAOLETTI
50	<b>13513</b>	CHRISTOPHER PAOLETTI
51	<b>5268</b>	CHRISTOPHER R. SHERIDAN
52	<b>9772</b>	CHRISTOPHER ROMANO
53	<b>11115</b>	CHRISTOPHER STETTNER
54	<b>11332</b>	CHRISTOPHER STETTNER
55	<b>12160</b>	CLEMENTE GONZALEZ
56	<b>12182</b>	CLEMENTE GONZALEZ
57	<b>3780</b>	CODY W. BANKS
58	<b>3802</b>	CRAIG ITAGAKI
59	<b>3805</b>	CRAIG ITAGAKI
60	<b>7668</b>	CURT WAGAMAN
61	<b>7674</b>	CURT WAGAMAN
62	<b>6394</b>	DANIEL J. PAYNTER
63	<b>6400</b>	DANIEL J. PAYNTER
64	<b>6666</b>	DANIEL N. MARTIN
65	<b>3706</b>	DANIEL STEVENSON
66	<b>3709</b>	DANIEL STEVENSON
67	<b>4271</b>	DANIELLE M. BONZER
68	<b>4273</b>	DANIELLE M. BONZER
69	<b>4442</b>	DAVID A. FULSCHER
70	<b>3924</b>	DAVID C. KRANZ
71	<b>7808</b>	DAVID SHEEHAN
72	<b>7821</b>	DAVID SHEEHAN
73	<b>5900</b>	DAVID T. GRIEZE-JURGELEVICIUS
74	<b>3850</b>	DAVID W. RETTGER
75	<b>4164</b>	DAVID W. RETTGER
76	<b>7826</b>	DEBRA STEPANEK
77	<b>7828</b>	DEBRA STEPANEK
78	<b>13503</b>	DENISA ILEA
79	<b>5800</b>	DENISA L. ILEA
80	<b>5802</b>	DENISA L. ILEA
81	<b>11416</b>	DEREK MILLER
82	<b>7738</b>	DEREK WILSON
83	<b>7747</b>	DEREK WILSON
84	<b>3919</b>	DIRK CUYPERS
85	<b>6366</b>	DWAYNE E. PLISKA
86	<b>13515</b>	DWAYNE E. PLISKA
87	<b>7641</b>	EILEEN E. TOMBASCO
88	<b>7642</b>	EILEEN E. TOMBASCO
89	<b>7638</b>	EMILIO DEBUERIIS
90	<b>7640</b>	EMILIO DEBUERIIS
91	<b>9634</b>	EMILY E. YESKE
92	<b>5784</b>	ERIC CANAKES
93	<b>5785</b>	ERIC CANAKES
94	<b>2732</b>	ERIC ROBINSON

<sup>1</sup>This list does not include any claims that were previously disallowed by the Court.

**EXHIBIT A - List of Disallowed Employee Claims<sup>1</sup>**

	<b>Claim No.</b>	<b>Creditor</b>
95	<b>13442</b>	ERIC ROBINSON
96	<b>13496</b>	ERIC ROBINSON
97	<b>5752</b>	ERICA SANFORD
98	<b>69</b>	ERICH NAZAROF
99	<b>70</b>	ERICH NAZAROF
100	<b>3982</b>	EVA SIGAEV
101	<b>3992</b>	FIEFIE NILES
102	<b>4249</b>	FIEFIE NILES
103	<b>12467</b>	FRANCISCO VEGA
104	<b>12469</b>	FRANCISCO VEGA
105	<b>7836</b>	FRANK M. BENVENUTO
106	<b>4359</b>	FRANK R. POTENZO
107	<b>4362</b>	FRANK R. POTENZO
108	<b>5730</b>	GEORGE J. COCALIS
109	<b>5733</b>	GEORGE J. COCALIS
110	<b>13512</b>	GEORGE J. COCALIS
111	<b>4438</b>	GPI FUTURES
112	<b>12033</b>	GREGORY A ENGELKES
113	<b>1232</b>	HAYLEY ANNA WIESKAMP
114	<b>1338</b>	HAYLEY ANNA WIESKAMP
115	<b>6356</b>	HERBERT R. KRAL
116	<b>1360</b>	JACKIE REITZ
117	<b>1376</b>	JACKIE REITZ
118	<b>9047</b>	JAMES D. REALE
119	<b>9735</b>	JAMES F. KELLY
120	<b>9778</b>	JAMES F. KELLY
121	<b>9686</b>	JAMES LAURENCE O'CONNELL
122	<b>9043</b>	JAMES W. BROWN
123	<b>9062</b>	JAMES W. BROWN
124	<b>5266</b>	JANICE R. MEINTZER
125	<b>5313</b>	JANICE R. MEINTZER
126	<b>5247</b>	JASON CARTWRIGHT
127	<b>5253</b>	JASON CARTWRIGHT
128	<b>10738</b>	JASON L. BUETTNER
129	<b>13076</b>	JEFFREY E. LEWANDOWSKI
130	<b>13176</b>	JENNIFER E. HASHMAN
131	<b>5688</b>	JENNIFER ELWOOD
132	<b>7749</b>	JENNIFER ELWOOD
133	<b>4394</b>	JENNIFER M. MUCHONEY
134	<b>4403</b>	JENNIFER M. MUCHONEY
135	<b>9762</b>	JENNIFER RENZ
136	<b>9971</b>	JESSE DELGADO JR
137	<b>9855</b>	JESSE DELGADO JR.
138	<b>1388</b>	JESSICA L. WITTENBURG
139	<b>1389</b>	JESSICA L. WITTENBURG
140	<b>12463</b>	JESSICA SKOLNICK
141	<b>13522</b>	JILL MURRAY

<sup>1</sup>This list does not include any claims that were previously disallowed by the Court.

**EXHIBIT A - List of Disallowed Employee Claims<sup>1</sup>**

	<b>Claim No.</b>	<b>Creditor</b>
142	<b>6422</b>	JILL T. MURRAY
143	<b>3700</b>	JOE DI VAGNO
144	<b>13510</b>	JOE DI VAGNO
145	<b>13209</b>	JOHN J WEYER
146	<b>648</b>	JOHN J. WELSH
147	<b>652</b>	JOHN J. WELSH
148	<b>3798</b>	JOHN K. DUFFY
149	<b>3799</b>	JOHN K. DUFFY
150	<b>5703</b>	JOHN M. COURTRIGHT
151	<b>5705</b>	JOHN M. COURTRIGHT
152	<b>3807</b>	JOHN M. LOGAN
153	<b>3808</b>	JOHN M. LOGAN
154	<b>5735</b>	JONATHAN RUSSELL HARBAUGH
155	<b>5739</b>	JONATHAN RUSSELL HARBAUGH
156	<b>11588</b>	JOSEPH DENZINGER
157	<b>9669</b>	JOSEPH N VARTANIAN
158	<b>61</b>	JOSEPH PETER SLAGA
159	<b>3783</b>	JOSHUA A. GATES
160	<b>3793</b>	JOSHUA A. GATES
161	<b>7753</b>	JOSHUA R. COLLINS
162	<b>7772</b>	JOSHUA R. COLLINS
163	<b>4625</b>	JOSHUA R. REITZ
164	<b>4633</b>	JOSHUA R. REITZ
165	<b>12156</b>	JULIANN PAULUS
166	<b>7670</b>	JULIE KANEYUKI
167	<b>7672</b>	JULIE KANEYUKI
168	<b>378</b>	JULIE THOMAS
169	<b>6086</b>	JUSTIN J. BERNING
170	<b>157</b>	KARL E. HEIT
171	<b>3721</b>	KATELYN LEDESMA
172	<b>3723</b>	KATELYN LEDESMA OR KATELYN KRUEGER
173	<b>9781</b>	KELLY JEAN KING
174	<b>9782</b>	KELLY JEAN KING
175	<b>3776</b>	KEM HONG CHONG
176	<b>401</b>	KEVIN ROSENBERG
177	<b>9319</b>	KIMBERLY FRANK
178	<b>9321</b>	KIMBERLY FRANK
179	<b>13677</b>	KRISTINA HACKBART
180	<b>4887</b>	KRYSTIAN J. KLING
181	<b>4888</b>	KRYSTIAN J. KLING
182	<b>9351</b>	KYLE T. MARKER
183	<b>12869</b>	KYLE T. MARKER
184	<b>4491</b>	LAELA RAE WINDER
185	<b>4513</b>	LAELA RAE WINDER
186	<b>3698</b>	LAURA M. OATNEY
187	<b>13517</b>	LAURA OATNEY
188	<b>4904</b>	LAUREN B. HAWKENSON

<sup>1</sup>This list does not include any claims that were previously disallowed by the Court.

**EXHIBIT A - List of Disallowed Employee Claims<sup>1</sup>**

	<b>Claim No.</b>	<b>Creditor</b>
189	<b>4911</b>	LAUREN B. HAWKENSON
190	<b>13505</b>	LAUREN HAWKENSON
191	<b>13086</b>	LAUREN M. HANSON
192	<b>13506</b>	LAUREN M. HANSON
193	<b>11623</b>	LAUREN VEGA
194	<b>13456</b>	LAVINIA LEWIS
195	<b>11337</b>	LIAM BOYLE
196	<b>11339</b>	LIAM BOYLE
197	<b>9278</b>	LUCIA I LUPSE
198	<b>9281</b>	LUCIA I LUPSE
199	<b>4276</b>	MARC JOSEPH CAHALAN
200	<b>13490</b>	MARK SOPER
201	<b>11517</b>	MARTIN MIOLINA
202	<b>703</b>	MARTIN SNOW
203	<b>5376</b>	MARTIN VINCENT FERRARO
204	<b>5384</b>	MARTIN VINCENT FERRARO
205	<b>6365</b>	MARY ANN BROWN
206	<b>5690</b>	MARY ELLEN WINKELMAN
207	<b>5972</b>	MARY GRACE BATTISTA
208	<b>5975</b>	MARY GRACE BATTISTA
209	<b>11030</b>	MATT WOHLLEBER
210	<b>158</b>	MATTHEW L. LOVETT
211	<b>12041</b>	MAURICIO MIRANDA
212	<b>11128</b>	MELCHER, STEPHEN ERIC
213	<b>11366</b>	MELISSA J. DOOCY
214	<b>11367</b>	MELISSA J. DOOCY
215	<b>13509</b>	MELISSA J. DOOCY
216	<b>4149</b>	MICHAEL A. MARQUEZ
217	<b>11435</b>	MICHAEL BERTELLE
218	<b>4913</b>	MICHAEL M. LESKA
219	<b>4914</b>	MICHAEL M. LESKA
220	<b>9048</b>	MICHELLE G. TOMBASCO
221	<b>9052</b>	MICHELLE G. TOMBASCO
222	<b>5267</b>	MING WEI CHEUNG
223	<b>13657</b>	NATALIE TENDALL
224	<b>4933</b>	NEIL J. ASLIN
225	<b>5203</b>	NEIL J. ASLIN
226	<b>5212</b>	NEIL J. ASLIN
227	<b>1390</b>	NICHOLAS D. WITTENBURG
228	<b>1391</b>	NICHOLAS D. WITTENBURG
229	<b>12075</b>	NICHOLAS WILLIAM BLASBERG
230	<b>5693</b>	NICOLE DONNAHUE
231	<b>4865</b>	NOLAN J. SCHIFF
232	<b>8955</b>	NOREEN GALLERY
233	<b>3764</b>	PAIGE C. MILLER
234	<b>3765</b>	PAIGE C. MILLER
235	<b>4219</b>	PATRICIA DIMARIA

<sup>1</sup>This list does not include any claims that were previously disallowed by the Court.

**EXHIBIT A - List of Disallowed Employee Claims<sup>1</sup>**

	<b>Claim No.</b>	<b>Creditor</b>
236	<b>4228</b>	PATRICIA DIMARIA
237	<b>11130</b>	PATRICIA K. CAMPBELL
238	<b>11250</b>	PATRICIA K. CAMPBELL
239	<b>11253</b>	PATRICIA K. CAMPBELL
240	<b>13494</b>	PATRICIA K. CAMPBELL
241	<b>9263</b>	PATRICK B. MULCAHY
242	<b>9264</b>	PATRICK B. MULCAHY
243	<b>4897</b>	PAUL J. MORAN
244	<b>5799</b>	PAUL J. MORAN
245	<b>6392</b>	PAUL K. FORCHIONE
246	<b>6397</b>	PAUL K. FORCHIONE
247	<b>13521</b>	PAUL MORAN
248	<b>3905</b>	PAUL NATHAN GILKERSON
249	<b>4004</b>	PETER A. THOMAS
250	<b>12754</b>	PHILIP A. MOSS
251	<b>5241</b>	RANDY CARTWRIGHT
252	<b>5246</b>	RANDY CARTWRIGHT
253	<b>3477</b>	REBECCA J. WING
254	<b>13190</b>	REBECCA J. WING
255	<b>4339</b>	REBECCA J. WING 401K
256	<b>287</b>	RICARDO MENJIVAR
257	<b>287</b>	RICARDO MENJIVAR
258	<b>9819</b>	RICHARD C. SCHACK
259	<b>3767</b>	RICHARD CLARKE
260	<b>6684</b>	RICHARD F. CHAPPETTO
261	<b>6419</b>	RITA E. TANDARIC
262	<b>11097</b>	ROBERT C. PARK
263	<b>13639</b>	ROBERT KOPP
264	<b>5755</b>	ROBERT MULCAHY
265	<b>5758</b>	ROBERT MULCAHY
266	<b>9836</b>	ROBERT PROSZKOWICZ (A.)
267	<b>2502</b>	ROBIN ROSENBERG
268	<b>4588</b>	RONALD J. KOTULAK
269	<b>13499</b>	RONALD J. KOTULAK
270	<b>12439</b>	RONALD M. RABUNE
271	<b>10731</b>	RONALD RUE
272	<b>13851</b>	RUSS WASENDORF JR.
273	<b>12871</b>	RUSSELL E. TANNER
274	<b>162</b>	RUSSELL TANNER
275	<b>4884</b>	RYAN HANNAM
276	<b>3907</b>	RYAN SCHIFF
277	<b>3909</b>	RYAN SCHIFF
278	<b>6384</b>	RYAN SCOTT PETERSON
279	<b>6385</b>	RYAN SCOTT PETERSON
280	<b>4397</b>	SAMANTHA SCHMIESING
281	<b>4399</b>	SAMANTHA SCHMIESING
282	<b>1410</b>	SARA KIES

<sup>1</sup>This list does not include any claims that were previously disallowed by the Court.



**EXHIBIT A - List of Disallowed Employee Claims<sup>1</sup>**

	<b>Claim No.</b>	<b>Creditor</b>
283	<b>1411</b>	SARA KIES
284	<b>13501</b>	SARAH K. JUDISCH
285	<b>5789</b>	SARAH KATHERINE JUDISCH
286	<b>6360</b>	SARAH KATHERINE JUDISCH
287	<b>13529</b>	SCOTT ADKINS
288	<b>12167</b>	SCOTT RING
289	<b>13495</b>	SCOTT RING
290	<b>9713</b>	SEAN R. LUSK
291	<b>1305</b>	SHANNON MARSH
292	<b>7710</b>	SHAOYONG CHEN
293	<b>7727</b>	SHAOYONG CHEN
294	<b>13832</b>	SHAUN LEISTIKOW
295	<b>13833</b>	SHAUN LEISTIKOW
296	<b>12343</b>	SKYLAR DORR
297	<b>13508</b>	SKYLAR DORR
298	<b>13497</b>	STANLEY PREUSSER
299	<b>13610</b>	STANLEY PREUSSER
300	<b>2312</b>	STEPHANIE CONRAD
301	<b>11128</b>	STEPHEN ERIC MELCHER
302	<b>11440</b>	STEPHEN JOHN LUONGO
303	<b>4598</b>	STEVE PIETKIEWICZ
304	<b>13516</b>	STEVE PIETKIEWICZ
305	<b>367</b>	STEVEN J. ZAKRZEWSKI
306	<b>7798</b>	STEVEN M. SHEPHERD
307	<b>9578</b>	STEVEN MAXFIELD
308	<b>758</b>	SUSAN ELAINE COURTRIGHT
309	<b>3900</b>	SUSAN O'MEARA
310	<b>4011</b>	SUSAN O'MEARA
311	<b>9707</b>	SUSANNE N BARTECKI
312	<b>9591</b>	SUSANNE N. BARTECKI
313	<b>9730</b>	TARA J. KANE
314	<b>4379</b>	TERENCE NELLIGAN
315	<b>6363</b>	TERENCE NELLIGAN
316	<b>13489</b>	TERESA GAERTNIER
317	<b>13507</b>	TERESA GAERTNIER
318	<b>11047</b>	TERRY NARLOCH
319	<b>11060</b>	TERRY NARLOCH
320	<b>13519</b>	TERRY NARLOCH
321	<b>10912</b>	THE ESTATE OF MICHAEL DALY
322	<b>9576</b>	THERESE J. HOGAN
323	<b>10989</b>	THERESE J. HOGAN
324	<b>7652</b>	THOMAS J. SOUMBENIOTIS
325	<b>7653</b>	THOMAS J. SOUMBENIOTIS
326	<b>3998</b>	THOMAS S. GARLAND
327	<b>4122</b>	TIFFANY TATE
328	<b>4125</b>	TIFFANY TATE
329	<b>6301</b>	TIM HANNAGAN

<sup>1</sup>This list does not include any claims that were previously disallowed by the Court.

	<b>Claim No.</b>	<b>Creditor</b>
330	<b>81</b>	TIMOTHY SCOTT DAVENPORT
331	<b>11405</b>	TIMOTHY W. ALLEN
332	<b>6648</b>	TOBIAS C. KOEHN
333	<b>6646</b>	TOBIAS KOEHN
334	<b>2492</b>	TUCKER A. MCKEEVER
335	<b>3979</b>	VAL SIGAEV
336	<b>13988</b>	VAL SIGAEV
337	<b>6352</b>	VINCENT GELLERA
338	<b>11679</b>	WASENDORF 401K PLAN
339	<b>4386</b>	WENDY ANN SWARENS
340	<b>13089</b>	WILLIAM G. O'DONNELL
341	<b>13096</b>	WILLIAM G. O'DONNELL
342	<b>3815</b>	WILLIAM L. KRICKL
343	<b>10755</b>	WILLIAM N. GORDON

<sup>1</sup>This list does not include any claims that were previously disallowed by the Court.  
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# EXHIBIT 2

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re: ) Chapter 7  
)  
PEREGRINE FINANCIAL GROUP, INC., ) Case No. 12-27488  
)  
) Honorable Judge Carol A. Doyle  
Debtor. )  
)

**NOTICE OF CLASS CLAIM SETTLEMENT AND FAIRNESS HEARING**

**TO: The former employees of Peregrine Financial Group, Inc. d/b/a PFG (“Debtor”) who are members of the Court-defined Class.**

On July 10, 2012 (“Petition Date”), the Debtor filed a voluntary petition for relief in the United States Bankruptcy Court for the Northern District of Illinois (“Bankruptcy Court”) under chapter 7 of title 11 of the United States Code (“Bankruptcy Code”). The filing of the Debtor’s chapter 7 petition commenced a bankruptcy case pending before the Bankruptcy Court and styled *In re Peregrine Financial Group, Inc.*, Case No. 12-27488 (“Case”).

On July 11, 2012, the Office of the United States Trustee appointed Ira Bodenstein, not personally, but as the chapter 7 trustee (“Trustee”) for the Debtor’s bankruptcy estate (“Estate”).

Ronald Kotulak (“Class Representative”) is a former employee of the Debtor and filed a class proof of claim (“Class Claim”) in the Case on behalf of himself and the Class (defined below).

The parties to the Class Claim have reached a proposed settlement (“Settlement”) of the Class Claim under which, among other things, benefits would be provided to Class Members, the Class Representative and Class Counsel (each defined below).

The Bankruptcy Court has authorized the dissemination of this Notice. You should review this Notice carefully as your rights may be affected by the proposed Settlement.

**I. SUMMARY OF THE CLASS**

The class members (referred to collectively as “Class Members” and individually as a “Class Member”) are the former employees of the Debtor who either (1) allege that they were terminated without cause as part of, or as the result of, a mass layoff ordered by the Debtor on or about July 9, 2012, and within thirty (30) days of that date, and thereafter, and who were not provided 60 days advance written notice of their terminations by the Debtor in violation of the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101 *et seq.* (“WARN Act”), and/or (2) did not receive their final paychecks in alleged violation of the Illinois Wage Payment and Collection Act, (“Illinois Wage Act”) and/or the Iowa Wage Payment Collection Act (“Iowa

Wage Act,” and together with the Illinois Wage Act, the “Wage Acts”); and (3) who have not filed a timely request to opt-out of the class (collectively, the “Class”).

## **II. BACKGROUND OF THE CASE**

Prior to the Petition Date, the Debtor employed certain employees, including the Class Members, in its business operations. The Class Representative asserts that on or about July 9, 2012, the Debtor terminated certain of its employees, including the Class Representative and each Class Member.

The Trustee represents the Estate and asserts that all of the terminations made were in compliance with all applicable laws, including the WARN Act.

On or about July 11, 2012, the Class Representative filed a class-action adversary complaint in the Bankruptcy Court commencing an adversary proceeding (“WARN Action”) against the Debtor, on behalf of himself and the Class Members, alleging that the Debtor violated the WARN Act, by ordering a mass layoff on or about July 9, 2012 without providing sixty (60) days advance notice thereof.

On October 1, 2012, the Class Representative voluntarily dismissed the WARN Action and filed the Class Claim against the Estate. The Class Claim contains allegations that the Debtor violated the WARN Act by failing to give its employees 60 days’ notice prior to their terminations. The Class Claim also alleges that the Debtor violated the Wage Acts.

On February 20, 2013, the Bankruptcy Court entered an Order certifying the Class. In addition, the Bankruptcy Court appointed Outten & Golden LLP and Fisher Cohen Waldman Shapiro LLP as class counsel (collectively, “Class Counsel”) and Ronald Kotulak as the Class Representative.

The parties have identified all persons that, to the best of the parties’ knowledge, information and belief, all currently fall within the Class definition and who are eligible to share in the Settlement Fund (as hereinafter defined) created under the Settlement.

Class Counsel has conducted informal discovery, including the examination of documents and the interview of members of the Class. Class Counsel has analyzed the applicable law and weighed the likelihood of success and recovery from the Estate, which does not have sufficient assets to pay all of its creditors in full. To avoid extensive, costly, and uncertain litigation over these issues, and the further dissipation of the Estate’s resources, the parties have engaged in good faith, arms-length negotiations regarding a possible consensual resolution of the Class Claim.

At a hearing held on October \_\_\_, 2019 the Bankruptcy Court (i) preliminarily approved the Settlement, (ii) approved this Notice, and (iii) established a date for a final hearing (“Fairness Hearing”) for approval of the Settlement.

### **III. THE PROPOSED SETTLEMENT**

The proposed Settlement is set out in the Settlement and Release Agreement (“Settlement Agreement”). The following description of the proposed Settlement is only a summary and is qualified in its entirety by the terms set forth in the Settlement Agreement, and any inconsistency shall be governed by the terms of the Settlement Agreement.<sup>1</sup>

Subject to Court approval, the material terms of the Settlement Agreement are as follows:

a. The Allowance and Payment of the Class Claim: The Class shall be awarded an allowed unsecured priority claim pursuant to 11 U.S.C. §§ 507(a)(4) and (5) in the amount of \$1,850,000.00 against the Estate (i.e., the Allowed Class Claim). The Allowed Class Claim shall be satisfied in full by a payment from the Estate in the amount of \$1,850,000.00 (“Settlement Payment”) from which the Class Representative Service Payment and Class Counsel’ Fees and Class Counsel’s Expenses (each defined below) shall be paid, to the extent approved by the Court. All distributions made by the Trustee on account of the Allowed Class Claim shall be referred to herein as the “Class Claim Distributions” and the Settlement Payment to be distributed pursuant to this Agreement shall be referred to herein as the “Settlement Fund.” For the avoidance of any doubt, the Estate shall be responsible for the payment of the employer’s share of applicable taxes and those administrative costs of the settlement set forth in Section 6(a) of the Agreement (i.e., the costs associated with disbursement of the Settlement Fund payments), which are the only payments of the Estate under the Settlement that shall not be paid from the Settlement Fund on account of the Allowed Class Claim.

b. Distribution of Settlement Fund: The Class Claim Distributions, after being first reduced by (i) the Class Representative Service Payment, (ii) Class Counsel’s Fees, and (iii) Class Counsel’s Expenses, shall be allocated to each Class Member on a pro rata basis based on the relationship that such Class Member’s potential damages under the WARN Act and the Wage Acts bears to the aggregate potential damages of all Class Members under the WARN Act and the Wage Acts, and shall be made directly to Class Members (“Class Members’ Pro Rata Share”).

c. Disallowance of Class Members’ Claims. The Settlement Order will provide that all other proofs of claim filed in the Case by Class Members for any all claims, asserted or assertible, arising out of or related to the allegations asserted in the Class Claim, including the termination of their former employment with the Estate by any of the Released Parties (defined below) are disallowed, including, but not limited to the proofs of claim identified in Exhibit A to the Settlement Agreement.

d. Released Claims of Class Members: Upon the Effective Date, the Class Members, for and on behalf of themselves, and their respective predecessors, successors, assigns, heirs, personal representative and estates grant the releases set for in Section V below.

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<sup>1</sup> You may request a copy of the Settlement Agreement from Class Counsel. Class Counsel’s contact information is provided on the last page of this notice.

e. Residual Funds: In the event that there are any Settlement Funds remaining for any reason, including Settlement checks which are not deposited, endorsed or negotiated, within ninety (90) days of their issuance, such residual funds shall be held for another sixty (60) days ("Residual Fund Waiting Period") to be used to make distributions to any individual who is subsequently determined to have been eligible to receive a distribution as a Class Member but was not on the Class Member distribution list. Undistributed funds remaining after the Residual Fund Waiting Period, shall become property of the Estate, free and clear of any and all claims and interests of the Class Members, but subject to further redistribution in accordance with the Bankruptcy Code.

#### **IV. CLASS COUNSEL FEES AND CLASS REPRESENTATIVE PAYMENT**

The Class Representative will be entitled to a one-time payment of \$15,000, payable from the Settlement Fund as compensation for his services to the Class, in addition to his pro rata share of the Settlement Fund ("Class Representative Service Payment").

Class Counsel will be entitled to a payment in the amount of one-third of the Settlement Amount ("Class Counsel's Fees"), net of litigation expenses (including the costs associated with the production and mailing of the class notice to the Class) not to exceed \$15,000 ("Class Counsel's Expenses," and together with Class Counsel Fees, the "Class Counsel Fees & Expenses") and the Class Representative's Service Payment.

#### **V. RELEASE OF ALL CLAIMS RELATED TO YOUR TERMINATION AND EFFECT OF APPROVAL OF SETTLEMENT AGREEMENT**

Upon final approval by the Court, the Settlement will result in the dismissal of the Class litigation on the merits and with prejudice to all Class Members. Except for the rights arising out of, provided for, or reserved in the Settlement Agreement, upon the Effective Date, the Class Members, for and on behalf of themselves, and their respective predecessors, successors, assigns, heirs, personal representative and estates (collectively, the "Releasing Parties"), do hereby fully and forever release and discharge (i) the Trustee, the Estate, the Debtor, Best Direct Securities, LLC, Peregrine Asset Management, Inc., Peregrine Financial Group Canada, Inc., Peregrine Capital Advisor, Inc., CHI FX, Inc., BestDirect Australia, Pty Ltd., PFG Depository, Ltd., Best Kids, LLC, Peregrine Diversified Investment Services Corp. and Peregrine Charities, Inc. and (ii) for each of the persons and entities listed in (i), their current and former shareholders, officers, directors, employees, accountants, attorneys, representatives and other agents, and all of their respective predecessors, successors and assigns (collectively, the "Released Parties"), of and from any and all claims, demands, debts, liabilities, obligations, liens, actions and causes of action, costs, expenses, attorneys' fees and damages of whatever kind or nature, at law, in equity and otherwise, whether known or unknown, anticipated, suspected or disclosed, which the Releasing Parties may now have or hereafter may have against the Released Parties, which relate to or are based on the WARN Act, the Wage Acts, or back- or severance pay or benefits under any federal, state or local law or regulation arising out of the termination of the Class Members' employment by any Released Party, including, but not limited to: (a) all claims asserted or that could have been asserted as part of the WARN Action or Class Claim filed on behalf of the Class Members; (b) all individual WARN Act

claims; (c) all individual Wage Act claims; (d) any other claims for wages, salaries, bonuses, expense reimbursements, back pay, severance pay or other benefits based on or arising out of any contract or any federal, state or local statute, ordinance or regulation; and (e) rights, if any, under the Debtor's 401(k) plan or other benefit plans of any type whatsoever (collectively, the "Released Claims"); provided, however, any claims for continuation of health or medical coverage, at the Class Member's expense, or at the expense of a beneficiary or dependent of a Class Member, to the extent allegedly required by the relevant provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 are not Released Claims.

#### **VI. CLASS COUNSEL'S RECOMMENDATION**

Class Counsel recommends the Settlement, believing that it is fair, reasonable and adequate to the Class.

#### **VII. FINAL FAIRNESS HEARING**

The proposed Settlement will be presented to the Bankruptcy Court for final approval at the Fairness Hearing to be held before the Honorable Carol A. Doyle on \_\_\_\_\_, **2019 at \_\_\_\_ .m. Central Time**, in the Courtroom 742 of the United States Bankruptcy Court for the Northern District of Illinois, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, IL 60604.

The Bankruptcy Court will, at that time, decide whether the Settlement is fair, reasonable and adequate to the Class Members and whether the Class Counsel Fees & Expenses and the Class Representative Service Payment should be approved.

As explained below, you have the right to object to the proposed Settlement, including the Class Counsel Fees & Expenses and the Class Representative Service Payment and to appear in person at the Fairness Hearing to be heard, or to engage counsel to do so on your behalf.

#### **VIII. HOW TO OBJECT**

If you are satisfied with the proposed Settlement, you need to do nothing and you will receive a payment, net of Class Counsel Fees & Expenses and the Class Representative Service Payment, in accordance with the terms of the Settlement.

If, on the other hand, you believe that the proposed Settlement is unfair or inadequate or that Class Counsel Fees & Expenses and the Class Representative Service Payment should not be approved, you may object to the Settlement by mailing a written statement, as described below, bearing the caption of this Case to the Clerk of the United States Bankruptcy Court for the Northern District of Illinois, 219 S. Dearborn, Chicago, IL 60604, and by sending copies of that statement to (1) Fox Rothschild LLP, 321 N. Clark Street, Suite 1600, Chicago, IL 60654, Attn: Ira Bodenstein and Allen J. Guon; and (2) Outten & Golden LLP, 685 Third Avenue, 25th Floor, New York, New York 10017, Attn: René S. Roupinian.

**Objections must be filed with the Bankruptcy Court and served no later than \_\_\_\_\_, 2019**, and must include your name, address, and telephone number



together with a detailed statement of the basis for your objection and whether you wish to be heard personally or by counsel at the final hearing at which the parties will be requesting binding Court approval of the Settlement and the award of the Class Counsel Fees & Expenses and the Class Representative Service Payment.

### **IX. OTHER INFORMATION**

Any questions from Class Members concerning this Notice, the Class Claim or requests for a complete copy of the Settlement Agreement should be directed to René S. Roupinian, Esq., at Outten & Golden LLP, 685 Third Avenue, 25th Floor, New York, New York 10017, by telephone at (212) 245-1000, or by fax to her attention at (646) 509-2070, or by email to [RSR@outtengolden.com](mailto:RSR@outtengolden.com).

While the Court has approved the sending of this Notice, that does not indicate that the Court has any opinion as to the respective claims or defenses asserted by the parties in the Class Action. Please do not write to or call the Court concerning this matter.

Date of Notice: November \_\_\_\_, 2019

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# EXHIBIT 3

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re: ) Chapter 7  
)  
PEREGRINE FINANCIAL GROUP, INC., ) Case No. 12-27488  
)  
) Honorable Judge Carol A. Doyle  
Debtor. )  
)

**ORDER PRELIMINARILY APPROVING SETTLEMENT RESOLVING WARN ACT CLAIMS AND CLAIMS UNDER THE ILLINOIS WAGE PAYMENT AND COLLECTION ACT AND THE IOWA WAGE PAYMENT COLLECTION ACT; (II) APPROVING THE FORM AND MANNER OF NOTICE TO CLASS MEMBERS OF THE PROPOSED SETTLEMENT; AND (III) SCHEDULING A FINAL FAIRNESS HEARING FOR APPROVAL OF THE SETTLEMENT UNDER BANK. R. 9019 AND 7023**

Upon consideration of the joint motion (the “Motion” and all capitalized terms not defined herein shall have the meanings ascribed to such terms in the Motion) of Ira Bodenstein, not personally, but as chapter 7 trustee (“Trustee”) for the estate of Peregrine Financial Group, Inc. d/b/a PFG (“Estate”), on the one hand, and Ronald Kotulak, on behalf of himself and the certified Class, for entry of an order: (i) preliminarily approving the Settlement resolving WARN Act claims and claims under the Illinois Wage Act and the Iowa Wage Act; (ii) approving the form and manner of notice to Class Members of the proposed Settlement; and (iii) scheduling a final Fairness Hearing for approval of the Settlement under Fed R. Bankr. P. 9019 and 7023; due and proper notice of the Motion having been provided; the Court being duly advised in the premises; and the Court having found that the preliminary relief sought by the Parties in the Motion is warranted; it is hereby **ORDERED** that:

1. The Settlement as reflected in the Settlement and Release Agreement attached to the Motion as Exhibit 1, and incorporated by this reference, is preliminarily approved.

2. The contents of the Notice of Class Claim Settlement and Fairness Hearing (“Class Notice”) attached to the Motion as Exhibit 2 meets the requirements of Fed. R. Civ. P. 23(3)(e)(B), and such Class Notice shall be mailed by first class mail, postage prepaid, by Class Counsel to each Class Member at their last known address within three (3) days of entry of this Order; and that Class Counsel shall promptly file proof of such service with the Court.

3. The Trustee shall serve a notice of the Fairness Hearing on all parties requesting notice in this Case through the CM/ECF system or by email.

4. The Bankruptcy Court shall conduct a Fairness Hearing for final consideration and approval of the Settlement on \_\_\_\_\_, 2019 at \_\_:\_\_ \_\_.m.

5. Any objections or other responses to the Motion must be filed with the Court and served on counsel for the Trustee and Class Counsel no later than \_\_\_\_\_, 2019, which is seven (7) days before the Fairness Hearing.

6. The Trustee and his agents are hereby authorized and empowered to take such steps and perform such acts as may be necessary to implement and effectuate the terms of this Order.

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Honorable Carol A. Doyle  
United States Bankruptcy Judge

# EXHIBIT 4

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re: ) Chapter 7  
)  
PEREGRINE FINANCIAL GROUP, INC., ) Case No. 12-27488  
)  
) Honorable Judge Carol A. Doyle  
Debtor. )  
)

**FINAL ORDER (A) APPROVING THE SETTLEMENT  
UNDER FED. BANKR. R. 7023 AND FED. BANKR. R. 9019;  
AND (B) APPROVING CLASS COUNSEL’S FEES AND EXPENSES**

Upon consideration of the continued joint motion (the “Motion” and all capitalized terms not defined herein shall have the meanings ascribed to such terms in the Motion) of Ira Bodenstein, not personally, but as chapter 7 trustee (“Trustee”) for the estate of Peregrine Financial Group, Inc. d/b/a PFG (“Estate”), on the one hand, and Ronald Kotulak, on behalf of himself and the certified Class, for entry of an order: (i) preliminarily approving the Settlement resolving Warn Act claims and claims under the Illinois Wage Act and the Iowa Wage Act; (ii) approving the form and manner of notice to Class Members of the proposed Settlement; and (iii) scheduling a final Fairness Hearing for approval of the Settlement under Fed R. Bankr. P. 9019 and 7023; the Court having preliminarily approved the Settlement and Class Notice by Order dated \_\_\_\_\_, 2019 [Dkt. No. \_\_\_\_] (“Preliminary Order”); the Court having reviewed the Motion and being fully advised in the premises; the Court finding that: (a) the Court has jurisdiction over this matter pursuant to 28 USC §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); the Court having reviewed the terms of the Settlement and Release Agreement (“Settlement Agreement”); and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted

herein; the Court having determined that the relief sought in the Motion is in the best interest of the Estate; and after due deliberations and sufficient cause appearing therefore, it is hereby Ordered that:

1. The Motion is granted in its entirety.
2. All objections to the Motion or the relief requested in the Motion, if any, that have not been withdrawn, waived or settled, and all reservation of rights in such objections, if any, shall be and hereby are, overruled in all respects on the merits and denied.
3. The terms of the Settlement as set forth in Motion and the Settlement Agreement, and incorporated herein by this reference, is approved pursuant to 11 U.S.C. § 363(b) and Fed. R. Bankr. P. and 9019(a).
4. The Settlement Agreement is approved in all respects as being fair, reasonable, adequate to the Class Members for the following reasons:
  - a. If the Settlement is not approved, litigation of this matter will likely be complicated, protracted and expensive, thereby unnecessarily depleting Estate and delaying and diminishing distributions to creditors, including Class Members.
  - b. The Class Representative supports the Settlement and Class Counsel anticipates that there will be a minimal number of objections given that the size and terms of the Settlement are favorable to Class Members.
  - c. The Settlement was reached after the essential facts had been thoroughly investigated by Class Counsel through informal discovery and settlement discussions between counsel for the Parties.
  - d. The risks of the Class Representative being unable to establish liability and damages, and or being unable to collect against a bankrupt debtor weighed in favor of settlement at this juncture of the adversary proceeding.
  - e. The Settlement is well within the range of reasonableness given the uncertainty of the Class Representatives ability to establish liability against the Estate.

- f. The Settlement Agreement was negotiated at arm's length by experienced counsel and in good faith, is fair, equitable, and in the best interests of the Parties.
5. The Trustee is hereby authorized to enter into the Settlement Agreement and implement all actions required of them therein.
6. On the Effective Date, the terms of the Settlement Agreement shall become binding upon the Parties and the Class Members.
7. Class Counsel is awarded fees of one-third of the Settlement Amount after deducting actual expenses not to exceed \$15,000.00 and the Class Representative's Service Payment in the amount of Fifteen Thousand Dollars (\$15,000). Class Counsel's fees and expenses and the Class Representative's Service Payment shall be paid from the Settlement Fund.
8. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052. To the extent that any of the findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the conclusions of law constitute findings of fact, they are adopted as such.
9. The entry of this Order is without prejudice to the relief granted in the Preliminary Order and entry of this Order shall not serve to extend or stay the time of filing any appeal regarding any of the relief granted in the Preliminary Order.
10. The Trustee, by and through its agents, is hereby authorized and empowered to take such steps and perform such acts as maybe necessary to implement and effectuate the terms of this Order and the Settlement Agreement.
11. This Court shall retain jurisdiction over all matters arising from or related to the interpretation and/or implementation of this Order.
12. This Order is effective immediately upon entry.



DATED: \_\_\_\_\_, 2019

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HONORABLE CAROL A. DOYLE  
United States Bankruptcy Judge

103118322.v3

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
Eastern Division

In Re: ) BK No.: 12-27488  
)  
PEREGRINE FINANCIAL GROUP, INC. ) Chapter: 7  
)  
) Honorable Carol A. Doyle  
)  
)  
Debtor(s) )

**ORDER PRELIMINARILY APPROVING SETTLEMENT RESOLVING WARN ACT CLAIMS AND CLAIMS UNDER THE ILLINOIS WAGE PAYMENT AND COLLECTION ACT AND THE IOWA WAGE PAYMENT COLLECTION ACT; (II) APPROVING THE FORM AND MANNER OF NOTICE TO CLASS MEMBERS OF THE PROPOSED SETTLEMENT; AND (III) SCHEDULING A FINAL FAIRNESS HEARING FOR APPROVAL OF THE SETTLEMENT UNDER BANK. R. 9019 AND 7023**

Upon consideration of the joint motion (the “Motion” and all capitalized terms not defined herein shall have the meanings ascribed to such terms in the Motion) of Ira Bodenstein, not personally, but as chapter 7 trustee (“Trustee”) for the estate of Peregrine Financial Group, Inc. d/b/a PFG (“Estate”), on the one hand, and Ronald Kotulak, on behalf of himself and the certified Class, for entry of an order: (i) preliminarily approving the Settlement resolving WARN Act claims and claims under the Illinois Wage Act and the Iowa Wage Act; (ii) approving the form and manner of notice to Class Members of the proposed Settlement; and (iii) scheduling a final Fairness Hearing for approval of the Settlement under Fed R. Bankr. P. 9019 and 7023; due and proper notice of the Motion having been provided; the Court being duly advised in the premises; and the Court having found that the preliminary relief sought by the Parties in the Motion is warranted; it is hereby ORDERED that:

1. The Settlement as reflected in the Settlement and Release Agreement attached to the Motion as Exhibit 1, and incorporated by this reference, is preliminarily approved.
2. The contents of the Notice of Class Claim Settlement and Fairness Hearing (“Class Notice”) attached to the Motion as Exhibit 2 meets the requirements of Fed. R. Civ. P. 23(3)(e)(B), and such Class Notice shall be mailed by first class mail, postage prepaid, by Class Counsel to each Class Member at their last known address within three (3) days of entry of this Order; and that Class Counsel shall promptly file proof of such service with the Court.
3. The Trustee shall serve a notice of the Fairness Hearing on all parties requesting notice in this Case through the CM/ECF system or by email.
4. The Bankruptcy Court shall conduct a Fairness Hearing for final consideration and approval of the Settlement on \_\_\_\_\_, 2019 at \_\_: \_\_.m.
5. Any objections or other responses to the Motion must be filed with the Court and served on counsel for the Trustee and Class Counsel no later than \_\_\_\_\_, 2019, which is seven (7) days before the Fairness Hearing.
6. The Trustee and his agents are hereby authorized and empowered to take such steps and perform such acts as may be necessary to implement and effectuate the terms of this Order.

Enter:

Honorable Carol A. Doyle  
United States Bankruptcy Judge

Dated:

**Prepared by:**

Allen J. Guon  
Fox Rothschild LLP  
321 N. Clark Street, Suite 1600  
Chicago, IL 60654  
(312) 517-9200