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

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

**DECLARATION OF RENÉ S. ROUPINIAN IN SUPPPORT OF JOINT MOTION FOR (A) ENTRY OF A FINAL ORDER APPROVING THE SETTLEMENT UNDER FED. BANKR. R. 7023 AND FED. BANKR. R. 9019, AND (B) APPROVING THE CLASS REPRESENTATIVE'S SERVICE PAYMENT AND CLASS COUNSEL'S FEES AND EXPENSES**

René S. Roupinian declares the truth of the following under penalty of perjury:

1. I am a partner at Outten & Golden LLP and Class Counsel in the Class Proof of Claim No. 1235 which was certified on February 20, 2013 [Dkt. No. 432].

2. 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].

3. Beginning on or about March 2018, Class Counsel and the Trustee began good-faith arms-length settlement discussions, which ultimately culminated in a proposed settlement subject to Court approval.

4. On November 6, 2019, the Court held a hearing and granted preliminary approval of the proposed settlement, approving the form and manner of the notice of the settlement to the Class ("the Preliminary Approval Order") [Dkt. No 5486].

5. Class Counsel mailed Notice of the Class Claim Settlement and Fairness Hearing ("Class Notice") on November 8, 2019 to the 269 class members and filed an *Affidavit of Mailing of Notice of Class Claim Settlement and Fairness Hearing* on November 12, 2019 [Dkt. No. 5493].

6. Pursuant to the Court's Preliminary Approval Order, anyone wishing to respond or object to the proposed settlement had until December 12, 2019 to do so by filing and serving the response or objection on the Trustee and Class Counsel by the December 12, 2019 deadline [Dkt. No. 5493 at par. 5].

7. To date, no objections or responses have been received by Class Counsel.

8. Class Counsel requests that the Court grant final approval of the settlement, finding it fair, reasonable and adequate and in the best interest of 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 depleting the Estate and delaying and diminishing distribution to creditors, including the Class Members. The Class Members have already waited seven (7) years and litigation would realistically delay a resolution for several more years, not including any appeals. Should the settlement be approved, the Class could receive a distribution within 30 days.

b. The Class Representative supports the settlement and no member of the class has objected to the settlement or filed a response.

c. The Settlement was reached after the essential facts had been thoroughly investigated by Class Counsel through informal discovery, including document production. The parties engaged in numerous settlement discussions regarding the merits of the claim, the WARN Act defenses, and exchanged payroll data and damages analysis. The parties had been in discussions regarding the Class Claim since its filing. Those discussions became more focused in 2018 when it became clear the Estate would have funds that could flow to priority creditors. The parties engaged in several months of informal discovery and more than one year of settlement negotiations.

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. Had the parties not reached a settlement, the Class Representative anticipated the need to overcome several defenses asserted by the Trustee.

e. The settlement is well within the range of reasonableness given the uncertainty of the Class Representative's ability to establish liability against the Estate. The settlement provides for 65% of the Class' maximum priority claim.

f. The terms of the settlement were negotiated in good-faith and at arm's length by experienced counsel, and is fair, equitable and in the best interests of the parties. Class Counsel has litigated more than 150 WARN class actions, a majority of which were initiated and resolved in bankruptcy court.

9. The Court should find that the $15,000 service payment to Class Representative is fair and reasonable for the following reasons:

a. The Class Representative filed a federal lawsuit that is searchable on the internet and may become known to prospective employers when evaluating a candidate. The Class Representative retained Outten & Golden LLP to commence a class claim for WARN damages on behalf of himself and his former colleagues at a point when he was terminated from his employment. He agreed to initiate a class action at a point when his future was uncertain and employment prospects dimmed by suing his former employer.

b. In addition to incurring the risks inherent in serving as a sole named plaintiff, he has assisted Class Counsel in pursuing the Class Claim for more than seven (7) years. He provided information to during several interviews regarding the relevant 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, class certification and damages' analysis. He also provided Class Counsel with relevant documents in his possession and assisted counsel in investigating the wage act claims. Courts recognize the important factual knowledge that named plaintiffs bring to employment class actions, including information about an employer's polices and practices of compensation.

c. The amount requested is within the range approved by other courts in the Seventh Circuit. *Chesemore 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).

d. The amount requested is also reasonable given awards approved by bankruptcy courts in other WARN Act class actions. *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).

e. Neither the Trustee, nor any member of the Class objects to the requested service payment to the Class Representative.

10. Class Counsel submits that attorneys' fees of one third of the common fund is reasonable for the following reasons:

a. As part of the settlement, Class Counsel is requesting one-third of the common fund, net of expenses and the Class Representative's service payment.

b. 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.

c. Parties to a class action may negotiate attorneys' fees based on a percentage of the entire common fund.

d. Class Counsel undertook the Class Claim on a pure contingency fee against a bankrupt entity, with no assurance of recovery for its time, or reimbursement of its out of pocket expenses. Class Counsel has received no compensation over the course of this litigation. Both liability and damages were contested by the Trustee and there was no guarantee of class certification, a favorable judgment or collectability of an award from the Estate. Class Counsel was successful in obtaining certification and able to negotiate a favorable resolution and recovery. 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, nor reimbursement of its expenses. Thus, the substantial risk of litigation justifies the fee requested.

e. WARN cases by their nature are complicated, fact-intensive 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.

f. 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).

g. 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 150 WARN Act class actions, many of which were litigated in bankruptcy court.

h. 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.

i. 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.

j. 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.

k. The Class Representative supports the settlement and neither the Trustee, nor any member of the Class objected to the requested award of attorneys' fees to Class Counsel.

11. In view of the foregoing and the Joint Motion and exhibits thereto, I ask that the Court grant final approval of the settlement, including the service payment to the Class Representative and Class Counsel's attorneys' fees and litigation expenses.

Dated: December 18, 2019

/s/ René S. Roupinian
René S. Roupinian

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

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

## CERTIFICATE OF SERVICE

I, Bonnie Schwab, under penalties of perjury, certify the following as true and correct: I am not a party to this action and I am over 18 years of age. I further certify that true and correct copies of the following documents were served via e-mail and via first class mail on the 18th day of December 2019 on the parties in the service list below:

- *Declaration of Rene S. Roupinian in Support of Joint Motion for (A) Entry of a Final Order Approving the Settlement Under Fed. Bankr. R. 7023 and Fed. Bankr. R. 9019, and (B) Approving the Class Representative's Service Payment and Class Counsel's Fees and Expenses*
- *Certificate of Service*

Dated: December 18, 2019
New York, New York

Bonnie Schwab

**SERVICE LIST**

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