UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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IN RE:	Chapter 11 Cases
RED LOBSTER MANAGEMENT LLC,[1]	Case No. 6:24-bk-02486-GER Lead Case
	Jointly Administered with
RED LOBSTER RESTAURANTS LLC,	Case No. 6:24-bk-02487-GER
RLSV, INC.,	Case No. 6:24-bk-02488-GER
RED LOBSTER CANADA, INC.,	Case No. 6:24-bk-02489-GER
RED LOBSTER HOSPITALITY LLC,	Case No. 6:24-bk-02490-GER
RL KANSAS LLC,	Case No. 6:24-bk-02491-GER
RED LOBSTER SOURCING LLC,	Case No. 6:24-bk-02492-GER
RED LOBSTER SUPPLY LLC,	Case No. 6:24-bk-02493-GER
RL COLUMBIA LLC,	Case No. 6:24-bk-02494-GER
RL OF FREDERICK, INC.,	Case No. 6:24-bk-02495-GER
RED LOBSTER OF TEXAS, INC.,	Case No. 6:24-bk-02496-GER
RL MARYLAND, INC.,	Case No. 6:24-bk-02497-GER
RED LOBSTER OF BEL AIR, INC.,	Case No. 6:24-bk-02498-GER
RL SALISBURY, LLC,	Case No. 6:24-bk-02499-GER
RED LOBSTER INTERNATIONAL HOLDINGS LLC,	Case No. 6:24-bk-02500-GER
Debtors.	

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JOINT MOTION PURSUANT TO 11 U.S.C. § 105 AND FED. R. BANKR. P. 7023 AND 9019 TO (I) APPROVE A SETTLEMENT PURSUANT TO FED. R. BANKR. P. 9019, (II) CERTIFY A CLASS OF WARN ACT CLAIMANTS FOR SETTLEMENT PURPOSES ONLY, APPOINT CLASS COUNSEL AND CLASS REPRESENTATIVES, AND PRELIMINARILY APPROVE THE SETTLEMENT PURSUANT TO FED. R. BANKR. P. 7023, (III) APPROVE THE FORM AND MANNER OF NOTICE TO CLASS

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are Red Lobster Management LLC (6889); Red Lobster Sourcing LLC (3075); Red Lobster Supply LLC (9187); RL Kansas LLC (2396); Red Lobster Hospitality LLC (5297); Red Lobster Restaurants LLC (4308); RL Columbia LLC (7825); RL of Frederick, Inc. (9184); RL Salisbury, LLC (7836); RL Maryland, Inc. (7185); Red Lobster of Texas, Inc. (1424); Red Lobster of Bel Air, Inc. (2240); RLSV, Inc. (6180); Red Lobster Canada, Inc. (4569); and Red Lobster International Holdings LLC (4661). The Debtors' principal offices were located at 450 S. Orange Avenue, Suite 800, Orlando, FL 32801.

MEMBERS OF THE CLASS CERTIFICATION AND SETTLEMENT, (IV) SCHEDULE A FAIRNESS HEARING TO CONSIDER FINAL APPROVAL OF THE SETTLEMENT, (V) FINALLY APPROVE THE SETTLEMENT PURSUANT TO FED. R. BANKR. P. 7023 AFTER THE FAIRNESS HEARING, AND (VI) GRANT RELATED RELIEF

Mark Smith, in his capacity as Plan Administrator (the "Plan Administrator") for and on behalf of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") in these Chapter 11 cases (the "Chapter 11 Cases") as more specifically set forth in the Confirmation Order (defined below), by and through his undersigned counsel, prospective separate class representatives Kyle Zakowicz ("Zakowicz"), Donna Lowe ("Lowe"), and George Parker ("Parker," and together with Zakowicz and Lowe, the "Class Representatives"), on behalf of themselves and similarly situated members of three respective classes (and, together with the Class Representatives, the "Class Members" or the "Classes," as further defined herein, and collectively with the Plan Administrator, the "Movants"), by and through their respective counsel, hereby move (the "Joint Motion") this Court pursuant to Section 105 of Title 11 of the United States Code (the "Bankruptcy Code"), Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 23 of the Federal Rules of Civil Procedure (the "Civil Rules"), made applicable hereto by Bankruptcy Rule 7023, for the entry of orders: (a) approving the *Settlement and Release Agreement* (the "Settlement Agreement" or the "Settlement")[2] among the Plan Administrator on behalf of the Debtors and the Class Members (collectively, the "Parties"), pursuant to Bankruptcy Rule 9019; (b) certifying the Classes for settlement purposes only, appointing the law firms of Migliaccio & Rathod LLP and Shuker & Dorris, P.A. (Lowe); Melmed Law Group P.C. and Branson Law, PLLC (Parker); Lankenau & Miller, LLC, The Gardner Firm, P.C., and Wenzel Fenton Cabassa, P.A. (Zakowicz) as class counsel (collectively, "Class Counsel"), appointing Kyle

[2]A true copy of the Settlement Agreement is attached hereto as Exhibit A. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Settlement Agreement.

Zakowicz, Donna Lowe, and George Parker as respective Class Representatives, and preliminarily approving the Settlement Agreement pursuant to Civil Rule 23; (c) approving the form and manner of notice to Covered Employees (as subsequently defined) of the conditional class certification and settlement; (d) scheduling a fairness hearing (the "Fairness Hearing"), to consider final approval of the Settlement Agreement pursuant to Civil Rule 23; (e) after the Fairness Hearing, finally approving the Settlement Agreement pursuant to Civil Rule 23; and (f) granting related relief. In support of the Joint Motion, Movants respectfully represent as follows:

PRELIMINARY STATEMENT

1. This Court should approve the Settlement Agreement as it is in the best interest of the Debtors' estates and their creditors. The Settlement Agreement resolves a complex, multifaceted set of litigation that would require extensive additional discovery, is well above the "lowest point in the range of reasonableness," *Martin v. Pahiakos (In re Martin)*, 490 F.3d 1272, 1275-76 (11th Cir. 2007), and saves the estates substantial litigation costs.

2. On May 17, 2024, Lowe filed a Federal WARN Act and New Jersey WARN complaint in the United States District Court for the Middle District of Florida against debtors Red Lobster Hospitality LLC, Red Lobster Restaurants, LLC, and non-debtor Red Lobster Seafood Co., LLC (6:24-CV-928) (the "Lowe District Court Action") and on May 22, 2024 Lowe also filed a substantially similar adversary action in this Court against the same defendants (6:24-AP-49). On May 22, 2024, Zakowicz filed a New York WARN Act adversary action in this Court (6:24-AP-48) against each of the debtors in these Chapter 11 cases.[3] On May 25, 2024, Parker filed a

[3] The Debtor Defendants, along with the last four digits of each Defendant Debtor's federal tax identification number are Red Lobster Management LLC (6889); Red Lobster Sourcing LLC (3075); Red Lobster Supply LLC (9187); RL Kansas LLC (2396); Red Lobster Hospitality LLC (5297); Red Lobster Restaurants LLC (4308); RL Columbia LLC (7825); RL of Frederick, Inc. (9184); RL Salisbury, LLC (7836); RL Maryland, Inc. (7185); Red Lobster of Texas, Inc. (1424); Red Lobster of Bel Air, Inc. (2240); RLSV, Inc. (6180); Red Lobster Canada, Inc. (4569); and Red Lobster International Holdings LLC (4661). The Debtor Defendants' principal offices were located at 450 S. Orange Avenue, Suite 800, Orlando, FL 32801.

WARN Act and California WARN Act adversary action in this Court against Red Lobster Hospitality LLC, Red Lobster Restaurants, LLC, and Red Lobster Seafood Co., LLC (6:24-ap-50). The District Court complaint and the adversary proceeding complaints are referred to hereby collectively as the "Complaints," and the resulting litigation collectively, the "WARN Act Litigation"). The Complaints generally are based upon the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101-2109 (the "WARN Act") and/or, respectively, one of three analogous state laws, namely the California Worker Adjustment and Retraining Act, Cal. Lab. Code, § 1400 *et seq*. (Parker); Millville Dallas Airmotive Plant Job Loss Notification Act, N.J.S.A. § 34:21-1 *et seq*. (Lowe); and New York Labor Law § 860 *et seq*. (Zakowicz) (collectively, the "Mini-WARN Acts"). The Complaints claim entitlement to damages associated with the WARN Act and/or the Mini-WARN Acts (together with the Individual Claims (as subsequently defined), the "WARN Act Claims").[4] The Class Representatives assert putative class claims pursuant to the WARN Act and/or the analogous Mini-WARN Acts for the applicable states pursuant to Rules 7023(a) and (b)(3) of the Federal Rules of Bankruptcy Procedure and Rules 23(a) and (b) of the Federal Rules of Civil Procedure.

3. After a detailed review of the Debtors' books and records and a consideration of the requirements of the federal and/or relevant state WARN Acts, the Parties agreed that certification of three settlement Classes was appropriate for the limited purpose of the settlement: a *Lowe* class consisting of New Jersey store employees who lost their jobs solely on account of the May 2024 store closures, a *Parker* class consisting of California store employees who lost their jobs solely on account of the May 2024 store closures, and a *Zakowicz* class consisting of New

[4] For purposes of this Motion, references to claims, defenses, and alleged damages under the WARN Act include claims, defenses, and alleged damages under the Mini-WARN Acts as well.

York store employees at 3701 McKinley Parkway, Buffalo, NY 14219 (the "McKinley Store"), who lost their jobs solely on account of the May 2024 closure of that store.

4. The Class Representatives allege that each respective Class is appropriate under the federal and/or relevant state WARN Acts and/or meets the requirements of Federal Rule of Civil Procedure 23; that each Class is so numerous as to render joinder of all members impracticable; that there are common questions of law and fact applicable to all Class Members which predominate over any questions affecting only individual members; that the Class Representatives' claims are typical of the claims of the other Class Members; that the Class Representatives will fairly and adequately protect and represent the interests of the Classes; that the Class Representatives have retained counsel with extensive experience in litigating class actions; and that a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

5. Lowe and her counsel organized the submission, by approximately 100 former employees of one or more Debtor(s), of individual proofs of claim asserting remedies under the WARN Act and/or Mini-WARN Acts (the "Individual Claims" and, together with the "Class Members," collectively, the "Covered Employees"). Co-class-counsel to Lowe, Migliaccio & Rathod LLP, is also counsel to each of the Individual Claimants and such firm in such capacity together with other Class Counsel shall be referred to hereinafter as "Employee Counsel."

6. The Parties agree that the Individual Claims by individuals who are *not* members of one of the Classes ("Individual Claimants") are appropriately compensated as such.

7. The Covered Employees further assert that, as a consequence of the alleged WARN Act and Mini-WARN Acts violations, the Covered Employees should have allowed priority claims pursuant to 11 U.S.C. § 507(a)(4) against the Debtor Defendants for WARN Act and/or relevant

state WARN Act damages, which potentially include unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay, and other benefits that would have been covered and paid under the then applicable employee benefit plans had that coverage continued post-termination, all determined in accordance with the WARN Act, 29 U.S.C. § 2104(a)(1)(A), and/or the relevant Mini-WARN Acts.

8. The Plan Administrator, on the other hand, believes that the Debtors have valid defenses to the WARN Act Claims, including, but not limited to: (a) the various Debtor Defendants do not qualify as a "single employer" as defined under the WARN Act; (b) the various locations operated by the individual Debtor Defendants do not qualify as a "single site" as defined under the WARN Act; (c) WARN Act and/or relevant state WARN Acts' damages were not triggered by the termination of the Covered Employees' employment; (d) the unforeseen business circumstances and faltering company exceptions to the WARN Act apply such that the Debtor Defendants are excused from any non-compliance with the WARN Act if it did apply to the alleged terminations; and (e) the Debtor Defendants had a good faith belief that all of their actions complied with the specific requirements of the WARN Act.

9. Employee Counsel have asserted that the Debtor Defendants are liable under the WARN Act and/or Mini-WARN Acts for, *inter alia*, at least sixty (60) days' post-termination damages and benefits totaling millions of dollars, and alleged that the Class Claims and Individual Claims constitute priority claims. In exchange for a full release of any claim arising under the WARN Act and Mini-WARN Acts in connection with the alleged mass layoffs and/or plant closings, the Settlement provides that the Plan Administrator, on behalf of the Debtors, shall pay $250,000.00 (the "Settlement Amount") to settlement administrator(s) of Employee Counsels' choice, in accordance with the terms of the Settlement Agreement. Such administrator(s), in turn,

will distribute the Settlement Amount to the Covered Employees in accordance with the terms of the Settlement Agreement.

10. From the perspective of the Debtors' estates and their creditors, the Settlement Agreement is fair and reasonable, and falls well above the lowest point in the range of reasonableness. Accordingly, the Court should approve the Settlement Agreement under Bankruptcy Rule 9019.

11. For essentially the same reasons, the Settlement Agreement is also fair and reasonable to the Covered Employees. Without the settlement, Covered Employees could wait years for any payment on their alleged WARN Act Claims, even if they were to prevail at trial and on appeal, and meanwhile would risk depletion of the Debtors' estates through continued administrative and litigation costs.

12. Further, it is appropriate to certify the Classes for settlement purposes only and appoint Class Counsel. As set forth below, for purposes of the Settlement, the Parties agree that each Class meets all of the requirements of Civil Rule 23 and that each Class Counsel is competent and experienced.

13. Finally, the Parties request a two-step approval process to facilitate notice to Covered Employees. After preliminary approval of the Settlement Agreement and the form of notice to be given to the Covered Employees, Employee Counsel will provide notice (the "Settlement Notice") to each Covered Employee that describes the Settlement Agreement and informs the Class Members and Individual Claimants of their right to opt out of their respective Class or object to the Settlement Agreement and the deadlines for doing so.

14. After service of the Settlement Notice, the Parties request that the Court hold a Fairness Hearing to consider final approval of the Settlement Agreement.

15. Based on the foregoing, and as set forth more fully below, the Parties submit that the Court should approve the Settlement Agreement and the procedures proposed in this Joint Motion.

JURISDICTION

16. This Court has jurisdiction to consider this Joint Motion pursuant to 28 U.S.C. §§ 157 and 1334.

17. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

18. The statutory predicates for the relief sought herein are Section 105 of the Bankruptcy Code, Bankruptcy Rule 9019, and Civil Rule 23, which is incorporated in Bankruptcy Rule 7023.

BACKGROUND

A. General Background

19. On or about May 13, 2024, the soon-to-be debtors of these Chapter 11 Cases commenced a comprehensive restructuring which included the immediate closure of multiple stores, including individual stores in each of California, New Jersey and New York, and layoffs of all or most of the staff at such closed stores.

20. On May 17, 2024, Lowe filed the first WARN Act and Mini WARN Act lawsuit in the United States District Court for the Middle District of Florida.

21. On May 19, 2024 (the "Petition Date"), each of the Debtors commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. Subsequently, Lowe, Parker and Zakowicz filed Complaints in the Bankruptcy Court seeking relief under the WARN Act and/or state equivalents.

22. On May 31, 2024, the Office of the United States Trustee for the Middle District of Florida (the "U.S. Trustee") appointed an official committee of unsecured creditors in these Chapter 11 Cases (the "Creditors' Committee"). *See* ECF No. 250. Parker was a member of the Creditors' Committee. No request was made for the appointment of a trustee or examiner.

23. During the Chapter 11 Cases, the Debtors operated their businesses and managed their affairs as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

24. For a detailed description of the Debtors and their operations, the Plan Administrator respectfully refers the Court and parties in interest to the *Declaration of Jonathan Tibus in Support of Debtors' Chapter 11 Petitions and First Day Relief* [ECF No. 6] (the "First Day Declaration"). The facts set forth in the First Day Declaration are incorporated by reference herein.

25. On May 22, 2024, this Court entered an order approving the retention of Epiq Corporate Restructuring, LLC ("Epiq"), as the Debtors' claims, noticing and solicitation agent. [ECF No. 156].

26. Pursuant to the *Notice of Chapter 11 Bankruptcy Case* entered on May 24, 2024 [ECF No. 194] (the "Notice"), the general claims bar date in these Chapter 11 Cases was July 28, 2024 (the "General Bar Date"), and the deadline for all governmental agencies to file proofs of claim is November 15, 2024 [ECF No. 194].

27. On September 6, 2024, the Court entered *Findings of Fact, Conclusions of Law, and Order (I) Approving the Adequacy of the Disclosure Statement on a Final Basis (II) Confirming the Joint Chapter 11 Plan for Red Lobster Management LLC and its Debtor Affiliates, (III) Setting Deadlines, and (IV) Setting Post-Confirmation Status Conference* [ECF No. 1140]

(the "Confirmation Order"), which approved the Debtors' *Second Amended Joint Chapter 11 Plan* [ECF No. 1124] (the "Plan"). The effective date of the Plan was September 16, 2024. *See* ECF No. 1177 (the "Effective Date").

B. Claims Reconciliation Process

28. On August 1, 2024, this Court entered the *Debtors' Motion for Entry of an Order (I) Approving Omnibus Claims Objection Procedures and (II) Authorizing Additional Claims Objection Categories for Omnibus Claim Objections* [ECF No. 760] approving the Debtors' proposed claim objection procedures (the "Objection Procedures").

29. To date, individuals and entities have filed over 3,000 proofs of claim in these Chapter 11 Cases. All proofs of claim received in these Chapter 11 Cases are recorded on the official claims register (the "Claims Register").

C. Discovery Efforts and Settlement Negotiations

30. Prior to the Effective Date, counsel for the Debtors and Class Members engaged in informal discovery including the production of information and documents and the candid exchange of views on the value of the claims at issue. The Debtor Defendants shared payroll information and related analysis with Employee Counsel.

31. Additionally, prior to the Effective Date, counsel for the Debtors and Class Members, with the assistance of Committee counsel and its financial advisor, earnestly engaged in numerous discussions and negotiations with respect to the WARN Act Litigation and the proofs of claim asserting remedies under the WARN Act and/or Mini-WARN Acts filed on behalf of the Classes and the Individual Claimants (collectively, the "WARN Act Proofs of Claim").

D. Essential Terms of the Proposed Settlement

32. In August 2024, the Debtors and Class Members reached a tentative agreement, the terms of which were later memorialized in the Settlement Agreement. In general, the Settlement

Agreement provides for the certification of Classes, for settlement purposes only, comprised of (a) former employees of the McKinley store in New York (Zakowicz), (b) former employees of stores in California (Parker), and (c) former employees of stores in New Jersey (Lowe), in each case limited to those who were terminated, without cause on their part, on or about May 13, 2024, within thirty (30) days of that date or thereafter as part of, or as the reasonably expected consequence of, the closing of the relevant stores, and who do not file a timely request to opt-out. It should be noted that each of the foregoing settlement classes represent a significant reduction of the respective complaint's initially proposed class, which is the result of careful evaluation by the Debtors, Class Members and Committee of the Debtors' former employees' WARN Act and/or Mini WARN Act eligibility and robust, arms-length negotiation regarding the liability implications of such evaluations. Based on the available books and records of the Debtor Defendants, all of the individuals who satisfy the criteria set forth above (i.e., the Class Members), and no others, as well as the Individual Claimants, are listed on Schedule 1 to the Settlement Agreement. The Settlement Agreement also provides for payments in the aggregate amount of $250,000.00 in full settlement of the Covered Employees' claims (the "Settlement Payment"). The Settlement Agreement provides that the Settlement Payment will be paid to Employee Counsel within five (5) business days after the entry of a final and non-appealable Order approving the Settlement. In addition to the certification of Classes for settlement purposes only, the other essential terms of the Settlement Agreement are as follows:[5]

a. Appointment of Class Counsel: Migliaccio & Rathod LLP; Branson Law, PLLC; Melmed Law Group P.C.; Lankenau & Miller, LLC; The Gardner Firm, P.C., Shuker & Dorris, P.A., Branson Law, PLLC and Wenzel Fenton Cabassa, P.A.

[5]This summary of the Settlement Agreement is qualified in its entirety by the terms and provisions of the Settlement Agreement. To the extent that there are any inconsistencies between the description of the Settlement Agreement contained herein and the terms and the provisions of the Settlement Agreement, the Settlement Agreement shall control.

shall be appointed as Class Counsel. The Parties agree Class Counsel is competent and experienced.

b. Appointment of Class Representatives: Kyle Zakowicz, Donna Lowe, and George Parker shall be appointed as Class Representatives.

c. Settlement Amount: The Plan Administrator, on behalf of the Debtors, shall pay in the aggregate $250,000.00 (the "Settlement Amount") to Employee Counsel or administrator(s) designated by Employee Counsel within five (5) business days after the entry of a final and non-appealable order by the Court approving the Settlement Agreement.

d. Settlement Distribution: Such administrator(s) shall handle distributions to Covered Employees. The projected distributions to Covered Employees are set forth on Schedule 1 attached to the Settlement Agreement.

e. Mutual Releases: Except for the rights arising out of, provided for, or reserved in this Agreement, upon the payment of the Settlement Amount to said administrator(s), Employee Counsel and Covered Employees for and on behalf of themselves, and their respective predecessors, successors, assigns, affiliates and subsidiaries (collectively, the "Releasing Parties"), do hereby fully and forever release and discharge the Debtor Defendants, the Debtors' estates, the Debtor Defendants' current and former parents, subsidiaries, partners, directors, officers, members, accountants, attorneys, representatives, and all other agents, and all of their respective predecessors, successors and assigns, and the Plan Administrator and his accountants, attorneys, representatives and agents (collectively, the "Released Parties"), of and from any and all claims, obligations, demands, rights, debts, liabilities, liens, actions and causes of action, costs, expenses, attorneys' fees and damages of whatever kind or nature, character, and description, whether in law or in equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, whether known or unknown, and whether anticipated or unanticipated, suspected or disclosed, which the Releasing Parties may now or hereafter may have against the Released Parties, which relate to or are based on the WARN Act or any federal, state, or local law or regulation applying to plant closings, mass layoffs, employment termination, or in any way relate to the WARN Act or state and local equivalents (collectively, the "Covered Employees' Released Claims").[6]

f. Employee Counsel Fees: Migliaccio & Rathod LLP; Branson Law, PLLC; Melmed Law Group P.C., and Shuker & Dorris, P.A. shall receive in the aggregate $66,666.67 in legal fees. Lankenau & Miller, LLC, The Gardner Firm, P.C. and Wenzel Fenton Cabassa, P.A. shall receive in the aggregate $16,666.67

[6]The Class Members Released Claims consist of any and all claims of any kind or nature whatsoever, at law, in equity, and otherwise, whether known or unknown, anticipated, suspected, or disclosed, which the Releasing Parties have or may have as of the date of a final Order approving the Settlement, which relate to or are based on the WARN Act or any federal, state, or local law or regulation applying to plant closings.

in legal fees (together with other Employee Counsel's fees, "Employee Counsels' Fees"), plus out of pocket costs and expenses including an advisory fee, for the Lowe and Parker matters, of $30,000 to Dundon Advisers LLC for its services as their financial and strategic adviser (collectively, "Employee Counsels' Expenses"). Employee Counsels' Fees and Employee Counsels' Expenses shall be paid in full for Employee Counsels' work and expenses in connection with this matter.

g. Issuance of Notice of Class Certification and the Settlement: Employee's Counsel shall send by first class mail to each Covered Employee's last known address an individualized Settlement Notice indicating:

i. that the Settlement shall become effective only if it is finally approved by the Bankruptcy Court:

ii. that, if so approved, the Settlement shall be effective as to all Covered Employees;

iii. that, if so approved, the projected dollar amount such Covered Employees would receive under the Settlement, net of Employee Counsels' Fees and Employee Counsels' Expenses is shown on Schedule 1;

iv. that such Covered Employee has the right to object to this Settlement in person or through counsel and be heard at the Fairness Hearing; and

v. that all Covered Employees' Released Claims (other than those claims to be paid under the terms of this Settlement) shall be released and waived, and that no person, including the Covered Employee, shall be entitled to any further distribution thereon.

h. Right of Class Member to Opt-Out:

i. By no later than the date fixed by the Court for filing an objection to final approval of this Agreement, any Class Member may opt out of his or her respective Class by mailing to Class Counsel the completed and executed *Opt-Out Form*, which is part of the Settlement Notice. Upon the timely receipt of the completed and executed Opt-Out Form by Class Counsel, such Class Member shall be classified as an Opt-Out. Class Counsel shall provide the Plan Administrator's counsel with a list of the Class Members who have timely returned a completed and executed Opt-Out Form.

ii. If a Class Member does not wish to be bound by this Agreement, such Class Member must opt out of the Class by timely returning a completed and executed Opt-Out Form to Class Counsel. Otherwise, if and when the Agreement becomes effective, all Class Members shall be bound by the terms of this Agreement.

iii. Notwithstanding anything to the contrary in this Motion, the Settlement Agreement or any order such papers contemplate, nothing contained herein shall release or impair the rights and claims, if any, of any Opt-Out, nor shall anything contained herein affect the defenses and offsets that the Debtor Defendants, their estates, their respective subsidiaries, their 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 or the Debtors, or the Plan Administrator or his accountants, attorneys, representatives or agents may have against any such rights or claims.

i. Right of Individual Claimant not to be bound by Settlement:

i. By no later than the date fixed by the Court for filing an objection to final approval of this Agreement, any Individual Claimant may opt out of the treatment provided for him or her or by the Settlement by Class by mailing to Migliaccio & Rathod LLP the completed and executed *Settlement Declination Form*, which is part of the Settlement Notice. Upon the timely receipt of the completed and executed Settlement Declination Form, such Individual Claimant shall be entirely removed from, and entirely unbound by, the Settlement Agreement. Migliaccio & Rathod LLP shall provide the Plan Administrator's counsel with a list of the Individual Claimants who have timely returned a completed and executed Settlement Declination Form.

ii. Notwithstanding anything to the contrary in this Motion, the Settlement Agreement or any order such papers contemplate, nothing contained herein shall release or impair the rights and claims, if any, of any Individual Claimant who timely executes and delivery a Settlement Declination Form, nor shall anything contained herein affect the defenses and offsets that the Debtor Defendants, their estates, their respective subsidiaries, their 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 or the Debtors, or the Plan Administrator or his accountants, attorneys, representatives or agents may have against any such rights or claims.

RELIEF REQUESTED

33. By this Joint Motion, the Parties request that the Court enter orders, substantially in the form annexed hereto as **Exhibits C** and **D**: (i) authorizing the Parties to enter into the Settlement Agreement; (ii) certifying the Classes for settlement purposes only, appointing Class Counsel and the Class Representatives, and preliminarily approving the Settlement Agreement;

(iii) approving the form and manner of the Settlement Notice annexed hereto as **Exhibit E**; (iv) scheduling a Fairness Hearing to consider final approval of the Settlement Agreement; and (v) approving the Settlement Agreement on a final basis.

BASIS FOR RELIEF REQUESTED

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

34. This Court has broad discretion in determining whether the proposed settlement should be approved. Settlement of litigation is strongly favored as a matter of public policy. *See In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992) ("Public policy strongly favors the pretrial settlement of class action lawsuits"); *Cotton v. Hinton*, 559 F.2d 1326, 1330-31 (5th Cir. 1977) ("It is often said that litigants should be encouraged to determine their respective rights between themselves. Particularly in class action suits, there is an overriding public interest in favor of settlement.") (internal and external citations omitted); *see also In re Culmtech, Ltd.*, 118 B.R. 237, 238 (Bankr. M.D. Pa. 1990) ("[C]ompromises are favored in bankruptcy and … much of litigation in bankruptcy estates results in settlements"). Bankruptcy Rule 9019 authorizes a bankruptcy court to approve a compromise or settlement after notice and a hearing, (Fed. R. Bankr. P. 9019(a)), and Section 105 of the Bankruptcy Code empowers a court to issue any order that is "necessary or appropriate" (11 U.S.C. § 105(a)).

35. "The approval of a compromise or settlement in a bankruptcy case resides within the sound discretion of the Bankruptcy Court." *In re McDowell*, 510 B.R. 660, 667 (Bankr. N.D. Ga. 2014); *In re Key3Media Group, Inc.*, 336 B.R. 87, 92 (Bankr. D. Del. 2005); *see also In re Louise's, Inc.*, 211 B.R. 798, 801 (D. Del. 1997). When exercising such discretion, the bankruptcy court must determine whether the compromise is "fair, reasonable, and in the best interest [sic] of the estate." *In re Harbour E. Dev., Ltd.*, No. 10-20733-BKC-AJC, 2012 WL 1851015, at *5 (Bankr.

S.D. Fla. May 21, 2012); *Key3Media,* 336 B.R. 87, 92; *see also Fry's Metals, Inc. v. Gibbons (In re RFE Industries, Inc.)*, 283 F.3d 159, 165 (3d Cir. 2002); *In re Louise's, Inc.*, 211 B.R. at 801; *In re Marvel Entertainment Group, Inc.,* 222 B.R. 243, 249 (Bankr. D. Del. 1998).

36. The bankruptcy court is not required to determine that the proposed settlement is the best possible compromise. *In re Harbour E. Dev., Ltd.,* 2012 WL 1851015, at *5. Rather, the settlement should be approved as long as it does not "fall below the lowest point in the range of reasonableness." *In re Martin,* 490 F.3d at 1275; *Cosoff v. Rodman (In re W.T. Grant Co.),* 699 F.2d 599, 608 (2d Cir. 1983). In this respect, it is unnecessary for the Court to consider the information necessary to resolve the factual dispute, nor is it necessary for the bankruptcy court to "conclusively determine claims subject to a compromise." *Key3Media Group,* 336 B.R. at 92 (quoting *In re Martin*, 212 B.R. 316, 319 (BAP 8th Cir. B.A.P. 1997)); *accord Matter of Cajun Elec. Power Co-op., Inc.*, 119 F.3d 349, 356 (5th Cir. 1997) (a bankruptcy court need not conduct a "mini-trial" to assess the merits of each claim prior to approving a settlement agreement, but only survey the legal issues to reasonably determine the efficacy of a proposed settlement under the circumstances); *Kenny v. Critical Intervention Svcs. Inc. (In re Kenny),* 630 B.R. 853, 859 (M.D. Fla. 2021) ("the bankruptcy court need not decide the merits of the claims at all—only the probability of succeeding on those claims. A fortiori, it also need not decide whether to approve a settlement based on a resolution of ultimate facts at issue in the underlying litigation."); *In re Soderstrom,* 477 B.R. 249, 252 (Bankr. M.D. Fla. 2012) ("A court is not required to decide the merits of each claim or hold a 'mini-trial' of the underlying litigation.").

1. Standard for Approval of the Settlement Agreement

37. Courts consider the following four factors when determining whether a settlement is in the best interest of the estate: (i) the probability of success in the litigation; (ii) the difficulties of collecting on proposed claims; (iii) the expense of litigation and (iv) the other creditors'

interests. *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*, 898 F.2d 1544, 1549 (11th Cir. 1990); *Kenny,* 630 B.R. at 859 (same, citing *Justice Oaks*); *Myers v. Martin (In re Martin),* 91 F.3d 389, 393 (3d Cir. 1996); *Key3Media Group,* 336 B.R. at 93.

38. In addition to these criteria, courts have also scrutinized additional factors, such as (i) the competency and experience of counsel who support the settlement; (ii) the relative benefits to be received by individuals or groups within the class; (iii) the nature and breadth of releases to be obtained by the Parties to the settlement; and (iv) the extent to which the settlement is the product of arm's length bargaining. *See Fischer v. Pereira (In re 47-49 Charles Street, Inc.),* 209 B.R. 618, 620 (S.D.N.Y. 1997); *In re Spielfogel*, 211 B.R. 133, 144 (Bankr. S.D.N.Y. 1997); *In re Dow Corning Corp*., 198 B.R. 214, 223 (Bankr. E.D. Mich. 1996).

39. Ultimately, a settlement should be approved unless it falls below the lowest point in the range of reasonableness. *See In re Martin,* 490 F.3d at 1275 ("the bankruptcy court did not err in approving the settlement agreement because it did not fall below the lowest point in the range of reasonableness."). The concept of the "range of reasonableness" has been defined as "a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion ...." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972).

a. Application of the Relevant Factors

40. The Plan Administrator believes that, absent settlement, due to the availability of multiple defenses, including that (i) the locations operated by individual Debtor Defendants are not a "single employer" as defined under the WARN Act; (ii) damages were not triggered by the WARN Act and/or state equivalents; (iii) the applicability of the unforeseen business circumstances and faltering company exceptions to the WARN Act Claims; and (iv) the Debtor Defendants' good faith belief that all of the Debtors' actions complied with the specific

requirements of the federal WARN Act and/or state equivalents, they would prevail in the litigation. The Covered Employees strenuously disagree and believe they would prevail based on the relevant facts and law. The results of a trial are, therefore, uncertain.

41. The litigation here is complex, and involves myriad fact-based issues. The WARN Act Claims involve numerous legal issues regarding the application of the WARN Act and/or Mini-WARN Acts and related statutory and other legal defenses, as well as other employment-related claims. These issues include, *inter alia*, (i) whether the Debtors violated the notice requirements under the WARN Act and/or Mini-WARN Acts; (ii) whether the Debtors were obligated to pay the Class Members back pay and benefits and, if so, (iii) whether Covered Employees' claims should be certified for class action treatment under the WARN Act and/or Mini-WARN Acts and/or Civil Rule 23; and (iv) whether attorneys' fees are to be awarded to the Covered Employees, as the prevailing party. *See also* Declarations of Mary Olsen, Jonathan Melmed, and Jay Rathod (the "Counsel Declarations") at ⁋ 5.

42. Continued litigation would be costly and time-consuming and expose the Parties to the risk of the depletion of estate assets, such that even if the Class Representatives prevailed, there would likely be no recovery for them or for the Class they seek to represent. *See also* Counsel Declarations at ¶ 6. The Settlement, which was the product of good faith, arms' length negotiations between the Debtors, Committee and Class Members, each represented by separate counsel, eliminates any further accrual of litigation expenses, on all sides, associated with the WARN Act Claims. Accordingly, the Parties respectfully submit that approval of the Settlement Agreement is warranted.[7]

[7] In the event that the Settlement Effective Date does not occur, the Parties reserve all of their rights.

43. The Plan Administrator submits that the Settlement Agreement is in the best interests of the Debtors' Estates and their creditors. When determining whether a compromise is in the best interests of an estate, the bankruptcy court must "'assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal.'" *In re Key3Media Group*, 336 B.R. at 93 (quoting *In re Martin*, 91 F.3d at 393 (citing *TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968))); *see also, In re Nationwide Sports Distributors, Inc.*, 227 B.R. 455, 460 (Bankr. E.D. Pa. 1998) ("[I]n deciding whether to approve a particular compromise, courts utilize various criteria designed to achieve the objective of having the Defendant or debtor in possession act in [the] best interests of the estate"). To properly balance these values, the Court should consider all factors "relevant to a full and fair assessment of the wisdom of the proposed compromise." *In re Marvel*, 222 B.R. at 249 (quoting *TMT Trailer Ferry, Inc*., 390 U.S. at 424); *see also, Key3Media Group*, 336 B.R. at 92 ("[t]he bankruptcy court must be "apprised of all relevant information that will enable it to determine what course of action will be in the best interest of the estate.") (quoting *In re Martin*, 91 F.3d at 393). A balancing of the claims being asserted, in the millions of dollars according to Employee Counsel, compared to the Settlement Amount of $250,000.00, squarely supports approval of the Settlement Agreement.

44. The paramount interest of creditors and reasonable deference to their views also supports approval of the Settlement Agreement.

45. The Settlement Agreement spares the Debtors' estates the significant expense and uncertainty associated with the litigation of the myriad of issues in the WARN Act Claims, and provides certainty and a mechanism for prompt distributions to the Covered Employees.

46. Accordingly, in light of each of the factors above, which confirm that the Settlement Agreement falls well above the lowest point in the range of reasonableness, the Parties respectfully submit it should be approved.

B. The Court Should Conditionally Certify the Settlement Classes

47. Where, as in this case, the bankruptcy court has not already certified a class, before approving a class settlement pursuant to Civil Rule 23, the bankruptcy court must determine whether the proposed settlement class satisfies the certification requirements of Civil Rule 23. *Amchem v. Windsor*, 521 U.S. 591, 620 (1997); *In re Beef Indus. Antitrust Litig.*, 607 F.2d 167, 178 (5th Cir. 1979) ("it is altogether proper and consistent for a court to certify a class for settlement purposes"); *In re Community Bank of Northern Virginia*, 418 F.3d 277, 300 (3rd Cir. 2005).

48. "[A]ll Federal Circuits recognize the utility of Rule 23(b)(3) settlement classes." *Amchem*, 521 U.S. at 618. "The settlement class action device offers defendants the opportunity to engage in settlement negotiations without conceding any of the arguments they may have against class certification." *Community Bank*, 418 F.3d at 299. *See also, General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 786 (3rd Cir. 1995) ("By specifying certification for settlement purposes only . . . the court preserves the defendant's ability to contest certification should the settlement fall apart.").

49. Subdivisions (a) and (b) of Rule 23 "focus court attention on whether a proposed class has sufficient unity so that absent members can fairly be bound by decisions of class Representatives." *Amchem*, 521 U.S. at 621.

1. The Court Should Conditionally Certify the Settlement Classes

50. To be certified under Federal Rule of Civil Procedure 23, a class must satisfy the four requirements of Rule 23(a): (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy

of representation. Fed. R. Civ. P. 23; *Valley Drug Co. v. Geneva Pharm., Inc.*, 350 F.3d 1181, 1188 (11th Cir. 2003). In addition, the class must satisfy the requirements of Rule 23(b)(1), (2), or (3). In this case, the Parties have agreed to request conditional certification under Rule 23(b)(3), "the customary vehicle for damage actions." *Id.* In order to certify a class under Rule 23(b)(3), the court must make two additional findings: predominance and superiority. That is, "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." *Reilly v. Frederick*, 21 Fed. R. Serv. 2d 163 (N.D. Ala. 1976).

51. The Parties agree, for settlement purposes only, that each proposed settlement Class meets each of the foregoing elements.

a. The Rule 23(a) Criteria

52. As an initial matter, and for the purposes of the Settlement Agreement only, the Parties agree that the Classes are precisely defined and readily identified. Specifically, each Class encompasses certain former employees of Red Lobster who do not file a timely request to opt-out of the class. Class Members were identified through a review of Debtor's records and, in the aggregate, 461 individuals have been identified as Class Members, comprising 136 individuals in the State of New Jersey, 276 individuals in the State of California and 49 individuals in the State of New York at the McKinley Store.

53. Numerosity requires a finding that the putative class is "so numerous that joinder of all members is impracticable." *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1266 (11th Cir. 2009). "[T]here is no magic number of class members that will support certification . . . ." *Braxton v. Farmer's Ins. Grp.*, 209 F.R.D. 654, 658 (N.D. Ala. 2002), *aff'd sub nom. Braxton v. Fire Ins. Exch.*, 91 F. App'x 656 (11th Cir. 2003). However, most courts approve classes numbering 40 members or more. *See Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986)

("generally less than twenty-one is inadequate, more than forty adequate" for the purposes of satisfying the numerosity prong).

54. The proposed classes, each of which range from 49 to 276 Class Members, meet the numerosity requirement, and joinder of all Class Members is impractical. For purposes of this Settlement only, each Class is sufficiently numerous to make joinder of all members impractical, and thus satisfies the numerosity requirement. Accordingly, the Court should find that the numerosity requirement is met.

55. The commonality requirement requires existence of at least one question of law or fact common to the Class. Fed. R. Civ. P. 23(a)(2); *Vega*, 564 F.3d at 1268. Commonality does not require an identity of claims or facts among class members. *Behrend v. Comcast Corp.*, 245 F.R.D. 195, 202 (E.D. Pa. 2007); *Wright v. Circuit City Stores, Inc.*, 201 F.R.D. 526, 539 (N.D. Ala. 2001) (the "commonality" provision "does not require complete identity of legal claims.").

56. Here, the commonality factor of Fed. R. Civ. P. 23(a)(2) is met because there are questions of law or fact common to every member of the respective Class, namely, (i) whether the Debtor Defendants violated the notice requirements under the WARN Act and/or Mini-WARN Acts; (ii) whether the Debtor Defendants were obligated to pay the Class Members back pay and benefits and, if so, (iii) whether attorneys' fees are to be awarded to the Class Members, as the prevailing party. For these reasons, and for purposes of this Settlement only, the commonality factor of Fed. R. Civ. P. 23(a)(2) is met.

57. Typicality requires that the claims of the "named Plaintiff" are typical, in common-sense terms, of the class, thus suggesting that the incentives of the Plaintiff are aligned enough with those of the class. Fed. R. Civ. P. 23(a)(3); *Colomar v. Mercy Hosp., Inc.*, 242 F.R.D. 671, 677 (S.D. Fla. 2007). Typicality requires "a strong similarity of legal theories" to ensure that the

Class Representatives' pursuit of their own goals will work to benefit the entire class. *Murray v. Auslander*, 244 F.3d 807, 811 (11th Cir. 2001). "Factual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members, and if it is based on the same legal theory." *LaBauve v. Olin Corp.*, 231 F.R.D. 632, 669 n.79 (S.D. Ala. 2005).

58. The Class Representatives do not allege that they were singled out for disparate treatment in their terminations. Instead, they allege that they suffered harm as a result of the same conduct that allegedly injured the absentee Class Members—that they were allegedly terminated during the same time period without receiving sufficient advance notice, namely, sixty (60) days' advance written notice under the federal WARN Act and California Mini-WARN Act, and/or ninety (90) days' advanced written notice in New Jersey and New York. Accordingly, and for settlement purposes only, the typicality requirement is met.

59. With respect to adequacy, Class Representatives must "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4); *London v. Wal-Mart Stores, Inc.*, 340 F.3d 1246, 1253 (11th Cir. 2003). The adequacy inquiry assures that the Class Representatives' claims "are not antagonistic to the class" and that the attorneys for the Class Representatives are "qualified, experienced, and generally able to conduct the proposed litigation." *London*, 340 F.3d at 1254; *Griffin v. Carlin*, 755 F.2d 1516, 1533 (11th Cir. 1985). Thus, the Court must determine whether the Class Representatives' interests conflict with those of the class and whether the class attorney is capable of representing the class. *Id.*

60. The Court should find that each Class Representative and Class Counsel adequately represent the interests of the Class Members based on the Declarations of Jonathan Melmed, Nicholas Migliaccio, and Mary Olsen (the "Counsel Declarations") attached hereto as **Exhibits B-**

1, B-2 and B-3. As demonstrated by the Counsel Declarations, the Class Representatives have diligently pursued this matter and have hired counsel who are well qualified and experienced to represent the Class Members. Collectively, proposed Class Counsel have been appointed as class counsel in more than one hundred WARN actions, many of which were in bankruptcy cases like here.

b. The Rule 23(b)(3) Criteria

61. Common questions of law and fact predominate over the individual issues. Predominance tests whether the proposed class is sufficiently cohesive to warrant adjudication by representation. *Amchem*, 521 U.S. at 623-24. The proper predominance inquiry "trains on the legal or factual questions that qualify each member's case as a genuine controversy, questions that preexist any settlement." *Id.* at 623. "In this respect, the predominance requirement . . . is similar to the requirement of Rule 23(a)(3) that claims or defenses of the named representatives must be typical of the claims or defenses of the class." *Id.* at 623 n. 18 (internal quotations omitted).

62. Just as typicality exists, for the purposes of Settlement, predominance also exists. All of the WARN Act Claims arise from the terminations that occurred during the relevant time frame. Accordingly, for settlement purposes only, the predominance requirement is met.

63. Rule 23(b)(3) also requires a determination that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3); *Gates v. Rohm & Hass Co.*, 248 F.R.D. 434, 443 (E.D. Pa. 2008). In effect, "[s]uperiority is determined by comparing the efficiency and fairness of all available methods of adjudicating the matter." *Barber Auto Sales, Inc. v. United Parcel Serv. Co.*, No. CV 06-J-4686-NE, 2009 WL 10688014, at *6 (N.D. Ala. Sept. 29, 2009).

64. Rule 23 sets forth several factors relevant to the superiority inquiry: "(A) the class members['] interests in individually controlling the prosecution or defence of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3). However, when a class certification is being considered for settlement purposes only, the difficulties in managing a class action are not considered. *Carter v. Forjas Taurus, S.A.*, 701 F. App'x 759, 765 (11th Cir. 2017).

65. Here, for settlement purposes only, a class action is superior to individual actions. The amount of each Class Member's claim is relatively small. Individually, there is little incentive in controlling the prosecution of separate actions. *See Amchem*, 521 U.S. at 617 ("The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor.") (quotation and citation omitted). Further, determining the claims of some Class Members, but not all, could prejudice the claims of the remaining Class Members. Accordingly, this Court should find that the superiority element is met.

66. Based on the foregoing, this Court should certify the Classes for settlement purposes only; appoint Kyle Zakowicz, Donna Lowe, and George Parker as the Class Representatives; and appoint Migliaccio & Rathod LLP; Branson Law, PLLC; Melmed Law Group P.C.; Lankenau & Miller, LLC; The Gardner Firm, P.C., Shuker & Dorris, P.A., Branson Law, PLLC and Wenzel Fenton Cabassa, P.A. as Class Counsel.

C. The Court Should Preliminarily Approve the Settlement Agreement Pursuant to Civil Rule 23

67. After class certification, approval of a class settlement generally requires two hearings: one preliminary approval hearing and one final "fairness" hearing. *Gates*, 248 F.R.D. 434. Once a settlement is preliminarily approved, notice of the proposed settlement and of the fairness hearing is provided to class members. Because the Settlement Agreement in this case will be preliminarily approved pursuant to this Joint Motion, notice of the conditional class certification and proposed settlement can be combined in one notice. *Gates*, 248 F.R.D. at 445; *Collier v. Montgomery Cty. Hous. Auth.*, 192 F.R.D. 176, 186 (E.D. Pa. 2000) (citing MANUAL FOR COMPLEX LITIGATION § 30.212 (2004)). At the subsequent fairness hearing, class members may formally object to the proposed settlement. *Gates*, 248 F.R.D. at 439.

68. The preliminary approval decision is not a commitment to approve the final settlement; rather, it is a determination that 'there are no obvious deficiencies and the settlement falls within the range of reason.'" *Family Med. Pharmacy, LLC v. Trxade Grp., Inc.*, No. CV 15-0590-KD-B, 2016 WL 6573981, at *7 (S.D. Ala. Nov. 4, 2016). The preliminary approval determination requires the bankruptcy court to consider whether (1) the negotiations occurred at arm's length; (2) there was sufficient discovery; and (3) the proponents of the settlement are experienced in similar litigation. *Rosner v. United States*, No. 01-1859-CIV, 2005 WL 8155967, at *6 (S.D. Fla. Apr. 11, 2005); *In re General Motors Corp.*, 55 F.3d 768, 785-86 (3d Cir. 1995).

69. The Settlement Agreement has no obvious deficiencies and falls well within the range of reason. Each of the above-cited factors favors preliminary approval of the Settlement Agreement.

70. First, the settlement is the result of good faith, arm's length negotiations between capable adversaries over months, each represented by separate counsel.

71. Second, informal discovery was provided to assist with settlement negotiations.

72. Third, counsel for all Parties has the experience and the skill to both vigorously litigate WARN Act Claims and to determine when and to what extent settlement is appropriate. Class Counsel has collectively been appointed as class counsel in over one hundred WARN Act cases, and counsel for the Plan Administrator, collectively, have decades of experience litigating complex business and employment disputes.

73. In light of the foregoing, this Court should preliminarily approve the Settlement Agreement.

D. The Court Should Approve the Form and Manner of the Proposed Notice of the Settlement

74. Once a settlement is preliminarily approved, notice of the proposed settlement and of the fairness hearing is provided to class members. Federal Rule of Civil Procedure 23(e) requires that all members of the class be notified of the terms of any proposed settlement. The Civil Rule 23(e) requirement is designed to "ensure that all interested parties be informed of the settlement of this case and have the opportunity to voice their objections." *Wyatt ex rel Rawlins v. Sawyer*, 219 F.R.D. 529, 533 (M.D. Ala. 2004).

75. Because the Settlement Agreement in this case will be preliminarily approved pursuant to this Joint Motion, notice of the class certification and proposed settlement can be combined in one notice. *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 223 (5th Cir. 1981); *Collier v. Montgomery County Housing Authority*, 192 F.R.D. 176, 186 (E.D. Pa. 2000) (citing MANUAL FOR COMPLEX LITIGATION § 30.212, at 226). At the subsequent fairness hearing, class members may formally object to the proposed settlement. *Greco v. Ginn Dev. Co.*, LLC, 635 F. App'x 628, 633 (11th Cir. 2015).

76. Rule 23(c)(2)(B) provides:

> For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice may be made by one or more of the following: United States mail, electronic means, or other appropriate means. The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and, (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B).

77. The proposed Settlement Notice, which includes the Settlement Declination Form and Opt-Out Form, attached hereto as **Exhibit "E,"** will be served by Employee Counsel upon each Covered Employee. Employee Counsel proposes that within seven (7) days following entry of the order certifying the Classes for settlement purposes and preliminarily approving the Settlement Agreement, Employee Counsel will serve the Settlement Notice substantially in the form approved by the Bankruptcy Court, upon each Covered Employee at the last known addresses of each Covered Employee. *Greco,* 635 F. App'x at 633.

78. The Settlement Notice includes each of the facts required by Rule 23(c)(2)(B). The Settlement Notice also outlines the terms of the Settlement Agreement, including the attorneys' fees and costs proposed to be paid to Class Counsel, describes how each Class Member may obtain a copy of the Settlement Agreement and provides each Class Member with the projected amount each Class Member will receive under this Settlement from the WARN Act Claims. The Settlement Notice also states the date, time, location, and purpose of the Fairness Hearing, informs Class Members of their right to appear at the Fairness Hearing, and describes the procedure for opting-out or objecting to the Settlement Agreement. Accordingly, the form and manner of the Settlement Notice is sufficient and should be approved.

E. The Court Should Finally Approve the Settlement at the Fairness Hearing Pursuant to Civil Rule 23

79. The Parties request that this Court hold a Fairness Hearing but in no event sooner than 2 business days following the opt-out/objection deadline in the Settlement Notice. At the Fairness Hearing, this Court should finally approve the Settlement Agreement.

80. Rule 23(e) provides that "[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed or compromised only with the court's approval." *Id.* Final approval of a settlement pursuant to Rule 23(e) turns on whether the settlement is "fair, reasonable and adequate." Fed. R. Civ. P. 23(e)(2); *Poertner v. Gillette Co.*, 618 F. App'x 624, 628 (11th Cir. 2015). "This inquiry requires the court's independent and objective analysis of the evidence and circumstances before it in order to determine whether the settlement is in the best interest of those whose claims will be extinguished." *Community Bank*, 2008 WL 3833271 at * 5 (quoting *General Motors*, 55 F.3d at 785.).

81. There is a strong judicial policy in favor of settlement in order to conserve scarce resources that would otherwise be devoted to protracted litigation. *Bennett v. Behring Corp*., 737 F. 982, 986 (11th Cir. 1984). The Eleventh Circuit has established the considerations that should be taken into account when evaluating a settlement. These factors are set forth in *Bennett*: (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate, and reasonable; (4) the complexity, expense, and likely duration of the litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved. *Ingram et al. v. Coca-Cola*, 200 F.R.D. 685, 688 (N.D. Ga. 2001) (citing *Bennett*, 737 F.2d at 986.) In addition, the judgment of experienced counsel is relevant to approval. *See Ingram*, 200 F.R.D. at 691 ("Given the qualifications of Class Counsel, which include substantial experience in class action

and other complex litigation and employment discrimination cases, the Court has confidence in their collective judgment that the benefits of this settlement far outweigh the delay and considerable risk of proceeding to trial.").

82. The following factors strongly support approval of the Settlement Agreement.

a. The Class Representatives contend that the facts and relevant case law support the WARN Act Claims. To date, no class has been certified. Continued litigation of the WARN Act Claims will be protracted and expensive and the outcome uncertain.

b. The Settlement Agreement was reached after Class Counsel, Committee counsel and Debtors' counsel analyzed the applicable law and thoroughly discussed the financial status of the estates.

c. Absent the Settlement, the risk was high that the Class Representatives would be unable to collect on any judgment, even if successful, since the Debtors have limited resources and continued litigation would further deplete the estates.

d. The Class Representatives support the Settlement Agreement, and Class Counsel believe that the bulk of the other Covered Employees will have a favorable reaction to the Settlement Agreement and will neither object to it nor opt out of it.

e. When considered in light of the best possible recovery and the attendant risks, the settlement falls well within the range of reasonableness. The maximum theoretical WARN Act damages in this matter are in the millions. The Settlement provides for a settlement amount in the aggregate amount of $250,000.00, to be paid in full, in cash, upon the Settlement Effective Date.

83. Based on the foregoing, this Court should finally approve the Settlement Agreement.

NOTICE

84. Bankruptcy Rule 2002 requires that the Plan Administrator, on behalf of the Debtors, give all creditors not less than twenty-one (21) days' notice of "the hearing on approval

of a compromise or settlement of a controversy…unless the court for cause shown directs that notice not be sent;" Fed. R. Bankr. P. 2002(a)(3).

85. In order to conserve the expense of serving thousands of creditors, the vast majority of whom have no interest in this matter, the Plan Administrator shall serve a copy of this Joint Motion with all exhibits thereto, as well as a copy of the notice of preliminary hearing thereon, by email and only first class U.S. Mail when email is not available, upon: (i) the Office of the United States Trustee for the Middle District of Florida; (ii) counsel for the Reorganized Debtors; (iii) Employee Counsel; and (iv) all parties which have requested notice pursuant to Bankruptcy Rule 2002 who automatically receive electronic notices of docketings by CM/ECF.[8] In order to protect the privacy of the Debtor Defendants' former employees, the Parties will file a separate motion seeking authority to submit the employee list annexed to the Settlement Agreement as Schedule 1 under seal. Additionally, as explained above, within seven (7) days after the Court enters the Order preliminarily approving the Settlement Agreement, Employee Counsel will cause the Settlement Notice to be served, upon each Covered Employee at his or her last known address.

86. In light of the nature of the relief requested, the Parties submit that no other or further notice need be given.

CONCLUSION

WHEREFORE, the Parties respectfully request that the Court enter orders, substantially in the proposed form annexed hereto as **Exhibits C** and **D**: (i) granting the Joint Motion in its entirety; (ii) authorizing the Parties to enter into the Settlement Agreement; (iii) certifying the Classes for settlement purposes only; (iv) appointing Class Counsel and the Class Representatives and preliminarily approving the Settlement; (v) approving the form and manner of Settlement

[8] At a status conference for the WARN Act Adversary Proceedings conducted by the Court on October 16, 2024, counsel for the Plan Administrator requested, and the Court approved, said relief.

Notice; (vi) scheduling a Fairness Hearing; (vii) approving the Settlement Agreement on a final basis; and (viii) granting such other relief as the Court deems necessary and appropriate.

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Dated: October 18, 2024

Respectfully submitted,

On behalf of the Plan Administrator:

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Filer's Attestation: Pursuant to Local Rule 1001-2(g)(3) regarding signatures, Paul Steven Singerman attests that concurrence in the filing of this paper has been obtained.

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EXHIBIT A

SETTLEMENT AGREEMENT AND RELEASE

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is by and between Mark Smith, in his capacity as Plan Administrator (the "Plan Administrator") for and on behalf of Red Lobster Management, LLC and its affiliated debtor entities (collectively, the "Debtors" or the "Debtor Defendants"[1]), Kyle Zakowicz ("Zakowicz"), Donna Lowe ("Lowe"), and George Parker ("Parker," and with Zakowicz and Lowe, collectively, the "Class Representatives"), on behalf of themselves and similarly situated prospective class members (together with the Class Representatives, the "Class Members" or the "Class," as further defined herein), and Lowe for and on behalf of the individual claimants for whom proofs of claim were filed as listed on Exhibit A-1 (the "Individual Claimants", and together with the Class Representatives on behalf of the Class Members, and the Plan Administrator, the "Parties").

RECITALS

WHEREAS, on May 19, 2024, the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Middle District of Florida (the "Bankruptcy Court"), commencing the chapter 11 cases (the "Chapter 11 Cases"), which are jointly administered as *In re Red Lobster Management LLC, et al*., Case No. 24-02486-GER.

WHEREAS, On May 22, 2024, Zakowicz filed his complaint at Adversary No. 24-00048 pursuant to the New York WARN Act (the "Zakowicz Adversary"), and Lowe filed her complaint at Adversary No. 24-00049 pursuant to the federal WARN Act and the New Jersey equivalent (the "Lowe Adversary"). Prior thereto, on May 17, 2024, Lowe filed a WARN Act complaint in the United States District Court for the Middle District of Florida, Case No. 6:24-CV-928 ("Lowe District Court Action");

WHEREAS, on May 25, 2024, Parker filed his complaint at Adversary No. 24-00050 pursuant to the federal WARN Act and California equivalent (the "Parker Adversary," and with the Zakowicz Adversary and the Lowe Adversary, collectively, the "WARN Act Adversary Proceedings," and with the District Court Action, collectively, the "WARN Act Litigation");

WHEREAS, the Individual Claimants and Class Representatives have filed the proofs of claim listed on Exhibits A-1 and A-2, respectively (collectively, the "WARN Act Proofs of Claim")[2];

WHEREAS, on September 4, 2024, the Debtors filed their *Second Amended Joint Chapter*

[1] The Debtor Defendants, along with the last four digits of each Defendant Debtor's federal tax identification number are Red Lobster Management LLC (6889); Red Lobster Sourcing LLC (3075); Red Lobster Supply LLC (9187); RL Kansas LLC (2396); Red Lobster Hospitality LLC (5297); Red Lobster Restaurants LLC (4308); RL Columbia LLC (7825); RL of Frederick, Inc. (9184); RL Salisbury, LLC (7836); RL Maryland, Inc. (7185); Red Lobster of Texas, Inc. (1424); Red Lobster of Bel Air, Inc. (2240); RLSV, Inc. (6180); Red Lobster Canada, Inc. (4569); and Red Lobster International Holdings LLC (4661). The Debtor Defendants' principal offices were located at 450 S. Orange Avenue, Suite 800, Orlando, FL 32801.

[2] To the extent it is not clear if a WARN Act Proof of Claim is filed on behalf of an Individual Claimant or a Class Representative, it is listed on both Exhibits A-1 and A-2.

11 Plan [ECF No. 1124] (the "Plan"), which the Court approved on September 6, 2024, by entering *Findings of Fact, Conclusions of Law, and Order (I) Approving the Adequacy of the Disclosure Statement on a Final Basis (II) Confirming the Joint Chapter 11 Plan for Red Lobster Management LLC and its Debtor Affiliates, (III) Setting Deadlines, and (IV) Setting Post-Confirmation Status Conference* [ECF No. 1140] (the "Confirmation Order"). The effective date of the Plan was September 16, 2024. *See* ECF No. 1177 (the "Effective Date"); and

WHEREAS, the parties hereto desire to resolve the WARN Act Litigation and the claims asserted in the WARN Act Proofs of Claim on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in reliance upon and in consideration of the representations, warranties and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

AGREEMENT

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

2. Bankruptcy Court Approval.

a. The Plan Administrator's obligations under this Agreement are contingent upon approval of this Agreement by entry of an order in the form attached to the 9019 Motion (as defined below) by Final Order (as defined below) in the Debtors' bankruptcy cases.

b. Within two (2) business days after the date on which all Parties have executed this Agreement, the Plan Administrator will file with the Bankruptcy Court a motion seeking preliminary and final approval of this Agreement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "9019 Motion"). The Parties agree to use their commercially reasonable efforts to seek such approval of this Agreement by the Bankruptcy Court.

c. Upon and after receipt of preliminary approval of the Settlement, counsel for the Class Members and Individual Claimants (collectively, "Employee Counsel") shall provide notice to the Individual Claimants and to each other employee of the Debtors whose employment was terminated as a result of store closures occurring on and after May 1, 2024 at the Debtors' California stores, New Jersey stores and the New York store located at 3701 McKinley Parkway, Buffalo, NY 14219 (the "McKinley Store") (ie., collectively, the Class Members, and with the Individual Claimants, collectively, the "Covered Employees"), advising them of the opportunity to object to final approval of the Settlement, and to opt-out of or decline this Settlement. Such notice shall make clear the Debtors', Reorganized Debtors', Plan Administrator's and/or GUC Trustee's right, as applicable, to object to the proofs of claim of any opted-out Individual Claim and the absence of any opportunity to recover on account of the failure to timely to make a claim. An opt-out or declination of the Settlement shall not be deemed an objection to final approval of the

Settlement.

d. Final approval of the Settlement may be rendered on presentment of a certificate of no objection.

e. As used in this Agreement, the term "Final Order" shall mean an order of the Bankruptcy Court as entered on the docket, the operation or effect of which has not been stayed, reversed, vacated, modified, or amended without the written consent of the Plan Administrator on behalf of the Debtors and as to which order (or any revision, modification, or amendment thereof) the time to appeal, petition for certiorari, or seekreview or rehearing has expired and as to which no appeal, petition for certiorari, or petition for review or rehearing was filed or, if filed, remains pending. This Agreement shall be void and of no force or effect if the Bankruptcy Court denies preliminary approval or final approval on the 9019 Motion, the 9019 Order does not become a Final Order by November 30, 2024 (unless such date is extended by written agreement of the Parties), or the order entered by the Bankruptcy Court is not in the form and substance of the order attached to the 9019 Motion.

3. Class Resolution. The Parties shall use their commercially reasonable efforts to document, execute, and seek approval of (including approval pursuant to Rule 7023 of the Federal Rules of Bankruptcy Procedure) a settlement of the WARN Act Litigation consistent with the terms set forth in Exhibit A-3 (the "Class Settlement").

4. Distributions. The Class Representatives, the Individual Claimants, and their respective counsel shall (in the aggregate) not be entitled to any distribution or payments (including payments of legal fees) under or in connection with the Plan, the WARN Act Adversary Proceedings, the WARN Act Litigation or WARN Act Proofs of Claims in an amount greater than $250,000.00. The Plan Administrator on behalf of the Debtors, shall reserve $250,000.00 for the payment of all such liabilities pursuant to the Class Settlement. That amount shall be allocated as follows:

a. $50,000.00 shall be allocated to Zakowicz Class, and distributed: (i) 33 1/3% as a legal fee to its Class Counsel, (ii) to its settlement administrator for such settlement administrator's actual fees and expenses, and (iii) the balance distributed equally between former employees within the State of New York at the McKinley Store, in each case the settlement administrator shall determine, and make, appropriate withholdings and tax filings in relation to the foregoing.

b. $200,000.00 shall be allocated to the other Covered Employees as follows: (i) 33 1/3% as a legal fee to the Lowe and Parker Employee Counsel, (ii) 15% as an advisory fee to Dundon Advisers LLC, (iii) to Lowe and Parker individually, such amount which is 60 and 90 days, respectively, of their respective former wages as of the date of termination, not to exceed $15,150 each, (iv) to its settlement administrator such settlement administrator's actual fees and expenses, (v) to Individual Claimants who worked at closed stores other than California stores, New Jersey stores, or New York stores, the lesser of $100 or such amount that is 50% of the individual distribution amounts set forth in the next paragraph, and (vi) the balance distributed equally among Covered Employees of California stores and New Jersey stores.

The settlement administrators shall determine, and make, appropriate tax withholdings in the payments to former employees set forth above, and may exclude an otherwise eligible former employee from participation in the settlement if he or she does not provide any required tax form within a reasonable period of time after request for the same.

For the avoidance of doubt, no recovery shall be had on account of the *Lowe*, *Parker* or *Zackowicz class* claims for former employees of stores other than in California, New Jersey or the McKinley Store in New York, unless they are among the Individual Claimants.

5. No Admission. It is understood and agreed by the Parties that this Agreement is a compromise and settlement of disputed matters and the execution, delivery, and performance of this Agreement (and any releases and other agreements related hereto) shall not be deemed or construed as an admission of liability or responsibility at any time or for any purpose whatsoever. In the event that the settlement contemplated in this Agreement is not consummated (for any reason whatsoever), (a) the entry into this Agreement by the Parties shall not be deemed or construed as (i) a waiver or release of any claims, arguments, or defenses held by or otherwise available to any of the Parties, or (ii) an admission of liability or responsibility by any of the Parties; and (b) each Party shall have the right to assert or otherwise maintain all claims, arguments, and defenses available to it, including, without limitation, all claims, arguments, and defenses available to it immediately prior to entering into this Agreement.

6. Voluntary Agreement. The Parties each acknowledge and agree that each of them is entering into this Agreement freely and voluntarily (after having received legal advice from the counsel of their respective choosing) and not acting under any misapprehension as to the effect hereof and has acted and does hereby act freely and voluntarily and not under any coercion or duress, and acknowledge that good and valuable consideration was and has been received. The Parties each declare that this Agreement is freely and fairly made and that, except as specifically referenced in this Agreement, there are no other agreements, oral or written or otherwise, pertaining to the subject matter of this Agreement.

7. Entire Agreement. This Agreement is an integrated instrument, containing the entire understanding among the signatory parties regarding the matters addressed herein and, except as set forth expressly in this Agreement, no representations, warranties, or promises have been made or relied upon by the Parties. This Agreement shall prevail over prior communications between the Parties or their representatives regarding the matters contained herein.

8. Further Assurances. Each of the Parties shall execute and deliver any additional papers, documents, and other assurances, and shall do any acts and things reasonably necessary in connection with the performance hereunder and to carry out the intent of this Agreement. The Parties further agree not to take any action that may frustrate the intent or purpose of this Agreement.

9. Execution and Due Authority. This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original. Each Party warrants that the individual signing this Agreement is duly authorized and empowered to enter into this Agreement.

10. Dismissal. Upon receipt of the payments required by this Agreement, each of the

Zakowicz Adversary, Parker Adversary, Lowe Adversary and Lowe District Court Action shall be dismissed with prejudice.

11. Resolution of WARN Act Proofs of Claim. Upon receipt of the payments required by this Agreement, each of the Covered Employees shall cause their claims to either be withdrawn or will not otherwise object to the expungement of their claims.

12. Costs. Each Party shall bear its own costs and expenses in connection with this matter, including legal fees and expenses.

13. Releases. All Covered Employees, for and on behalf of themselves, and their respective predecessors, successors, assigns, affiliates and subsidiaries (collectively, the "Releasing Parties"), do hereby fully and forever release and discharge the Debtors, the Debtors' estates, the Debtors' current and former parents, subsidiaries, partners, directors, officers, members, accountants, attorneys, representatives, and all other agents, and all of their respective predecessors, successors and assigns, and the Plan Administrator and his accountants, attorneys, representatives and agents (collectively, the "Released Parties"), of and from any and all claims, obligations, demands, rights, debts, liabilities, liens, actions and causes of action, costs, expenses, attorneys' fees and damages of whatever kind or nature, character, and description, whether in law or in equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, whether known or unknown, and whether anticipated or unanticipated, suspected or disclosed, which the Releasing Parties may now or hereafter may have against the Released Parties, which relate to or are based on the WARN Act or any federal, state, or local law or regulation applying to plant closings, mass layoffs, employment termination, or in any way relate to the WARN Act or state and local equivalents (collectively, the "Covered Employees' Released Claims").[3]

14. Headings. Section headings contained in this Agreement are for purposes of organization only and shall not constitute a part of this Agreement.

15. Construction. This Agreement is the product of arm's-length negotiations among the signatory parties regarding a compromise of disputed claims, and no Party shall be deemed to be the drafter of the Agreement or any provision of the Agreement, nor shall any part of this Agreement be construed against another Party on the basis of that Party's identity as the drafter of any part of this Agreement.

16. Binding Agreement. This Agreement shall be binding upon the Parties and their respective executors, heirs, successors, and assigns.

17. Governing Law. This Agreement shall be governed in all respects by, and interpreted in accordance with, the laws of the State of Florida, without giving effect to choice of

[3]The Covered Employees' Released Claims consist of any and all claims of any kind or nature whatsoever, at law, in equity, and otherwise, whether known or unknown, anticipated, suspected, or disclosed, which the Releasing Parties have or may have as of the date the Court enters an order approving the settlement, which relate to or are based on the WARN Act or any federal, state, or local law or regulation applying to plant closings, mass layoffs, or employment termination.

law principles.

18. Amendments. No amendments to the terms of this Agreement shall be valid unless made in writing and signed by all Parties.

19. Time of Essence. Time is of the essence of this Agreement and each provision of this Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of October 18, 2024.

On behalf of the Class Representatives:

SHUKER & DORRIS, P.A.
Local Counsel for Donna Lowe
and the Individual Claimants
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By: */s/R. Scott Shuker*
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Florida Bar No. 984469
Email: rshuker@shukerdorrris.com

and

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Florida Bar No. 0285020
Email: aheystek@wfclaw.com

and

On behalf of the Plan Administrator

/s/ Paul Steven Singerman
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Robin J. Rubens
Florida Bar No. 959413
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Filer's Attestation: Pursuant to Local Rule 1001-2(g)(3) regarding signatures, Paul Steven Singerman attests that concurrence in the filing of this paper has been obtained.

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Johnathan Miller, Esq.
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Telephone: (407) 894-6834

By: /s/ *Jeffrey S. Ainsworth*
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Email: jeff@bransonlaw.com
Jacob F. Flentke
Florida Bar No. 25482
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and

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Telephone: (310) 824-3828
Email: jim@melmedlaw.com
Email: rh@melmedlaw.com

EXHIBIT A-1

WARN Act Proofs of Claim Filed by Individual Claimants

CLAIM NUMBER

1092
1093
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1101
1102
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EXHIBIT A-2

WARN Act Proofs of Claim Filed by Class Representatives

CLAIM NUMBER

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11497
11498
11536
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EXHIBIT A-3
Settlement Term Sheet

This Term Sheet (the "Term Sheet") has been prepared in the context of settlement discussions and negotiations among the above-referenced debtors (the "Debtors") and the other Parties referenced below in the chapter 11 cases of the Debtors. This Term Sheet shall be subject to, and exclusively evidenced by, definitive legal documentation in form and substance satisfactory to any party to be bound thereby. The Term Sheet is not intended to be all-inclusive.

Parties	Kyle Zakowicz ("Zakowicz"), Donna Lowe ("Lowe"), and George Parker ("Parker," and with Zakowicz and Lowe, collectively, the "Class Representatives"), on behalf of themselves and similarly situated prospective class members (together with the Class Representatives, the "Class Members" or the "Class," as further defined herein), and the individual claimants listed on Exhibit A-1 (the "Individual Claimants").
Settlement Reserve	The Debtors shall reserve $250,000.00 for the full satisfaction of all claims related to the WARN Act Litigation and the WARN Act Proofs of Claim (the "Settlement Reserve"). The Settlement Reserve shall be used for: (a) payment of counsel; (b) payment of all expenses associated with the administration of the settlement and other fees; and (c) payments to Class Members. Payment to Class Members shall be based upon a formula to be agreed to among the Parties. Notwithstanding the foregoing, the Settlement Reserve shall be reduced for each potential Class Member that elects to be excluded based on a formula to be agreed to by the Parties.
Class Members	All individuals that are members of the classes set forth in the WARN Act Litigation and all Individual Claimants. Individual Claimants shall agree to not be excluded from the Class.
Binding Terms	All Class Members (excluding those individuals that elect to be excluded from the Class pursuant to Rule 23) shall be bound by the terms of this Settlement, including the releases provided for herein.
Releases	All Class Members (including, for the avoidance of doubt, the Individual Claimants) shall be deemed to grant full releases to the Debtors, the Debtors' estates and the Plan Administrator and each of their Members, directors, managers, officers, attorneys, advisors, and Related Parties (as defined in the Plan).
Cooperation	The Parties shall use commercially reasonable efforts to document this settlement and seek appropriate approval thereof.
Individual Claimants	The Individual Claimants shall not receive any distributions other than what is provided for herein.

Schedule 1 to Agreement

Covered Employees and Projected Distributions

[To Be Filed Under Seal]

EXHIBIT B-1

DECLARATION OF MARY E. OLSEN IN SUPPORT OF CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

IN RE:	Chapter 11 Cases
RED LOBSTER MANAGEMENT LLC,[1]	Case No. 6:24-bk-02486-GER
	Jointly Administered with
RED LOBSTER RESTAURANTS LLC,	Case No. 6:24-bk-02487-GER
RLSV, INC.,	Case No. 6:24-bk-02488-GER
RED LOBSTER CANADA, INC.,	Case No. 6:24-bk-02489-GER
RED LOBSTER HOSPITALITY LLC,	Case No. 6:24-bk-02490-GER
RL KANSAS LLC,	Case No. 6:24-bk-02491-GER
RED LOBSTER SOURCING LLC,	Case No. 6:24-bk-02492-GER
RED LOBSTER SUPPLY LLC,	Case No. 6:24-bk-02493-GER
RL COLUMBIA LLC,	Case No. 6:24-bk-02494-GER
RL OF FREDERICK, INC.,	Case No. 6:24-bk-02495-GER
RED LOBSTER OF TEXAS, INC.,	Case No. 6:24-bk-02496-GER
RL MARYLAND, INC.,	Case No. 6:24-bk-02497-GER
RED LOBSTER OF BEL AIR, INC.,	Case No. 6:24-bk-02498-GER
RL SALISBURY, LLC,	Case No. 6:24-bk-02499-GER
RED LOBSTER INTERNATIONAL HOLDINGS LLC,	Case No. 6:24-bk-02500-GER
Debtors.	
_____/	

DECLARATION OF MARY E. OLSEN

I, Mary E. Olsen, declare that the following is true to the best of my knowledge, information, and belief:

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are Red Lobster Management LLC (6889); Red Lobster Sourcing LLC (3075); Red Lobster Supply LLC (9187); RL Kansas LLC (2396); Red Lobster Hospitality LLC (5297); Red Lobster Restaurants LLC (4308); RL Columbia LLC (7825); RL of Frederick, Inc. (9184); RL Salisbury, LLC (7836); RL Maryland, Inc. (7185); Red Lobster of Texas, Inc. (1424); Red Lobster of Bel Air, Inc. (2240); RLSV, Inc. (6180); Red Lobster Canada, Inc. (4569); and Red Lobster International Holdings LLC (4661). The Debtors' principal offices were located at 450 S. Orange Avenue, Suite 800, Orlando, FL 32801.

1. I am a member of The Gardener Firm, PC, one of the law firms representing a class claimant, Kyle Zakowicz ("Zakowicz" or "Class Representative"). This declaration (the "Declaration") is submitted in support of the *Joint Motion Pursuant to 11 U.S.C. §105 and Fed. R. Bankr. P. 7023 and 9019 to (I) Approve a Settlement Pursuant to Fed. R. Bankr. P. 9019, (II) Certify a Class of WARN Act Claimants for Settlement Purposes Only, Appoint Class Counsel and Class Representatives, and Preliminarily Approve the Settlement Pursuant to Fed. R. Bankr. P. 7023, (III) Approve the Form and Manner of Notice to Class Members of the Class Certification and Settlement, (IV) Schedule a Fairness Hearing to Consider Final Approval of the Settlement, (V) Finally Approve the Settlement Pursuant to Fed. R. Bankr. P. 7023 After the Fairness Hearing, and (VI) Grant Related Relief* (the "Joint Motion") filed contemporaneously herewith.

2. If I were called to testify as a witness in this matter, I could and would competently testify to each of the facts set forth herein based upon my personal knowledge, and on my review of the documents referenced above. I am authorized to submit this Declaration on behalf of the Class Members (as subsequently defined). On May 22, 2024, Zakowicz filed an Adversary Proceeding Complaint, Adv. No. 24-00048 (the "Complaint") on behalf of himself and similarly situated prospective class members (together with the Class Representative, the "Class Members" or the "Class," as further defined herein) against Red Lobster Management, LLC and its fellow debtor entities (collectively, the "Debtor Defendants"), under the New York Worker Adjustment and Retraining Notification Act, New York Labor Law § 860 *et seq*. (the "NY WARN Act").[2] The Class Representative asserts the class claim pursuant to the NY WARN Act; that the Class is so numerous as to render joinder of all members impracticable; that there are common questions of law and fact applicable to all Class Members that predominate over any questions affecting only

[2] Although the Zakowicz Complaint asserts only NY WARN Act claims, the NY WARN Act may be referenced herein as the "WARN Act."

individual members; that the Class Representative's claims are typical of the claims of the other Class Members; that the Class Representative will fairly and adequately protect and represent the interests of the Class; that the Class Representative has retained counsel who have extensive experience in litigating class actions; and that a class action is superior to other available methods for the fair and efficient adjudication of this controversy. The Class Representative further asserts that, as a consequence of the alleged NY WARN Act violation, the Class Members have an allowed priority claim pursuant to 11 U.S.C. § 507(a)(4) against the Debtor Defendants for NY WARN Act damages which include (a) unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay, retirement plan and other benefits, for a maximum of sixty (60) days, that would have been covered and paid under the then applicable employee benefit plans had that coverage continued for that period, all determined in accordance with the NY WARN Act.

3. The Class Representative also filed a proof of claim collectively on behalf of the Class Members against each of the Debtors (collectively, the "Class Proof of Claim").

4. On May 31, 2024, the Office of the United States Trustee for the Middle District of Florida (the "U.S. Trustee") appointed an official committee of unsecured creditors in these Chapter 11 Cases (the "Creditors' Committee"). *See* ECF No. 250.

5. The WARN Act Litigation involves numerous legal issues regarding the application of the WARN Act and/or Mini-WARN Acts and statutory and other legal defenses to complex facts. These issues include, *inter alia*, (i) whether the Debtor Defendants were a covered employer under the WARN Act and/or Mini-WARN Acts at the time of the alleged plant closings or mass layoffs pursuant to the liquidating fiduciary doctrine; (ii) whether the Debtor Defendants were required to provide notice under the WARN Act and/or Mini-WARN Acts; (iii) whether there is liability associated with the Debtor Defendants' failure to provide notice; (iv) whether the Debtor

Defendants were entitled to give fewer than ninety (90) days' notice because of the unforeseeable business circumstances that caused the Debtors to fail; (v) whether the Debtor Defendants were entitled to give fewer than ninety (90) days' notice because, at the time notice would otherwise have been required, they were seeking new capital they reasonably believed, if obtained, would have obviated the need for or substantially postponed the alleged plant closing or mass layoffs; (vi) whether the Debtor Defendants' efforts to obtain new capital were commercially reasonable under the circumstances; (vii) whether the Debtor Defendants have other defenses to the application of the WARN Act and/or Mini-WARN Acts; (viii) whether the Debtor Defendants gave "as much notice as practicable"; (ix) whether the Debtor Defendants are entitled to a defense of "good faith"; (x) the computation of the amount of damages; (xi) whether attorneys' fees are to be awarded to the Class Members if they prevail and whether such fees are entitled to administrative priority; (xii) whether the alleged damages are entitled to wage or benefit priority under §§ 507(a)(4) or (5), respectively; and (xiii) whether the Debtor Defendants constitute a "single employer" under the provisions of the WARN Act and/or Mini-WARN Acts for damages to apply and/or such that they would be jointly and severally liable for some or all or the alleged damages.

6. Continued litigation would be costly and time-consuming and expose the Debtors' estates to significant litigation risks. Class Counsel has asserted that the Debtor Defendants' WARN Act liability on the WARN Act Claims of sixty (60) days' damages and benefits is in the multi-millions, which constitutes, at least in large part, an alleged administrative expense and otherwise a priority claim. The Settlement provides that the Debtors shall pay $50,000.00 (the "Settlement Amount") to an administrator(s) of Class Counsels' choice, in accordance with the terms of the Settlement Agreement. Class Counsel, or administrator(s), in turn, will distribute the Settlement Amount to the Class Members in accordance with the terms of the Settlement

Agreement. The Settlement resolves the WARN Act Litigation and eliminates further accrual of the substantial litigation expenses which have been associated therewith.

7. Additionally, the Settlement Agreement provides for the certification of a Class comprised of all persons who were employed by the Debtor Defendants and who worked at or reported to the McKinley Store in New York, who were terminated, without cause on their part, on or about May 13, 2024, within thirty (30) days of that date or thereafter as part of, or as the reasonably expected consequence of, the closing of the relevant store, and who do not file a timely request to opt-out of the class (the "Class").

8. The Covered Employees' Released Claims, as defined in the Settlement Agreement shall take effect upon the distribution of the Settlement Payment in accordance with the Settlement Agreement.

9. The Settlement Agreement provides that, for purposes of the Class, Zakowicz, will be appointed as Class Representative; and the law firms of Lankenau & Miller, LLC; The Gardner Firm, P.C. and Wenzel Fenton Cabassa, P.A. will be designated as Class Counsel.

10. As set forth in the Joint Motion, and as further supported by this declaration, I submit that the proposed Class should be certified pursuant to the NY WARN Act, and to the extent applicable, meets the requirements of Rule 7023 of the Federal Rules of Bankruptcy and Rule 23 of the Federal Rules of Civil Procedure.

11. With respect to the numerosity requirement, based on the Debtors' records, there are 49 Class Members who fall within the agreed upon Class definition. I submit that this meets the numerosity requirement and that the Class is sufficiently numerous so as to make joinder of all Class Members impractical. Accordingly, I submit that the Court should find the numerosity requirement has been met.

12. The commonality requirement requires existence of at least one question of law or fact common to the Class. See, e.g., Fed. R. Civ. P. 23(a)(2); *Johnston v. HBO Film Management, Inc.*, 265 F.3d 178, 184 (3d Cir. 2001). The commonality threshold is low, (*Powers v. Lycoming Engines*, 245 F.R.D. 226, 236 (E.D. Pa. 2007)), and does not require "an identity of claims or facts among class members," *Beherend v. Comcast Corp.*, 245 F.R.D. 195, 202 (E.D. Pa. 2007) (citing *Moskovitz v. Loop*, 128 F.R.D. 624, 628 (E.D. Pa. 1989)). Further, I submit that the existence of individual facts and circumstances will not defeat commonality so long as the Class Members allege harm under the same legal theory.

13. Here, fundamental issues of law and fact regarding applicability of the NY WARN Act, notice of termination, applicability of several defenses, measure of damages and priority of claims and attorneys' fees are common to all Class Members.[3] For these reasons, I submit that the commonality factor is met.

14. In my experience and having been appointed as class counsel in more than seventy-five WARN Act class actions, commonality has been found for class certification where class members had different degrees of injury or even where defenses might exist only as to particular individuals.

15. In my experience, class action suits under the WARN Act almost always involve a class of claimants who held different positions, were paid different amounts, frequently were terminated on different dates, and often work at different locations with varying numbers of employees per location.

[3] Class Counsel recognizes that the amount of damages is particular to each Class Member. However, individualized damages calculations do not defeat commonality, "so long as the plaintiffs allege harm under the same legal theory." *Baby Neal v. Casey*, 43 F.3d 48, 56-58 (3d Cir. 1994).

16. Typicality requires that the "named plaintiffs" claims are typical, in common- sense terms, of the class, thus suggesting that the incentives of the plaintiffs are aligned with those of the class." See, e.g., Fed. R. Civ. P. 23(a)(3); *Beck v. Maximus, Inc.*, 457 F.3d 291, 295-296 (3d Cir. 2006) (quoting *Baby Neal*, 43 F.3d at 55). "Typicality requires a strong similarity of legal theories to ensure that the class representatives' pursuit of their own goals will work to benefit the entire class." *Powers*, 245 F.R.D. at 236. "Factual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members, and if it is based on the same legal theory." *Beck*, 457 F.3d at 295- 296 (quoting *Baby Neal*, 43 F.3d at 55). The Class Representative does not allege that he was singled out for disparate treatment in connection with his termination. Instead, he alleges that he suffered harm as a result of the same conduct that allegedly injured the absentee Class Members—that they were allegedly terminated during the same time period without receiving ninety (90) days' advance written notice. I submit that the same facts supporting commonality support the "typicality prong," as well.

17. With respect to adequacy, the Class Representative must "fairly and adequately protect the interests of the class." See, e.g., Fed. R. Civ. P. 23(a)(4). I submit that the Class Representative is suitable to serve as the representative for the Class. The Class Representative was terminated during the relevant period, and his claims are not antagonistic to the Class. The Class Representative had no involvement in the Debtor Defendants' decision to terminate the Class Members, nor did he have any involvement in the Debtor Defendants' decision regarding the provision of notice to the individuals who worked at the McKinley Store. The Class Representative has no conflict of interest with the members of the Class.

18. The Class Representative has prosecuted the WARN Act claims, in spite of the stigma that can accompany being a named plaintiff in class litigation and in spite of the risk of retaliation by prospective employers. He has willingly assisted counsel throughout the litigation.

19. Regarding the "predominance" requirement, common questions of law and fact predominate over the individual issues. I submit that the same facts supporting the "typicality prong," support predominance. All of the claims arise from an alleged violation of the WARN Act resulting from the terminations occurring on or about May 13, 2024.

20. I submit that the "superiority" element is met. The WARN Act notes the propriety of class treatment for WARN Act litigation, and the nature of the WARN Act makes it perfectly suited to class treatment. In many cases, such as this one, liability depends on issues of law and fact that affect an entire large group of individuals in the same way. Additionally, as shown in Schedule 1 to the Settlement Agreement, the amount of each Class Member's individual claim is relatively small. Individually, there is little incentive in controlling the prosecution of separate actions. Further, determining the claims of some Class Members, but not all, could prejudice the claims of the remaining Class Members.

21. I, along with attorneys from the following firms have had and will have responsibility for this matter: Lankenau & Miller, LLC and Wenzel Fenton Cabassa, P.A..

22. I submit that the above-referenced counsel are well-suited to serve as Class Counsel, have no conflict of interest, and, as shown herein, have diligently prosecuted the WARN Action and should be appointed Class Counsel.

23. I submit that the Settlement Notice attached to the Joint Motion will fairly apprise the Class Members of the nature of the dispute, the terms and benefits of the Settlement, of their right to opt-out of the Class, and of the effect of their decision not to opt-out of the class; namely,

that they will be bound by terms of the proposed Settlement Agreement, including the releases of claims therein.

24. The Parties seek approval of service of the Settlement Notice by mail to Covered Employees at their last known address. As discussed in the Joint Motion, I submit that service in this manner, and according to the proposed schedule, is proper.

25. In view of the foregoing and the Joint Motion, I ask the Bankruptcy Court to enter an order for the relief requested in the Joint Motion, and to approve all aspects of the Settlement.

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

Dated: October 18, 2024

/s/ Mary E. Olsen
Mary E. Olsen

EXHIBIT B-2

DECLARATION OF JONATHAN MELMED IN SUPPORT OF CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

IN RE:	Chapter 11 Cases
RED LOBSTER MANAGEMENT LLC,[1]	Case No. 6:24-bk-02486-GER
	Jointly Administered with
RED LOBSTER RESTAURANTS LLC,	Case No. 6:24-bk-02487-GER
RLSV, INC.,	Case No. 6:24-bk-02488-GER
RED LOBSTER CANADA, INC.,	Case No. 6:24-bk-02489-GER
RED LOBSTER HOSPITALITY LLC,	Case No. 6:24-bk-02490-GER
RL KANSAS LLC,	Case No. 6:24-bk-02491-GER
RED LOBSTER SOURCING LLC,	Case No. 6:24-bk-02492-GER
RED LOBSTER SUPPLY LLC,	Case No. 6:24-bk-02493-GER
RL COLUMBIA LLC,	Case No. 6:24-bk-02494-GER
RL OF FREDERICK, INC.,	Case No. 6:24-bk-02495-GER
RED LOBSTER OF TEXAS, INC.,	Case No. 6:24-bk-02496-GER
RL MARYLAND, INC.,	Case No. 6:24-bk-02497-GER
RED LOBSTER OF BEL AIR, INC.,	Case No. 6:24-bk-02498-GER
RL SALISBURY, LLC,	Case No. 6:24-bk-02499-GER
RED LOBSTER INTERNATIONAL HOLDINGS LLC,	Case No. 6:24-bk-02500-GER
Debtors.	

_____/

DECLARATION OF JONATHAN MELMED

I, Jonathan Melmed, declare that the following is true to the best of my knowledge, information, and belief:

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are Red Lobster Management LLC (6889); Red Lobster Sourcing LLC (3075); Red Lobster Supply LLC (9187); RL Kansas LLC (2396); Red Lobster Hospitality LLC (5297); Red Lobster Restaurants LLC (4308); RL Columbia LLC (7825); RL of Frederick, Inc. (9184); RL Salisbury, LLC (7836); RL Maryland, Inc. (7185); Red Lobster of Texas, Inc. (1424); Red Lobster of Bel Air, Inc. (2240); RLSV, Inc. (6180); Red Lobster Canada, Inc. (4569); and Red Lobster International Holdings LLC (4661). The Debtors' principal offices were located at 450 S. Orange Avenue, Suite 800, Orlando, FL 32801.

1. I am a member of Melmed Law Group P.C., one of the law firms representing a class claimant, George Parker ("Parker" or "Class Representative"). This declaration (the "Declaration") is submitted in support of the *Joint Motion Pursuant to 11 U.S.C. §105 and Fed. R. Bankr. P. 7023 and 9019 to (I) Approve a Settlement Pursuant to Fed. R. Bankr. P. 9019, (II) Certify a Class of WARN Act Claimants for Settlement Purposes Only, Appoint Class Counsel and Class Representative, and Preliminarily Approve the Settlement Pursuant to Fed. R. Bankr. P. 7023, (III) Approve the Form and Manner of Notice to Class Members of the Class Certification and Settlement, (IV) Schedule a Fairness Hearing to Consider Final Approval of the Settlement, (V) Finally Approve the Settlement Pursuant to Fed. R. Bankr. P. 7023 After the Fairness Hearing, and (VI) Grant Related Relief* (the "Joint Motion") filed contemporaneously herewith.

2. If I were called to testify as a witness in this matter, I could and would competently testify to each of the facts set forth herein based upon my personal knowledge, and on my review of the documents referenced above. I am authorized to submit this Declaration on behalf of the Class Members (as subsequently defined). On May 25, 2024, Parker filed an Adversary Proceeding Complaint, Adv. No. 24-00050 (the "Complaint") on behalf of himself and similarly situated prospective class members (together with the Class Representative, the "Class Members" or the "Class," as further defined herein) against Red Lobster Management, LLC and its fellow debtor entities (collectively, the "Debtor Defendants"), under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101-2109 (the "WARN Act") and the analogous California state statute. The Class Representative asserts the class claim pursuant to the WARN Act, California WARN, Rules 7023(a) and (b)(3) of the Federal Rules of Bankruptcy Procedure and Rules 23(a) and (b) of the Federal Rules of Civil Procedure. The Class Representative alleges that the Class meets the requirements of Federal Rule of Civil Procedure Rule 23; that the Class is so numerous

as to render joinder of all members impracticable; that there are common questions of law and fact applicable to all Class Members that predominate over any questions affecting only individual members; that the Class Representative's claims are typical of the claims of the other Class Members; that the Class Representative will fairly and adequately protect and represent the interests of the Class; that the Class Representative has retained counsel who have extensive experience in litigating class actions; and that a class action is superior to other available methods for the fair and efficient adjudication of this controversy. The Class Representative further asserts that, as a consequence of the alleged WARN Act violation, the Class Members have an allowed priority claim pursuant to 11 U.S.C. § 507(a)(4) against the Debtor Defendants for WARN Act damages which include (a) unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay, retirement plan and other benefits, for a maximum of sixty (60) days, that would have been covered and paid under the then applicable employee benefit plans had that coverage continued for that period, all determined in accordance with the WARN Act, 29 U.S.C. § 2104(a)(1)(A).

3. The Class Representative also filed a proof of claim collectively on behalf of the Class Members (the "Class Proof of Claim").

4. On May 31, 2024, the Office of the United States Trustee for the Middle District of Florida (the "U.S. Trustee") appointed an official committee of unsecured creditors in these Chapter 11 Cases (the "Creditors' Committee"). *See* ECF No. 250.

5. The WARN Act Litigation involves numerous legal issues regarding the application of the WARN Act and its statutory and other legal defenses to complex facts. These issues include, *inter alia*, (i) whether the Debtor Defendants were a covered employer under the WARN Act at the time of the alleged plant closings or mass layoffs pursuant to the liquidating fiduciary doctrine;

(ii) whether the Debtor Defendants were required to provide notice under the WARN Act and Mini-WARN Acts; (iii) whether there is liability associated with the Debtor Defendants' failure to provide notice; (iv) whether the Debtor Defendants were entitled to give fewer than sixty (60) days' notice because of the unforeseeable business circumstances that caused the Debtors to fail; (v) whether the Debtor Defendants were entitled to give fewer than sixty (60) days' notice because, at the time notice would otherwise have been required, they were seeking new capital they reasonably believed, if obtained, would have obviated the need for or substantially postponed the alleged plant closing or mass layoffs; (vi) whether the Debtor Defendants' efforts to obtain new capital were commercially reasonable under the circumstances; (vii) whether the Debtor Defendants have other defenses to the application of the WARN Act; (viii) whether the Debtor Defendants gave "as much notice as practicable"; (ix) whether the Debtor Defendants are entitled to a defense of "good faith"; (x) the computation of the amount of damages; (xi) whether attorneys' fees are to be awarded to the Class Members if they prevail and whether such fees are entitled to administrative priority; (xii) whether the alleged damages are entitled to wage or benefit priority under §§ 507(a)(4) or (5), respectively; and (xiii) whether the Debtor Defendants constitute a "single employer" under the provisions of the WARN Act for damages to apply and/or such that they would be jointly and severally liable for some or all or the alleged damages.

6. Continued litigation would be costly and time-consuming and expose the Debtors' estates to significant litigation risks. Class Counsel has asserted that the Debtor Defendants' WARN Act liability of sixty (60) days' damages and benefits is in the multi-millions, which constitutes, at least in large part, an alleged administrative expense and otherwise a priority claim. The Settlement provides that the Debtors shall pay $200,000.00 (the "Settlement Amount") to an administrator(s) of Class Counsels' choice (to be shared with the plaintiffs represented by Donna

Lowe), in accordance with the terms of the Settlement Agreement. Class Counsel, or administrator(s), in turn, will distribute the Settlement Amount to the Class Members in accordance with the terms of the Settlement Agreement. The Settlement resolves the WARN Act Litigation and eliminates further accrual of the substantial litigation expenses which have been associated therewith.

7. Additionally, the Settlement Agreement provides for the certification of a Class for settlement purposes only, comprised of all persons who were employed by the Debtor Defendants and who worked at or reported to the Debtor Defendants' Facilities in California, who were terminated, without cause on their part, on or about May 13, 2024, within thirty (30) days of that date or thereafter as part of, or as the reasonably expected consequence of, the closing of the relevant stores, and who do not file a timely request to opt-out of the class (the "Class").

8. All Class Members' claims against the Debtors (other than claims with respect to amounts to be paid under the terms of the Settlement) shall be released and waived upon the distribution of the Settlement Payment in accordance with the Settlement Agreement.

9. The Settlement Agreement provides that, for purposes of the Class, Parker, will be appointed as Class Representative; and the law firms of Melmed Law Group P.C and Branson Law, PLLC will be designated as Class Counsel.

10. As set forth in the Joint Motion, and as further supported by this declaration, I submit that the proposed Class meets the requirements of Rule 7023 of the Federal Rules of Bankruptcy and Rule 23 of the Federal Rules of Civil Procedure.

11. With respect to the numerosity requirement of Federal Rule of Civil Procedure Rule 23, based on the Debtors' records, there are 276 Class Members who fall within the agreed upon Class definition. I submit that this meets the numerosity requirement and that the Class is

sufficiently numerous so as to make joinder of all Class Members impractical. Accordingly, I submit that the Court should find the numerosity requirement has been met.

12. The commonality requirement requires existence of at least one question of law or fact common to the Class. Fed. R. Civ. P. 23(a)(2); *Johnston v. HBO Film Management, Inc.*, 265 F.3d 178, 184 (3d Cir. 2001). The commonality threshold is low, (*Powers v. Lycoming Engines*, 245 F.R.D. 226, 236 (E.D. Pa. 2007)), and does not require "an identity of claims or facts among class members," *Beherend v. Comcast Corp.*, 245 F.R.D. 195, 202 (E.D. Pa. 2007) (citing *Moskovitz v. Loop*, 128 F.R.D. 624, 628 (E.D. Pa. 1989)). Further, I submit that the existence of individual facts and circumstances will not defeat commonality so long as the Class Members allege harm under the same legal theory.

13. Here, fundamental issues of law and fact regarding applicability of the WARN Act, notice of termination, applicability of several defenses, measure of damages and priority of claims and attorneys' fees are common to all Class Members.[2] For these reasons, I submit that the commonality factor of Federal Rule of Civil Procedure Rule 23(a)(2) is met.

14. In my experience and having been appointed as class counsel in more than seventy-five WARN Act class actions, commonality has been found for class certification where class members had different degrees of injury or even where defenses might exist only as to particular individuals.

15. In my experience, class action suits under the WARN Act almost always involve a class of claimants who held different positions, were paid different amounts, frequently were

[2] Class Counsel recognizes that the amount of damages is particular to each Class Member. However, individualized damages calculations do not defeat commonality, "so long as the plaintiffs allege harm under the same legal theory." *Baby Neal v. Casey*, 43 F.3d 48, 56-58 (3d Cir. 1994).

terminated on different dates, and often work at different locations with varying numbers of employees per location.

16. Typicality requires that the "named plaintiffs" claims are typical, in common- sense terms, of the class, thus suggesting that the incentives of the plaintiffs are aligned with those of the class." Fed. R. Civ. P. 23(a)(3); *Beck v. Maximus, Inc.*, 457 F.3d 291, 295-296 (3d Cir. 2006) (quoting *Baby Neal*, 43 F.3d at 55). "Typicality requires a strong similarity of legal theories to ensure that the class representatives' pursuit of their own goals will work to benefit the entire class." *Powers*, 245 F.R.D. at 236. "Factual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members, and if it is based on the same legal theory." *Beck*, 457 F.3d at 295- 296 (quoting *Baby Neal*, 43 F.3d at 55). The Class Representative does not allege that he was singled out for disparate treatment in connection with his termination. Instead, he alleges that he suffered harm as a result of the same conduct that allegedly injured the absentee Class Members—that they were allegedly terminated during the same time period without receiving sixty (60) days' advance written notice. I submit that the same facts supporting commonality support the "typicality prong," as well.

17. With respect to adequacy, the Class Representatives must "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). I submit that the Class Representative is suitable to serve as the representatives for the Class. The Class Representative was terminated during the relevant period, and his claims are not antagonistic to the Class. The Class Representative had no involvement in the Debtor Defendants' decision to terminate the Class Members, nor did he have any involvement in the Debtor Defendants' decision regarding the provision of notice to the individuals who worked at the Facilities. The Class Representative has no conflict of interest with the members of the Class.

18. The Class Representative has prosecuted the WARN Act claims, in spite of the stigma that can accompany being a named plaintiff in class litigation and in spite of the risk of retaliation by prospective employers. He has willingly assisted counsel throughout the litigation.

19. Regarding the "predominance" requirement of Federal Rule of Civil Procedure Rule 23(b), common questions of law and fact predominate over the individual issues. I submit that the same facts supporting the "typicality prong," support predominance. All of the claims arise from an alleged violation of the WARN Act resulting from the terminations occurring on or about May 13, 2024.

20. I submit that the "superiority" element of Federal Rule of Civil Procedure Rule 23(b) is met. The WARN Act notes the propriety of class treatment for WARN Act litigation, and the nature of the WARN Act makes it perfectly suited to class treatment. In many cases, such as this one, liability depends on issues of law and fact that affect an entire large group of individuals in the same way. Additionally, as shown in Schedule 1 to the Settlement Agreement, the amount of each Class Member's individual claim is relatively small. Individually, there is little incentive in controlling the prosecution of separate actions. Further, determining the claims of some Class Members, but not all, could prejudice the claims of the remaining Class Members.

21. I, along with attorneys from the following firms have had and will have responsibility for this matter: Melmed Law Group P.C. and Branson Law, PLLC.

22. I submit that the above-referenced counsel are well-suited to serve as Class Counsel, have no conflict of interest, and, as shown herein, have diligently prosecuted the WARN Action and should be appointed Class Counsel.

23. I submit that the Settlement Notice attached to the Joint Motion will fairly apprise the Class Members of the nature of the dispute, the terms and benefits of the Settlement, of their

right to opt-out of the Class, and of the effect of their decision not to opt-out of the class; namely, that they will be bound by terms of the proposed Settlement Agreement, including the releases of claims therein. The Settlement Notice also includes my telephone number and email address so that Class Members can contact me should they have any questions about the Settlement or the WARN Act Litigation.

24. The Parties seek approval of service of the Settlement Notice by mail to Covered Employees at their last known address. As discussed in the Joint Motion, I submit that service in this manner, and according to the proposed schedule, is proper.

25. In view of the foregoing and the Joint Motion, I ask the Bankruptcy Court to enter an order for the relief requested in the Joint Motion, and to approve all aspects of the Settlement. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: October 18, 2024

/s/ Jonathan Melmed
Jonathan Melmed

EXHIBIT B-3

DECLARATION OF NICHOLAS MIGLIACCIO IN SUPPORT OF CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

IN RE:	Chapter 11 Cases
RED LOBSTER MANAGEMENT LLC,[1]	Case No. 6:24-bk-02486-GER
	Jointly Administered with
RED LOBSTER RESTAURANTS LLC,	Case No. 6:24-bk-02487-GER
RLSV, INC.,	Case No. 6:24-bk-02488-GER
RED LOBSTER CANADA, INC.,	Case No. 6:24-bk-02489-GER
RED LOBSTER HOSPITALITY LLC,	Case No. 6:24-bk-02490-GER
RL KANSAS LLC,	Case No. 6:24-bk-02491-GER
RED LOBSTER SOURCING LLC,	Case No. 6:24-bk-02492-GER
RED LOBSTER SUPPLY LLC,	Case No. 6:24-bk-02493-GER
RL COLUMBIA LLC,	Case No. 6:24-bk-02494-GER
RL OF FREDERICK, INC.,	Case No. 6:24-bk-02495-GER
RED LOBSTER OF TEXAS, INC.,	Case No. 6:24-bk-02496-GER
RL MARYLAND, INC.,	Case No. 6:24-bk-02497-GER
RED LOBSTER OF BEL AIR, INC.,	Case No. 6:24-bk-02498-GER
RL SALISBURY, LLC,	Case No. 6:24-bk-02499-GER
RED LOBSTER INTERNATIONAL HOLDINGS LLC,	Case No. 6:24-bk-02500-GER

Debtors.
_____/

DECLARATION OF NICHOLAS MIGLIACCIO

I, Nicolas Migliaccio, declare that the following is true to the best of my knowledge, information, and belief:

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are Red Lobster Management LLC (6889); Red Lobster Sourcing LLC (3075); Red Lobster Supply LLC (9187); RL Kansas LLC (2396); Red Lobster Hospitality LLC (5297); Red Lobster Restaurants LLC (4308); RL Columbia LLC (7825); RL of Frederick, Inc. (9184); RL Salisbury, LLC (7836); RL Maryland, Inc. (7185); Red Lobster of Texas, Inc. (1424); Red Lobster of Bel Air, Inc. (2240); RLSV, Inc. (6180); Red Lobster Canada, Inc. (4569); and Red Lobster International Holdings LLC (4661). The Debtors' principal offices were located at 450 S. Orange Avenue, Suite 800, Orlando, FL 32801.

1. I am a member of Migliaccio & Rathod LLP, one of the law firms representing a class claimant, Donna Lowe ("Lowe" or "Class Representative"). This declaration (the "Declaration") is submitted in support of the *Joint Motion Pursuant to 11 U.S.C. §105 and Fed. R. Bankr. P. 7023 and 9019 to (I) Approve a Settlement Pursuant to Fed. R. Bankr. P. 9019, (II) Certify a Class of WARN Act Claimants for Settlement Purposes Only, Appoint Class Counsel and Class Representative, and Preliminarily Approve the Settlement Pursuant to Fed. R. Bankr. P. 7023, (III) Approve the Form and Manner of Notice to Class Members of the Class Certification and Settlement, (IV) Schedule a Fairness Hearing to Consider Final Approval of the Settlement, (V) Finally Approve the Settlement Pursuant to Fed. R. Bankr. P. 7023 After the Fairness Hearing, and (VI) Grant Related Relief* (the "Joint Motion") filed contemporaneously herewith.

2. If I were called to testify as a witness in this matter, I could and would competently testify to each of the facts set forth herein based upon my personal knowledge, and on my review of the documents referenced above. I am authorized to submit this Declaration on behalf of the Class Members (as subsequently defined). On May 17, 2024, Lowe filed a complaint in the United States District Court for the Middle District of Florida against debtors Red Lobster Hospitality LLC, Red Lobster Restaurants, LLC, and non-debtor Red Lobster Seafood Co., LLC (6:24-CV-928). On May 22, 2024, Lowe filed a similar complaint in Adversary Proceeding Complaint, Adv. No. 24-00049 (the "Complaint") on behalf of herself and similarly situated prospective class members (together with the Class Representative, the "Class Members" or the "Class," as further defined herein) against Red Lobster Management, LLC and its fellow debtor entities (collectively, the "Debtor Defendants"), under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101-2109 (the "WARN Act") and the analogous New Jersey state statute. The Class Representative asserts the class claim pursuant to the WARN Act, New Jersey WARN, Rules

7023(a) and (b)(3) of the Federal Rules of Bankruptcy Procedure and Rules 23(a) and (b) of the Federal Rules of Civil Procedure. The Class Representative alleges that the Class meets the requirements of Federal Rule of Civil Procedure Rule 23; that the Class is so numerous as to render joinder of all members impracticable; that there are common questions of law and fact applicable to all Class Members that predominate over any questions affecting only individual members; that the Class Representative's claims are typical of the claims of the other Class Members; that the Class Representative will fairly and adequately protect and represent the interests of the Class; that the Class Representative has retained counsel who have extensive experience in litigating class actions; and that a class action is superior to other available methods for the fair and efficient adjudication of this controversy. The Class Representative further asserts that, as a consequence of the alleged WARN Act violation, the Class Members have an allowed priority claim pursuant to 11 U.S.C. § 507(a)(4) against the Debtor Defendants for WARN Act damages which include (a) unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay, retirement plan and other benefits, for a maximum of sixty (60) days, that would have been covered and paid under the then applicable employee benefit plans had that coverage continued for that period, all determined in accordance with the WARN Act, 29 U.S.C. § 2104(a)(1)(A).

3. The Class Representative also filed proofs of claim collectively on behalf of the Class Members (collectively, the "Class Proof of Claim").

4. On May 31, 2024, the Office of the United States Trustee for the Middle District of Florida (the "U.S. Trustee") appointed an official committee of unsecured creditors in these Chapter 11 Cases (the "Creditors' Committee"). *See* ECF No. 250.

5. The WARN Act Litigation involves numerous legal issues regarding the application of the WARN Act and its statutory and other legal defenses to complex facts. These issues include,

inter alia, (i) whether the Debtor Defendants were a covered employer under the WARN Act at the time of the alleged plant closings or mass layoffs pursuant to the liquidating fiduciary doctrine; (ii) whether the Debtor Defendants were required to provide notice under the WARN Act and Mini-WARN Acts; (iii) whether there is liability associated with the Debtor Defendants' failure to provide notice; (iv) whether the Debtor Defendants were entitled to give fewer than ninety (90) days' notice because of the unforeseeable business circumstances that caused the Debtors to fail; (v) whether the Debtor Defendants were entitled to give fewer than ninety (90) days' notice because, at the time notice would otherwise have been required, they were seeking new capital they reasonably believed, if obtained, would have obviated the need for or substantially postponed the alleged plant closing or mass layoffs; (vi) whether the Debtor Defendants' efforts to obtain new capital were commercially reasonable under the circumstances; (vii) whether the Debtor Defendants have other defenses to the application of the WARN Act; (viii) whether the Debtor Defendants gave "as much notice as practicable"; (ix) whether the Debtor Defendants are entitled to a defense of "good faith"; (x) the computation of the amount of damages; (xi) whether attorneys' fees are to be awarded to the Class Members if they prevail and whether such fees are entitled to administrative priority; (xii) whether the alleged damages are entitled to wage or benefit priority under §§ 507(a)(4) or (5), respectively; and (xiii) whether the Debtor Defendants constitute a "single employer" under the provisions of the WARN Act for damages to apply and/or such that they would be jointly and severally liable for some or all or the alleged damages.

6. Continued litigation would be costly and time-consuming and expose the Debtors' estates to significant litigation risks. Class Counsel has asserted that the Debtor Defendants' WARN Act liability of sixty (60) days' damages and benefits is in the multi-millions, which constitutes, at least in large part, an alleged administrative expense and otherwise a priority claim.

The Settlement provides that the Debtors shall pay $200,000.00 (the "Settlement Amount") to an administrator(s) of Class Counsels' choice (to be shared with the plaintiffs represented by George Parker), in accordance with the terms of the Settlement Agreement. Class Counsel, or administrator(s), in turn, will distribute the Settlement Amount to the Class Members in accordance with the terms of the Settlement Agreement. The Settlement resolves the WARN Act Litigation and eliminates further accrual of the substantial litigation expenses which have been associated therewith.

7. Additionally, the Settlement Agreement provides for the certification of a Class for settlement purposes only, comprised of all persons who were employed by the Debtor Defendants and who worked at or reported to the Debtor Defendants' Facilities in New Jersey, who were terminated, without cause on their part, on or about May 13, 2024, within thirty (30) days of that date or thereafter as part of, or as the reasonably expected consequence of, the closing of the relevant stores, and who do not file a timely request to opt-out of the class (the "Class").

8. All Class Members' claims against the Debtors (other than claims with respect to amounts to be paid under the terms of the Settlement) shall be released and waived upon the distribution of the Settlement Payment in accordance with the Settlement Agreement.

9. The Settlement Agreement provides that, for purposes of the Class, Lowe, will be appointed as Class Representative; and the law firms of Migliaccio & Rathod LLP, and Shuker & Dorris, P.A. will be designated as Class Counsel.

10. As set forth in the Joint Motion, and as further supported by this declaration, I submit that the proposed Class meets the requirements of Rule 7023 of the Federal Rules of Bankruptcy and Rule 23 of the Federal Rules of Civil Procedure.

11. With respect to the numerosity requirement of Federal Rule of Civil Procedure Rule 23, based on the Debtors' records, there are 136 Class Members who fall within the agreed upon Class definition. I submit that this meets the numerosity requirement and that the Class is sufficiently numerous so as to make joinder of all Class Members impractical. Accordingly, I submit that the Court should find the numerosity requirement has been met.

12. The commonality requirement requires the existence of at least one question of law or fact common to the Class. Fed. R. Civ. P. 23(a)(2); *Johnston v. HBO Film Management, Inc.*, 265 F.3d 178, 184 (3d Cir. 2001). The commonality threshold is low, (*Powers v. Lycoming Engines*, 245 F.R.D. 226, 236 (E.D. Pa. 2007)), and does not require "an identity of claims or facts among class members," *Beherend v. Comcast Corp.*, 245 F.R.D. 195, 202 (E.D. Pa. 2007) (citing *Moskovitz v. Loop*, 128 F.R.D. 624, 628 (E.D. Pa. 1989)). Further, I submit that the existence of individual facts and circumstances will not defeat commonality so long as the Class Members allege harm under the same legal theory.

13. Here, fundamental issues of law and fact regarding applicability of the WARN Act, notice of termination, applicability of several defenses, measure of damages and priority of claims and attorneys' fees are common to all Class Members.[2] For these reasons, I submit that the commonality factor of Federal Rule of Civil Procedure Rule 23(a)(2) is met.

14. In my experience commonality has been found for class certification where class members had different degrees of injury or even where defenses might exist only as to particular individuals.

[2] Class Counsel recognizes that the amount of damages is particular to each Class Member. However, individualized damages calculations do not defeat commonality, "so long as the plaintiffs allege harm under the same legal theory." *Baby Neal v. Casey*, 43 F.3d 48, 56-58 (3d Cir. 1994).

15. In my experience, class action suits under the WARN Act almost always involve a class of claimants who held different positions, were paid different amounts, frequently were terminated on different dates, and often work at different locations with varying numbers of employees per location.

16. Typicality requires that the "named plaintiffs" claims are typical, in common- sense terms, of the class, thus suggesting that the incentives of the plaintiffs are aligned with those of the class." Fed. R. Civ. P. 23(a)(3); *Beck v. Maximus, Inc.*, 457 F.3d 291, 295-296 (3d Cir. 2006) (quoting *Baby Neal*, 43 F.3d at 55). "Typicality requires a strong similarity of legal theories to ensure that the class representatives' pursuit of their own goals will work to benefit the entire class." *Powers*, 245 F.R.D. at 236. "Factual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members, and if it is based on the same legal theory." *Beck*, 457 F.3d at 295- 296 (quoting *Baby Neal*, 43 F.3d at 55). The Class Representative does not allege that she was singled out for disparate treatment in connection with her termination. Instead, she alleges that she suffered harm as a result of the same conduct that allegedly injured the absentee Class Members—that they were allegedly terminated during the same time period without receiving ninety (90) days' advance written notice. I submit that the same facts supporting commonality support the "typicality prong," as well.

17. With respect to adequacy, the Class Representatives must "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). I submit that the Class Representative is suitable to serve as the representative for the Class. The Class Representative was terminated during the relevant period, and her claims are not antagonistic to the Class. The Class Representative had no involvement in the Debtor Defendants' decision to terminate the Class Members, nor did she have any involvement in the Debtor Defendants' decision regarding the

provision of notice to the individuals who worked at the Facilities. The Class Representative has no conflict of interest with the members of the Class.

18. The Class Representative has prosecuted the WARN Act claims, in spite of the stigma that can accompany being a named plaintiff in class litigation and in spite of the risk of retaliation by prospective employers. She has willingly assisted counsel throughout the litigation.

19. Regarding the "predominance" requirement of Federal Rule of Civil Procedure Rule 23(b), common questions of law and fact predominate over the individual issues. I submit that the same facts supporting the "typicality prong," support predominance. All of the claims arise from an alleged violation of the WARN Act resulting from the terminations occurring on or about May 13, 2024.

20. I submit that the "superiority" element of Federal Rule of Civil Procedure Rule 23(b) is met. The WARN Act notes the propriety of class treatment for WARN Act litigation, and the nature of the WARN Act makes it perfectly suited to class treatment. In many cases, such as this one, liability depends on issues of law and fact that affect an entire large group of individuals in the same way. Additionally, as shown in Schedule 1 to the Settlement Agreement, the amount of each Class Member's individual claim is relatively small. Individually, there is little incentive in controlling the prosecution of separate actions. Further, determining the claims of some Class Members, but not all, could prejudice the claims of the remaining Class Members.

21. I, along with attorneys from the following firms have had and will have responsibility for this matter: Migliaccio & Rathod LLP, and Shuker & Dorris, P.A.

22. I submit that the above-referenced counsel are well-suited to serve as Class Counsel, have no conflict of interest, and, as shown herein, have diligently prosecuted the WARN Action and should be appointed Class Counsel.

23. I submit that the Settlement Notice attached to the Joint Motion will fairly apprise the Class Members of the nature of the dispute, the terms and benefits of the Settlement, of their right to opt-out of the Class, and of the effect of their decision not to opt-out of the class; namely, that they will be bound by terms of the proposed Settlement Agreement, including the releases of claims therein. The Settlement Notice also includes my firm's telephone number and email address so that Class Members can contact my firm should they have any questions about the Settlement or the WARN Act Litigation.

24. The Parties seek approval of service of the Settlement Notice by mail to Covered Employees at their last known address. As discussed in the Joint Motion, I submit that service in this manner, and according to the proposed schedule, is proper.

25. In view of the foregoing and the Joint Motion, I ask the Bankruptcy Court to enter an order for the relief requested in the Joint Motion, and to approve all aspects of the Settlement.

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

Dated: October 18, 2024

/s/ Nicholas Migliaccio
Nicholas Migliaccio

EXHIBIT C

PROPOSED ORDER PRELIMINARILY APPROVING SETTLEMENT

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

IN RE:	Chapter 11 Cases
RED LOBSTER MANAGEMENT LLC,[1]	Case No. 6:24-bk-02486-GER
	Jointly Administered with
RED LOBSTER RESTAURANTS LLC,	Case No. 6:24-bk-02487-GER
RLSV, INC.,	Case No. 6:24-bk-02488-GER
RED LOBSTER CANADA, INC.,	Case No. 6:24-bk-02489-GER
RED LOBSTER HOSPITALITY LLC,	Case No. 6:24-bk-02490-GER
RL KANSAS LLC,	Case No. 6:24-bk-02491-GER
RED LOBSTER SOURCING LLC,	Case No. 6:24-bk-02492-GER
RED LOBSTER SUPPLY LLC,	Case No. 6:24-bk-02493-GER
RL COLUMBIA LLC,	Case No. 6:24-bk-02494-GER
RL OF FREDERICK, INC.,	Case No. 6:24-bk-02495-GER
RED LOBSTER OF TEXAS, INC.,	Case No. 6:24-bk-02496-GER
RL MARYLAND, INC.,	Case No. 6:24-bk-02497-GER
RED LOBSTER OF BEL AIR, INC.,	Case No. 6:24-bk-02498-GER
RL SALISBURY, LLC,	Case No. 6:24-bk-02499-GER
RED LOBSTER INTERNATIONAL HOLDINGS LLC,	Case No. 6:24-bk-02500-GER
Debtors.	

_____/

ORDER PURSUANT TO 11 U.S.C. § 105 AND FED. R. BANK. P. 7023 AND 9019 (I) PRELIMINARILY APPROVING THE SETTLEMENT AGREEMENT BETWEEN THE PLAN ADMINISTRATOR ON BEHALF OF THE DEBTORS AND THE WARN ACT PLAINTIFFS, (II) CERTIFYING A CLASS OF WARN ACT CLAIMANTS FOR SETTLEMENT PURPOSES ONLY, (III) APPOINTING CLASS COUNSEL AND CLASS REPRESENTATIVES, (IV) APPROVING THE FORM AND MANNER OF NOTICE TO CLASS MEMBERS AND INDIVIDUAL CLAIMANTS OF THE CLASS

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are Red Lobster Management LLC (6889); Red Lobster Sourcing LLC (3075); Red Lobster Supply LLC (9187); RL Kansas LLC (2396); Red Lobster Hospitality LLC (5297); Red Lobster Restaurants LLC (4308); RL Columbia LLC (7825); RL of Frederick, Inc. (9184); RL Salisbury, LLC (7836); RL Maryland, Inc. (7185); Red Lobster of Texas, Inc. (1424); Red Lobster of Bel Air, Inc. (2240); RLSV, Inc. (6180); Red Lobster Canada, Inc. (4569); and Red Lobster International Holdings LLC (4661). The Debtors' principal offices were located at 450 S. Orange Avenue, Suite 800, Orlando, FL 32801.

CERTIFICATION AND SETTLEMENT, (V) SCHEDULING A FAIRNESS HEARING TO CONSIDER FINAL APPROVAL OF THE SETTLEMENT AGREEMENT, AND (VI) GRANTING RELATED RELIEF

THIS CASE came before the Court on _____, 2024, at _____ a.m./p.m., in Orlando, Florida, upon the joint motion of the Plan Administrator on behalf of Red Lobster Management, LLC and its fellow debtor entities (collectively, the "Debtor Defendants"), Kyle Zakowicz ("Zakowicz"), Donna Lowe ("Lowe"), and George Parker ("Parker," and with Zakowicz and Lowe, collectively, the "Class Representatives"), on behalf of themselves and similarly situated prospective class members (together with the Class Representatives, the "Class Members" or the "Classes," as further defined herein, for an order (i) preliminarily approving the proposed Settlement and Release Agreement (the "Settlement Agreement")[2] settling the WARN Act Litigation and WARN Act Proofs of Claim; (ii) certifying the Class for settlement purposes only; (iii) appointing Migliaccio & Rathod LLP, Branson Law, PLLC, Melmed Law Group P.C., Lankenau & Miller, LLC, The Gardner Firm, P.C., Shuker & Dorris, P.A. and Wenzel Fenton Cabassa, P.A. as class counsel ("Class Counsel") and the Class Representatives as class representatives; (iv) approving the form and manner of notice to the Class Members and certain individual WARN Act claimants (together with Class Members, the "Covered Employees") of the conditional class certification and the proposed Settlement Agreement; and (v) scheduling a Fairness Hearing to consider the final approval of the Settlement Agreement (the "Joint Motion"). The Court finds that:

(a) On October [_], 2024, the Joint Motion and the notice of hearing on the Joint Motion were served by email or First Class Mail on : (i) the Office of the United States Trustee for the Middle District of Florida; (ii) counsel for the Reorganized Debtors; (iii) Employee Counsel;

[2] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Settlement Agreement or Joint Motion, as applicable.

and (iv) all parties which have requested notice pursuant to Bankruptcy Rule 2002 who automatically receive electronic notices of docketings by CM/ECF, as reflected by the Certificate of Service filed with the Court ("Notice").

(b) The Notice given constituted the best notice practicable under the circumstances, is adequate, and no other notice need be given.

(c) A full opportunity has been offered to the parties-in-interest to participate in the hearing on the Joint Motion.

(d) For purposes of the settlement, Class Counsel have extensive experience handling class action WARN Act Litigation and have collectively been appointed class counsel in over one-hundred (100) WARN Act class actions and the Class Representatives do not have interests antagonistic to those of the Classes.

(e) For the purposes of the Class settlement: (i) the Classes, consisting of 461 Class Members in the aggregate (136 individuals in the State of New Jersey, 276 individuals in the State of California and 49 individuals in the State of New York at the McKinley Store), is so numerous that joinder of all Class Members is impracticable; (ii) there are questions of law or fact common to the Classes; (iii) the claims of the Class Representatives are typical of the Class; (iv) the law firms of Migliaccio & Rathod LLP; Branson Law, PLLC; Melmed Law Group P.C.; Lankenau & Miller, LLC, The Gardner Firm, P.C., Shuker & Dorris, P.A. and Wenzel Fenton Cabassa, P.A. have fairly and adequately protected the interests of the Classes; (v) questions of law or fact common to the Class Members predominate over any questions affecting only the individual Class Members; and (vi) the class settlement mechanism is superior to other available methods of resolving the alleged WARN Act Claims and the other claims released in the Settlement Agreement. Therefore, the Classes should be certified for settlement purposes only, pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and Rule 7023 of the Federal Rules

of Bankruptcy Procedure, comprised of all persons employed by the Debtor Defendants and who worked at or reported to the Debtor Defendants' restaurants across the country (the "Facilities"), who were terminated without cause on their part, on or about May 13, 2024, or thereafter as part of, or as the reasonably expected consequence of, the closing of the Facilities, who did not provide a voluntary and knowing waiver of their WARN Act Claims or receive payments in satisfaction of the WARN Act claim amounts, as calculated for each by Class Counsel, and who do not file a timely request to opt-out of the Class to which he or she is assigned.

(f) Notice of this Order and the Settlement Notice (defined below) shall be given by Employee Counsel to all Covered Employees, affording them the opportunity to opt-out, decline and/or object to the proposed Settlement Agreement.

(g) Based on the range of possible outcomes and the cost, delay, and uncertainty associated with further litigation, the Settlement Agreement is reasonable and cost-effective, and preliminary approval of the Settlement Agreement is warranted.

(h) The Settlement Agreement should be preliminarily approved.

(i) Notice to all individuals identified in Schedule 1 to the Settlement Agreement by First Class Mail, postage prepaid, at their last known address as indicated in the records of the Debtors (and as updated by Class Counsels' searches for current addresses or as may otherwise be determined by the Parties) is reasonable and the best notice practicable under the circumstances, and such mailing should be made by Class Counsel within seven (7) days following the entry of this Order.

(j) The contents of the notice of settlement (the "Settlement Notice") annexed to the Joint Motion as Exhibit E meets the requirements of Federal Rule of Civil Procedure 23(c)(2)(B). The Settlement Notice states the nature of the action, and the issues and defenses. The Settlement Notice also states that the Settlement Agreement, if approved, will be binding on all Covered

Employees. The Settlement Notice also summarizes the terms of the Settlement Agreement, the right of each Covered Employee to appear by counsel at the Fairness Hearing, and the fact that more information is available from Employee Counsel upon request. Further, the Settlement Notice informs the Covered Employees that the Settlement Agreement will result in the Covered Employees' Released Claims (as that term is defined in the Settlement Agreement) and the payment of Class Counsels' attorneys' fees and costs. *See* Fed. R. Civ. P. 23(h).

(k) A final hearing on the approval of the Settlement Agreement ("Fairness Hearing") should be held no sooner than the earliest date for entry of a binding order under 28 U.S.C. § 1715 so that Covered Employees will have sufficient time from the mailing of the Settlement Notice to secure further information regarding the relief sought by the Joint Motion, to opt out of the Class, decline the Settlement, or object to the proposed Settlement Agreement should they choose to do so, and to engage counsel to appear at the Fairness Hearing.

(l) Other good and sufficient cause exists for granting the relief requested in the Joint Motion.

THEREFORE, IT IS ORDERED THAT:

1. The Joint Motion is **GRANTED**, as set forth herein.

2. The Settlement Agreement, including its disposition of Individual Claims, is preliminarily approved.

3. The Classes, comprised of (a) all California employees who lost their jobs in the May 2024 store closures (Parker), (b) all New Jersey employees who lost their jobs in the May 2024 store closures (Lowe), and (c) all New York employees from the McKinley Store who lost their jobs in the May 2024 store closures (Zakowicz) and as more fully defined in the Settlement Agreement, and who do not file a timely request to opt-out of the class (each a "Class"), are certified for settlement purposes only, pursuant to Rule 23(a) and (b)(3) of the Federal Rules of

Civil Procedure, and Rule 7023 of the Federal Rules of Bankruptcy Procedure, with respect to their WARN Act Claims against the Debtors.

4. Kyle Zakowicz, Donna Lowe, and George Parker are appointed each as Class Representatives.

5. The law firms of Migliaccio & Rathod LLP, Branson Law, PLLC, Melmed Law Group P.C., Lankenau & Miller, LLC, The Gardner Firm, P.C., Shuker & Dorris, P.A. and Wenzel Fenton Cabassa, P.A. are appointed as Class Counsel.

6. The form of the Settlement Notice and the preparation and service of the Settlement Notice by Employee Counsel by First Class Mail, postage prepaid, to each individual identified in Schedule 1 to the Settlement Agreement at his or her last known address contained in the Debtors' records (as updated by Employee Counsels' searches for current addresses or as may otherwise be determined by the Parties) are approved.

7. Within two (2) business days of entry of this Order, the Plan Administrator, on behalf of the Debtor Defendants, shall provide Employee Counsel with the last known mailing addresses of each Covered Employee, as well as a Social Security number for each, for Employee Counsels' and/or the Settlement Administrator's use in locating any Covered Employee whose address is stale and/or for the preparation of IRS 1099 forms in connection with the Settlement distributions.

8. The Settlement Notice shall be mailed by First Class Mail by Employee Counsel to the individuals identified in Schedule 1 to the Settlement Agreement within seven (7) days following the entry of this Order.

9. Class Members who wish to opt-out of the Settlement must send such completed opt-out form, according to the instructions set out in the Settlement Notice, such that it is received by Class Counsel no later than the opt-out deadline set forth in the Settlement Notice. Individual

Claimants who wish for their Individual Claims not to be governed by the Settlement Agreement must fill out and submit a Settlement Declination Notice according to the instructions set out in the Settlement Notice, such that it is received by Migliaccio & Rathold LLP no later than the declination deadline set forth in the Settlement Notice.

10. Class Members or Individual Claimants who wish to object to the Settlement must send such objection, according to the instructions set out in the Settlement Notice, such that it is received by the Parties and filed with the Court no later than the objection deadline set forth in the Settlement Notice.

11. **The Court shall conduct a Fairness Hearing on _____, 2024 at ____ __.m , at the George C. Young Courthouse, 400 W. Washington Street, Courtroom D, 6th Floor, Orlando, Florida.**

12. The Court shall retain jurisdiction, even after the closing of these Chapter 11 Cases, with respect to all matters arising from or related to the interpretation, enforcement and implementation of the Settlement Agreement and this Order.

# # #

(Attorney Paul Steven Singerman is directed to serve a copy of this order on interested parties who are non-CM/ECF users and to file a proof of service within three days of entry of the order.)

EXHIBIT D

PROPOSED FINAL ORDER APPROVING SETTLEMENT

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

IN RE:	Chapter 11 Cases
RED LOBSTER MANAGEMENT LLC,[1]	Case No. 6:24-bk-02486-GER
	Jointly Administered with
RED LOBSTER RESTAURANTS LLC,	Case No. 6:24-bk-02487-GER
RLSV, INC.,	Case No. 6:24-bk-02488-GER
RED LOBSTER CANADA, INC.,	Case No. 6:24-bk-02489-GER
RED LOBSTER HOSPITALITY LLC,	Case No. 6:24-bk-02490-GER
RL KANSAS LLC,	Case No. 6:24-bk-02491-GER
RED LOBSTER SOURCING LLC,	Case No. 6:24-bk-02492-GER
RED LOBSTER SUPPLY LLC,	Case No. 6:24-bk-02493-GER
RL COLUMBIA LLC,	Case No. 6:24-bk-02494-GER
RL OF FREDERICK, INC.,	Case No. 6:24-bk-02495-GER
RED LOBSTER OF TEXAS, INC.,	Case No. 6:24-bk-02496-GER
RL MARYLAND, INC.,	Case No. 6:24-bk-02497-GER
RED LOBSTER OF BEL AIR, INC.,	Case No. 6:24-bk-02498-GER
RL SALISBURY, LLC,	Case No. 6:24-bk-02499-GER
RED LOBSTER INTERNATIONAL HOLDINGS LLC,	Case No. 6:24-bk-02500-GER
Debtors.	

_____/

FINAL ORDER APPROVING WARN ACT SETTLEMENT AGREEMENT

THIS CASE came before the Court on _____, 2024, at _____ a.m./p.m., in Orlando, Florida, upon the Joint Motion[2] [ECF No. ____] of the Plan Administrator

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are Red Lobster Management LLC (6889); Red Lobster Sourcing LLC (3075); Red Lobster Supply LLC (9187); RL Kansas LLC (2396); Red Lobster Hospitality LLC (5297); Red Lobster Restaurants LLC (4308); RL Columbia LLC (7825); RL of Frederick, Inc. (9184); RL Salisbury, LLC (7836); RL Maryland, Inc. (7185); Red Lobster of Texas, Inc. (1424); Red Lobster of Bel Air, Inc. (2240); RLSV, Inc. (6180); Red Lobster Canada, Inc. (4569); and Red Lobster International Holdings LLC (4661). The Debtors' principal offices were located at 450 S. Orange Avenue, Suite 800, Orlando, FL 32801.

[2] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Joint Motion or Settlement Agreement, as appropriate.

on behalf of Red Lobster Management, LLC and its fellow debtor entities (collectively, the "Debtor Defendants"), Kyle Zakowicz ("Zakowicz"), Donna Lowe ("Lowe"), and George Parker ("Parker," and with Zakowicz and Lowe, collectively, the "Class Representatives"), on behalf of themselves and similarly situated prospective class members (together with the Class Representatives, the "Class Members" or the "Classes," as further defined herein), for an order approving the proposed WARN Act Settlement Agreement and Release (the "Settlement Agreement") settling WARN Act Litigation and WARN Act Proofs of Claim (the "Joint Motion"). The Court finds:

A. The Court entered an Order on October [__], 2024 conditionally certifying the Classes for settlement purposes only, granting preliminary approval of the Settlement Agreement and approving the form and manner of notice of Class Certification and the Settlement Agreement to be given to all Class Members and Individual Claimants;

B. Due notice has been given to the Class Members and Individual Claimants of the Settlement Agreement and the right to appear in person or by counsel at the Fairness Hearing; and no other and further notice is required, and such notice is deemed proper and sufficient under the circumstances;

C. The Court has held a Fairness Hearing on October [__], 2024 at _____ to consider final approval of the Settlement Agreement;

D. All Class Members and Individual Claimants who have not provided a written opt out or declination of the Settlement Agreement are bound by this Order and the terms of the Settlement Agreement;

E. The terms of the Settlement Agreement are fair, reasonable, and adequate under Rule 23 of the Federal Rules of Civil Procedure, incorporated by Rule 7023 of the Federal Rules

of Bankruptcy Procedure, and the four factor test the Eleventh Circuit set out in *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*, 898 F.2d 1544 (11th Cir. 1990);

F. The Settlement Agreement was negotiated at arm's-length and in good faith, is fair equitable and in the best interest of the Debtors' estates; and

G. Other good and sufficient cause exists for granting the relief requested in the Joint Motion.

THEREFORE, IT IS ORDERED THAT:

1. The Settlement Agreement is **APPROVED**, as set forth herein.

2. Upon this Order becoming final and non-appealable, the Plan Administrator is authorized to remit $250,000.00 (the "Settlement Amount") to Employee Counsel per wire instructions to be provided by Employee Counsel to the Plan Administrator, so that Employee Counsel or their chosen administrator(s) can, thereafter, make the payments required in accordance with the Settlement Agreement.

3. Upon the Plan Administrator's payment of the Settlement Amount to Employee Counsel: (i) the Covered Employees' Released Claims shall take effect and all such claims, including the Warn Act Proofs of Claim, shall be released, waived and expunged in their entirety; and (ii) the Plan Administrator, Debtors, the Reorganized Debtors, the GUC Trustee and/or the claims agent appointed in these Chapter 11 Cases shall each be authorized and directed, as applicable, to make such revisions to the Debtors' schedules of assets and liabilities and/or the Claims Register maintained in these cases as are necessary to reflect the relief granted in this Order including, but not limited to, expunging the Covered Employees' Released Claims, including the disallowance and striking of the WARN Act Proofs of Claim in their entireties, pursuant to the terms of the Settlement Agreement. For the avoidance of doubt, this Order shall serve to disallow and strike the WARN Act Proofs of Claim in their entireties, without the need for any further filings

objecting to those claims, including but not limited to the WARN Act Proofs of Claim listed in Exhibit A-1 and Exhibit A-2 of the Settlement Agreement, which are attached hereto as **Exhibits A-1 and A-2**.

4. Upon the Plan Administrator's payment of the Settlement Amount to Employee Counsel, respective Class Counsel shall promptly dismiss with prejudice, the adversary proceedings styled *Kyle Zakowicz, on behalf of himself and all other similarly situated*, Adversary Procedure No. 24-00048, *Donna Lowe, on behalf of herself and all other similarly situated*, Adversary Procedure No. 24-00049 and *George Parker, on behalf of himself and all other similarly situated*, Adversary Procedure No. 24-00050, and counsel to Lowe shall promptly dismiss the Lowe District Court Action with prejudice.

5. The Plan Administrator shall serve a copy of this Order by email and only first class U.S. Mail when email is not available, upon: (i) the Office of the United States Trustee for the Middle District of Florida; (ii) counsel for the Reorganized Debtors; (iii) Employee Counsel; and (iv) all parties which have requested notice pursuant to Bankruptcy Rule 2002 who automatically receive electronic notices of docketings by CM/ECF.

6. This Court shall retain jurisdiction, even after the closing of these Chapter 11 Cases, with respect to all matters arising from or related to the interpretation, enforcement and implementation of the Settlement Agreement and this Order.

# # #

(Attorney Paul Steven Singerman is directed to serve a copy of this order on interested parties who are non-CM/ECF users and to file a proof of service within three days of entry of the order.)

EXHIBIT E

SETTLEMENT NOTICE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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IN RE:	Chapter 11 Cases
RED LOBSTER MANAGEMENT LLC,[1]	Case No. 6:24-bk-02486-GER
	Jointly Administered with
RED LOBSTER RESTAURANTS LLC,	Case No. 6:24-bk-02487-GER
RLSV, INC.,	Case No. 6:24-bk-02488-GER
RED LOBSTER CANADA, INC.,	Case No. 6:24-bk-02489-GER
RED LOBSTER HOSPITALITY LLC,	Case No. 6:24-bk-02490-GER
RL KANSAS LLC,	Case No. 6:24-bk-02491-GER
RED LOBSTER SOURCING LLC,	Case No. 6:24-bk-02492-GER
RED LOBSTER SUPPLY LLC,	Case No. 6:24-bk-02493-GER
RL COLUMBIA LLC,	Case No. 6:24-bk-02494-GER
RL OF FREDERICK, INC.,	Case No. 6:24-bk-02495-GER
RED LOBSTER OF TEXAS, INC.,	Case No. 6:24-bk-02496-GER
RL MARYLAND, INC.,	Case No. 6:24-bk-02497-GER
RED LOBSTER OF BEL AIR, INC.,	Case No. 6:24-bk-02498-GER
RL SALISBURY, LLC,	Case No. 6:24-bk-02499-GER
RED LOBSTER INTERNATIONAL HOLDINGS LLC,	Case No. 6:24-bk-02500-GER
Debtors.	

_____/

NOTICE TO CLASS OF (A) PROPOSED SETTLEMENT OF CLASS ACTION CONCERNING WARN ACT CLAIMS; (B) PROPOSED DISPOSITION OF INDIVIDUAL WARN ACT CLAIMS;(C) DATE OF COURT HEARING FOR FINAL APPROVAL OF PROPOSED SETTLEMENT AND AWARD OF ATTORNEYS' FEES AND EXPENSES; (C) RIGHT TO OPT OUT OR DECLINE THE SETTLEMENT OR OBJECT TO THE SETTLEMENT AND TO APPEAR AT COURT HEARING

TO: All persons (I) who were employed by Red Lobster Management, LLC and its fellow debtor entities (collectively, the "Debtor Defendants") and who worked at or reported to

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are Red Lobster Management LLC (6889); Red Lobster Sourcing LLC (3075); Red Lobster Supply LLC (9187); RL Kansas LLC (2396); Red Lobster Hospitality LLC (5297); Red Lobster Restaurants LLC (4308); RL Columbia LLC (7825); RL of Frederick, Inc. (9184); RL Salisbury, LLC (7836); RL Maryland, Inc. (7185); Red Lobster of Texas, Inc. (1424); Red Lobster of Bel Air, Inc. (2240); RLSV, Inc. (6180); Red Lobster Canada, Inc. (4569); and Red Lobster International Holdings LLC (4661). The Debtors' principal offices were located at 450 S. Orange Avenue, Suite 800, Orlando, FL 32801.

the Debtor Defendants' facilities in the State of California, State of New Jersey, or at 3701 McKinley Pkway, Buffalo, NY 14219 (the "McKinley Store") in the State of New York (collectively, the "Facilities") who were terminated, without cause on their part, on or about May 13, 2024, within thirty (30) days prior to that date and thereafter as part of, or as the reasonably expected consequence of, the closing of the Facilities, who did not provide a voluntary and knowing waiver of their WARN Act Claims or receive payments in satisfaction of the WARN claim amounts, as calculated for each by Class Counsel, and who do not file a timely request to opt-out of the class (the "Class"); and (II) who filed Individual Claims asserting remedies under the WARN Act and/or Mini-WARN Acts as described in paragraph 7 below.

INTRODUCTION

1. On May 17, 2024, Donna Lowe ("Lowe") filed a complaint pursuant to the Federal WARN Act and the New Jersey equivalent in the United States District Court for the Middle District of Florida (the "Lowe District Court Action").

2. On May 19, 2024 (the "Petition Date") each of the Debtor Defendants (collectively, the "Debtors") filed a voluntary petition in this Court commencing a case for relief under chapter 11 of the Bankruptcy Code.

3. On May 22, 2024, Kyle Zakowicz ("Zakowicz") filed a complaint in this Court [Adversary Proceeding No. 24-000048] against the Debtor Defendants under the New York Worker Adjustment and Retraining Notification Act (the "Zakowicz Adversary").

4. On the same day, Lowe filed her complaint in this Court [Adversary Proceeding No. 24-00049] pursuant to the Federal WARN Act and the New Jersey equivalent (the "Lowe Adversary").

5. On May 25, 2024, George Parker ("Parker") filed his complaint in this Court [Adversary Proceeding No. 24-00050] pursuant to the Federal WARN Act and California equivalent (the "Parker Adversary," and with the Zakowicz Adversary and the Lowe Adversary, collectively, the "WARN Act Adversary Proceedings" and with the Lowe District Court Action, collectively, the "WARN Act Litigation").[2]

6. On May 31, 2024, the Office of the United States Trustee for the Middle District of Florida (the "U.S. Trustee") appointed an official committee of unsecured creditors in these Chapter 11 Cases (the "Creditors' Committee"). Parker was among those appointed to the Creditors Committee. *See* ECF No. 250.

7. On or before July 28, 2024, over 100 former employees (the "Individual Claimants," and together with Class Members the "Covered Employees") filed individual WARN Act proofs of claim (the "Individual Claims").

[2] The respective state statutes analogous to the federal WARN Act may be referred to as the "Mini WARN Acts" and references to the "WARN Act" may include the Mini WARN Acts.

8. The Plan Administrator on behalf of the Debtor Defendants, on the one hand, and Zakowicz, Lowe and Parker (Zakowicz, Lowe and Parker, collectively, the "Class Representatives") on the other hand (collectively, the "Parties"), have reached a proposed settlement to resolve all WARN Act Claims, memorialized in the *Settlement Agreement and Release* dated as of October____, 2024 (the "Settlement" or "Settlement Agreement").

9. This notice constitutes notice to the Covered Employees of (a) the proposed Settlement and a summary of the Settlement terms, (b) the date of the hearing before the Bankruptcy Court on final approval of the proposed Settlement, and (c) the right to opt-out (in the case of Class Members) or decline the Settlement (in the case of Individual Claimants) or object to or comment on the Settlement and to appear at the hearing, if you should so choose, at which the Bankruptcy Court will consider final approval of the Settlement.

DESCRIPTION OF THE WARN ACT LITIGATION

10. As noted above, the WARN Act Claims arise out of the Debtor Defendants' shutdown of restaurants across the country. The Class Representatives contend that they, along with hundreds of other employees who worked at or reported to Debtor Defendants' restaurants were terminated, without cause on their part, without receiving the advance written notice of their terminations as required by the WARN Act and/or Mini-WARN Acts.

11. As a consequence of the alleged violations of the WARN Act and/or Mini-WARN Acts, described above, the Class Representatives asserted that the Class Members have an allowed administrative priority claim and/or wage priority claim against the Debtor Defendants for WARN Act and/or Mini-WARN Act damages, which include unpaid wages and benefits, for a minimum of sixty (60) days.

12. In general, the WARN Act requires employers to give their employees working at facilities having at least fifty (50) employees (exclusive of part-time employees) at least sixty (60) calendar days' advance written notice before ordering a shutdown. An employer may give less than sixty (60) days' written notice if it can prove that certain defenses, as enumerated in the WARN Act, were applicable. But to avail itself of these defenses, the employer must still give as much notice as practicable and include in the notice a brief statement of the basis for less than sixty (60) days' notice. The Mini WARN Acts of New Jersey and New York, meanwhile generally provide for a ninety (90) day period rather than a sixty (60) day period.

13. The Parties desire to enter into a final settlement which resolves all WARN Act Claims, including the WARN Act Litigation.

THE PROPOSED SETTLEMENT

14. The following description of the proposed Settlement is only a summary. In the event of any difference between this summary and the terms of the Settlement, the terms of the Settlement shall control. You may download a copy of the Settlement at no charge from ***https://dm.epiq11.com/case/redlobster/dockets*** at ECF No. [ ]. The terms of the Settlement relevant to the Class Members and Individual Claimants may be summarized as follows:

THE TERMS OF THE SETTLEMENT

15. In general, the Settlement Agreement contemplates the certification of three Classes for settlement purposes only, comprised of (a) former employees of California stores, (b) former employees of New Jersey stores, and (c) former employees of the McKinley Store in the State of New York (collectively, the "Facilities") who, in each case, who were terminated, without cause on their part, on or about May 13, 2024, within thirty (30) days prior to that date or thereafter as part of, or as the reasonably expected consequence of, the closing of the Facilities, who did not provide a voluntary and knowing waiver of their WARN Act Claims or receive payments in satisfaction of the WARN Act claim amounts, as calculated for each by Class Counsel, and who do not file a timely request to opt-out of the class (the "Class"). The Settlement also resolves Individual Claims filed by Individual Claimants who do not file a timely settlement declination form. The Settlement requires the Plan Administrator, on behalf of the Debtor Defendants, to pay a total of $250,000.00 (the "Settlement Amount") to settlement administrator(s) designated by Employee Counsel, within five (5) business days following final approval of the Settlement. Such administrator(s) shall then promptly distribute the Settlement Amount to the Covered Employees as set forth in the Settlement Agreement. Class Counsel shall receive payment in the amount of one-third (1/3) of the Settlement Amount, ("Class Counsels' Fees") plus out of pocket costs and expenses including a $30,000.00 advisory fee for Dundon Advisers LLC ("Class Counsels' Expenses"). The net amount of the Settlement Amount, after deduction of Class Counsel Fees, and Class Counsels' Expenses, shall be divided as shown on Schedule 1 to the Settlement. The net amount of your individualized WARN Act settlement amount is detailed on **Exhibit A** hereto.

16. Any distributions that are not cashed or deposited within one hundred eighty (180) days of their date of issuance shall be deemed residual funds on the 181st day following the Settlement distribution and treated as follows: Residual funds will be (i) first, used to make Settlement Payment distributions to additional Covered Employees, if any, that may be identified after Class Counsel has made distributions of the Settlement Payment and who fall within the Covered Employees definition herein but who did not appear on Schedule 1 ("Additional Class Members"), and (ii) second, distributed in a supplemental distribution to Covered Employees, who have timely cashed or deposited their original Settlement distributions, so long as Class Counsel determine that such distribution is feasible.

Class Counsels' Recommendation

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

RELEASE OF CLAIMS AND EFFECT OF APPROVAL OF SETTLEMENT AGREEMENT

18. Except for the rights arising out of, provided for, or reserved in the Settlement Agreement, upon the payment of the Settlement Amount to Employee Counsel, the Covered Employees, for and on behalf of themselves, and their respective predecessors, successors, assigns, affiliates and subsidiaries (collectively, the "Releasing Parties") do hereby fully and forever release and discharge the Debtors the Debtors' estates, the Debtors' current and former parents, subsidiaries, partners, directors, officers, members, accountants, attorneys, representatives, and all other agents, and all of their respective predecessors, successors and assigns, and the Plan

Administrator and his accountants, attorneys, representatives and agents (collectively, the "Released Parties") of and from any and all claims, obligations, demands, rights, debts, liabilities, liens, actions and causes of action, costs, expenses, attorneys' fees and damages of whatever kind or nature, character, and description, whether in law or in equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, whether known or unknown, and whether anticipated or unanticipated, suspected or disclosed, which the Releasing Parties may now or hereafter may have against the Released Parties which relate to or are based on the WARN Act, or any federal, state, or local law or regulation applying to plant closings, mass layoffs, employment termination (collectively, the "Covered Employees' Released Claims").[3]

HOW TO OBJECT, OPT OUT OF OR DECLINE THE SETTLEMENT

19. If you are satisfied with the proposed Settlement including Class Counsels' Fees and Class Counsels' Expenses and your projected individualized WARN Act settlement amount as shown on **Exhibit A**, you do not need to do anything. Following final Bankruptcy Court approval and payment of the Settlement Amount, your individualized WARN Act settlement amount will be mailed to your last known address as indicated in the Debtor Defendants' books and records or to such address that you have updated with Class Counsel, in accordance with the Settlement Agreement. If you are concerned that Class Counsel does not have your current address, please promptly notify Class Counsel as follows:

Via Mail: Nicholas A. Migliaccio, Esq.
Migliaccio & Rathod LLP
412 H Street N.E., Suite 302
Washington, D.C. 20002

Via Phone: 202-470-3520

Via Email: nmigliaccio@classlawdc.com

20. If, on the other hand, you believe that the proposed Settlement is unfair or inadequate or are dissatisfied with the amount shown on **Exhibit A** or feel that Class Counsels' Fees or Class Counsels' Expenses should not be approved, you may object to the Settlement by mailing via First Class U.S. Mail a detailed written statement bearing the caption of this action shown above on the first page stating your comment or objection, to the United States Bankruptcy Court for the Middle District of Florida, 400 W. Washington Street, Suite 5100, Orlando, FL 32801, and by sending copies of that statement, also by First Class U.S. Mail, to (1) THE GARDNER FIRM, P.C., 182 St Francis Street, Suite 103, Mobile, AL 36602, Attention: Mary E. Olsen, Esq., (2) MIGLIACCIO & RATHOD LLP, 412 H Street N.E., Suite 302 Washington, D.C. 20002, Attention: Nicholas A. Migliaccio, Esq. and (2) BERGER SINGERMAN LLP, 1450 Brickell Avenue, Suite 1900, Miami, FL 33131, Attention: Paul Steven Singerman, Esq. and Robin J. Rubens, Esq. **Objections must be mailed so as to be received no later than _____,**

[3] The Covered Employees' Released Claims consist of any and all claims of any kind or nature whatsoever, at law, in equity, and otherwise, whether known or unknown, anticipated, suspected, or disclosed, which the Releasing Parties have or may have as of the date of a final Order approving the Settlement, which relate to or are based on the WARN Act or any federal, state or local law or regulation applying to plant closings or mass layoffs.

2024, and must include the caption of the action and 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 attorneys' fees and costs, as described above.

21. You may also appear in person or by counsel at the final hearing described below, if you so choose.

22. If you are a Class Member and choose not to be bound by this Settlement and do not wish to share in any of the benefits described herein, you may opt out of the Class by filling out the attached "Opt Out Form," and signing and mailing that form by First Class U.S. Mail to: Migliaccio & Rathod LLP 412 H Street N.E., Suite 302 Washington, D.C. 20002 Attention: Nicholas A. Migliaccio, Esq. The "Opt Out Form" form must be received by Mr. Migliaccio no later than _____, 2024. Any Class Member who sends a late request to opt out of the Class will be a member of the Class. IT IS IMPORTANT FOR CLASS MEMBERS TO RECOGNIZE THAT OPTING OUT OF THE CLASS DOES NOT PROVIDE ANY NEW OPPORTUNITY TO FILE A PROOF OF CLAIM IN ANY OF THE RED LOBSTER BANKRUPTCY CASES FOR ANY ASSERTED LIABILITY, INCLUDING BUT NOT LIMITED TO WARN ACT LIABILITY. IF YOU DID NOT TIMELY FILE SUCH A PROOF OF CLAIM AND OPT OUT OF THE SETTLEMENT, YOU WILL LIKELY BE UNABLE TO RECEIVE ANY RECOVERY ON ACCOUNT OF A WARN ACT CLAIM UPON ANY RED LOBSTER BANKRUPTCY DEBTOR OR ANY SUCCESSOR BY PURCHASE OF RED LOBSTER ASSETS (INCLUDING OPEN STORES).

23. If you are an Individual Claimant who filed an Individual Claim and choose not to be bound by this Settlement and do not wish to share in any of the benefits described herein, you may opt out of the Class by filling out the attached "Settlement Declination Form," and signing and mailing that form by First Class U.S. Mail to: Migliaccio & Rathod LLP 412 H Street N.E., Suite 302 Washington, D.C. 20002 Attention: Nicholas A. Migliaccio, Esq. The "Settlement Declination Form" form must be received by Mr. Migliaccio no later than _____, 2024. Any Individual Claimant who sends a late request to opt out of the Class will be subject to the Settlement. IT IS IMPORTANT FOR INDIVIDUAL CLAIMANTS TO RECOGNIZE THAT RED LOBSTER OR ITS SUCCESSORS HAVE THE RIGHT TO SEEK TO DISALLOW IN WHOLE OR PART ANY PROOFS OF CLAIM FILED BY INDIVIDUAL CLAIMANTS WHO DECLINE THE SETTLEMENT.

FINAL HEARING TO APPROVE SETTLEMENT AND AWARD ATTORNEYS' FEES AND COSTS

24. The hearing for final consideration and approval of the Settlement and the award of Class Counsel Fees and Class Counsel Expenses is scheduled to take place on **_____, 2024 at ____a.m./p.m. before the Honorable Grace E. Robson, in the United States Bankruptcy Court, George C. Young Federal Courthouse, 400 W. Washington Street, Courtroom 6D, 6th Floor, Orlando, Florida 32801**. **The Hearing may be adjourned to a subsequent date in these Chapter 11 Cases in the Plan Administrator's sole discretion.** That

hearing may be adjourned without further notice. If you wish to determine if the hearing is adjourned, you may contact Ms. Olsen at the address shown above.

OTHER INFORMATION

25. For more information about the Settlement or the WARN Act Litigation, you may contact Class Counsel Nicholas A. Migliaccio at (202) 470-3520 or at nmigliaccio@classlawdc.com.

26. While the Bankruptcy Court has approved the sending of this notice, that does not indicate, and is not intended to indicate, that the Bankruptcy Court has any opinion as to the respective claims or defenses asserted by the parties in the WARN Act Litigation.

OPT OUT FORM / SETTLEMENT DECLINATION FORM

I, the undersigned, have read the foregoing Settlement Notice and understand its contents.

I **DO NOT** want to participate in the above Settlement of the WARN Act Litigation and/or WARN Act Claims, and **DO NOT** wish to receive any benefits from or be bound by the Settlement Agreement described herein.

SIGNATURE	ADDRESS
NAME (printed or typed)	CITY, STATE and ZIP CODE
DATE	TELEPHONE
EMAIL ADDRESS	

If you do NOT wish to participate, send this completed form to:

Attention: Nicholas A. Migliaccio
Migliaccio & Rathod LLP
412 H.Street N.E., Suite 302
Washington, D.C. 200022

EXHIBIT A

Projected Net Settlement Amount, After the Deduction of Class Counsels' Fees and Class Counsels' Expenses	$_____