

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

-----X  
 :  
 In re: : Chapter 11  
 :  
 NATROL, INC., *et al.*, : Case No. 14-11446 (BLS)  
 :  
 Debtors.<sup>1</sup> : Jointly Administered  
 :  
 : (Proposed) Obj. Deadline: July 28, 2014 at 10:00 a.m. (ET)  
 : (Proposed) Hearing Date: July 30, 2014 at 10:00 a.m. (ET)  
 -----X

**DEBTORS' MOTION PURSUANT TO SECTIONS 105(a), 361, 362, AND 363 OF THE  
BANKRUPTCY CODE AND BANKRUPTCY RULE 9019 FOR AN ORDER (I)  
AUTHORIZING AND APPROVING COMPROMISE AND SETTLEMENT  
AGREEMENT WITH CERBERUS BUSINESS FINANCE LLC, (II) AUTHORIZING  
AND APPROVING THE AGREED FINAL ORDER AUTHORIZING THE USE OF  
CASH COLLATERAL, AND (III) GRANTING RELATED RELIEF**

Natrol, Inc. ("Natrol") and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), hereby move this Court (the "Motion") for entry of proposed orders, substantially in the forms annexed hereto as Exhibits A and B respectively, pursuant to sections 105(a), 361, 362 and 363 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (i) authorizing and directing the Debtors to enter into and perform each of their obligations under that certain *Compromise and Settlement Agreement* (the "Settlement"),<sup>2</sup> by and among the Debtors, the Official Committee of Unsecured Creditors appointed in the Debtors' chapter 11 bankruptcy cases (the "Committee"), Cerberus Business Finance, LLC

---

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: Natrol, Inc. (0780); Natrol Holdings, Inc. (4614); Natrol Products, Inc. (7823); Natrol Direct, Inc. (5090); Natrol Acquisition Corp. (3765); Prolab Nutrition, Inc. (3283); and Medical Research Institute (2825). The Debtors' principal offices are located at 21411 Prairie Street, Chatsworth CA 91311.

<sup>2</sup> A proposed form of order approving the Settlement is attached hereto as Exhibit A (the "Proposed Settlement Order"). The Settlement is attached to the Proposed Settlement Order as Exhibit 1. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Settlement.

(“Cerberus”) solely in its capacity as administrative agent and collateral agent under that certain Financing Agreement dated as of March 5, 2013 (as amended, the “Financing Agreement”), on behalf of itself and the lenders that are parties thereunder (the “Secured Lenders”), and Natrol Global Fze LLC (“Global”), (ii) authorizing and approving the proposed *Agreed Final Order Authorizing the Use of Cash Collateral Pursuant to 11 U.S.C. §§ 105, 361, 362, and 363*; (2) *Granting Adequate Protection*; (3) *Modifying the Automatic Stay*; and (4) *Granting Related Relief* attached as Exhibit B hereto and incorporated herein by reference (the “Agreed Final Cash Collateral Order,” and together with the Proposed Settlement Order, the “Proposed Orders”), and (iii) granting related relief. In support of the Motion and entry of the Proposed Orders, the Debtors rely upon and incorporate by reference the *Declaration of Mesrop G. Khoudagoulian in Support of the Debtors’ Chapter 11 Petitions and Requests for First Day Relief* [Docket No. 31] and the *Declaration of Jeffrey C. Perea in Support of the Debtors’ Chapter 11 Petitions and Requests for First Day Relief* [Docket No. 32] (collectively the “First Day Declarations”), which were filed with the Court on June 18, 2014 and have been admitted into evidence at prior hearings in connection with these chapter 11 cases (the “Chapter 11 Cases”). In further support of the Motion and entry of the Proposed Orders, the Debtors respectfully states:

#### **PRELIMINARY STATEMENT**

1. The Settlement proposed in this Motion will resolve a multitude of complex and contentious issues between the Debtors and Cerberus, their major secured lender. For example, the Settlement will resolve the pending contested motions for use of cash collateral and for the appointment of a Chapter 11 trustee. The Settlement provides for a reasonable time for the Debtors to explore all alternatives for a restructuring, including refinancing or a sale. Moreover, the Settlement will avoid protracted and contentious litigation between the Debtors and

Cerberus. Accordingly, by resolving these disputes now through the Settlement, the Debtors will significantly improve the likelihood of achieving an expeditious conclusion to these Chapter 11 Cases.

2. The comprehensive Settlement is the product of extensive, arm's-length negotiations among the Debtors, the Committee, and Cerberus. In the Debtors' business judgment, with which the Committee concurs, the Settlement provides an outcome for the Debtors' estates and creditors that is both fair and far superior to the expense, vagaries and inherent uncertainty of protracted litigation. Respectfully, the Settlement should therefore be approved.

### **JURISDICTION**

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Debtors consent pursuant to rule 9013-1(f) of the Local Rules to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory and other predicates for the relief requested herein are sections 105(a), 361, 362, 363, 507, and 552 of the Bankruptcy Code, and Bankruptcy Rules 2002, 4001, 6004, 9014 and 9019.

**BACKGROUND**

5. The Debtors produce high-quality, branded nutritional and dietary supplements that address a wide range of preventative healthcare and condition-specific dietary, nutritional, and performance needs. The Debtors' product portfolio includes approximately 115 products, which are distributed through direct customer sales in addition to a retailer network of over 50,000 retailers, including natural and health food stores, specialty health retailers, mass market/club stores, online retailers, and through international distribution channels. The Debtors have plans to introduce new products, are completing clinical trials with respect to some of their key products, and are investing in marketing efforts to increase their sales and market share of growing industry.

6. The Debtors have approximately 216 employees. Most of their employees assist with production and operations. All products are manufactured in-house, with the exception of protein powders, soft gels, liquid products, and herbal teas (which collectively represent approximately 17% of gross sales). Because of the Debtors' control and oversight of production, the Debtors enjoy a strong reputation for quality ingredients and maintain a loyal consumer following.

7. The Debtors are currently constructing four new manufacturing lines within their Chatsworth facilities, which will enable the Debtors to produce protein powder, soft gel, tea, and bottles. The powder line is expected to be completed in October 2014, with all four new lines to be completed by 2015. The manufacturing facility expansion will enable the Debtors to bring substantially all of their production in-house, thereby providing maximum control over quality and the supply chain. Moreover, the Debtors anticipate seeing a significant return on their investment based on cost savings on production of existing product lines.

8. Despite the economic downturn over the last several years, the Debtors have achieved steady, organic growth, including net sales of approximately \$94.9 million and adjusted EBITDA of approximately \$16.1 million in 2013.

9. Prior to the Petition Date (as defined below), on March 5, 2013, the Debtors entered into a financing agreement (the “Prepetition Credit Agreement”) with certain lenders, including certain funds affiliated with Cerberus. Under the Prepetition Credit Agreement, the Lenders made a term loan to the Debtors in the aggregate principal amount of \$65,000,000, and provided a revolving credit facility to the Debtors in an aggregate principal amount not to exceed \$10,000,000. Contemporaneously with entry into the Prepetition Credit Agreement, the Debtors entered into a pledge and security agreement (the “Security Agreement”), whereby the Debtors pledged substantially all of their assets to Cerberus, as collateral agent for the Secured Lenders. The assets pledged to the Secured Lenders are referred to collectively as the “Prepetition Collateral.”

10. As of the Petition Date, the Debtors owed approximately \$70 million under Prepetition Credit Agreement, exclusive of any reductions from cash sweeps or otherwise, and without taking into account any claims or offsets that the Debtors might have against the Secured Lenders, if any.

11. Prior to the Petition Date, there were no payment defaults of any kind under the Prepetition Credit Agreement. However, as a result of certain covenant defaults, Cerberus sent several notices of default and reserved its remedies on behalf of the Secured Lenders. In order to avoid acceleration of the obligations under the Prepetition Credit Agreement, the Debtors agreed to the terms of that certain First Amendment to Prepetition Credit Agreement and Forbearance Agreement, dated as of March 23, 2014 (the “Forbearance Agreement”). The Prepetition Credit

Agreement, the Security Agreement and the Forbearance Agreement, in each case as the same may be amended, modified or supplemented from time to time, are collectively referred to herein as the “Prepetition Credit Documents.”

12. On June 11, 2014 (the “Petition Date”), each of the Debtors commenced a voluntary case under chapter 11 of Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are continuing to manage their financial affairs as debtors in possession.

13. The Debtors’ Chapter 11 Cases are jointly administered pursuant the order entered on June 19, 2014 [Docket No. 66] and Rule 1015(b) of the Bankruptcy Rules and Rule 1015-1 of the Local Rules. No trustee or examiner has been appointed in these cases.

14. On June 18, 2014, the Debtors filed the *Debtors’ Motion for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral Under 11 U. S. C. § 363, (B) Granting Adequate Protection Under 11 U.S.C. §§ 361 and 363 and (C) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b) in the Bankruptcy Cases* [Docket No. 42] (the “Cash Collateral Motion”).

15. On June 19, 2014, Cerberus filed an *Emergency Motion for Appointment of a Chapter 11 Trustee in the Bankruptcy Cases* [Docket No. 56] (the “Trustee Motion”). A hearing to consider the Trustee Motion is currently scheduled for July 30, 2014.

16. On June 19, 2014, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed the Committee in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code [Docket No. 61].

17. On June 19, 2014, Cerberus filed a preliminary opposition to the Cash Collateral Motion, and on June 23, 2014, the Court entered an *Interim Order Pursuant to 11 U.S.C. §§*

105(a), 361 and 363 (A) Authorizing Use of Cash Collateral and (B) Granting Adequate Protection [Docket No. 86] (the “Interim Cash Collateral Order”), and on July 11, 2014, the Court entered a *Second Interim Order Pursuant to 11 U.S.C. §§ 105(a), 361 and 363 (A) Authorizing Use of Cash Collateral and (B) Granting Adequate Protection* [Docket No. 235] (the “Second Interim Cash Collateral Order”). A hearing to consider granting the relief requested in the Cash Collateral Motion on a final basis is currently scheduled for July 30, 2014.

18. After extensive negotiations and in order to avoid the expense, uncertainty, and other burdens attendant to litigating, among other things, the Trustee Motion and the Cash Collateral Motion, the Parties have reached a comprehensive compromise and settlement as set forth in the Settlement and in Agreed Final Cash Collateral Order.

#### **THE SETTLEMENT**

19. A summary of the principal terms of the Settlement are set forth below.<sup>3</sup>

a. Allowed Claim.

- i. Subject to certain challenge rights set forth in the Settlement (but only for the Committee or any chapter 11 trustee that may be appointed), the Allowed Claim shall consist of (1) \$68,785,869.67, plus interest at a rate of 12.75% per annum, from and after July 1, 2014; plus (2) the amount of all of Cerberus’s reasonable prepetition and post-petition fees, costs, and expenses minus any amounts actually paid by the Debtors during the Bankruptcy Cases, and the Allowed Claim will be deemed to be a fully secured claim under section 506 of the Bankruptcy Code.
- ii. The Debtors agree to absolutely and indefeasibly pay to Cerberus cash equal to the full amount of the Allowed Claim in accordance with the terms of the Settlement (the Parties agree to jointly preserve the confidentiality of various aspects of the Settlement, including, without limitation, filing that aspect of the Settlement under seal, in order to preserve the confidentiality thereof). If the Allowed Claim is absolutely and indefeasibly paid in full pursuant to the terms of the

---

<sup>3</sup> What follows is by way of summary only and is qualified in its entirety by the language of the Settlement, which controls in the event of any conflict with the following description. All defined terms used herein are as defined in the Settlement.

Settlement, Cerberus will agree to waive the Forbearance Fee and certain releases will be granted as discussed further below.

- b. GLC Advisors & Co. Employment Application. Cerberus and the Committee have reviewed and approved the terms and conditions of the Engagement Agreement by and between Natrol, Inc. and GLC Advisors & Co. The Debtors will file the Employment Application within 7 calendar days after the Agreement Execution Date.
- c. Restructuring Process. The Debtors will pursue, with the assistance of the Investment Banker, restructuring alternatives, including a sale or refinancing of their assets, in either instance in an amount sufficient to satisfy the Allowed Claim in accordance with the terms of the Settlement. The Debtors will comply with certain milestones with respect to the processes set forth in the Settlement.
- d. Agreements Regarding Operational Issues.
  - i. CRO/CFO. The Debtors will retain the CFO and the CRO through the processes/milestones set forth in the Settlement. The CRO will report to the Board and may report on a confidential basis to the Independent Director.
  - ii. Corporate Credit Cards and Reimbursements. No personal expenses may or will be charged to corporate credit cards. Payment of any expense reimbursements in excess of \$250 must be approved by (1) the CFO or CRO and (2) FTI Consulting (which approval will not be unreasonably withheld).
- e. 2013 Audit. The Debtors, with the assistance of the CFO and the CRO, will initiate the process of completing the audit for 2013 and will use their reasonable best efforts to complete such audit on or before September 1, 2014.
- f. Deposits to DIP Accounts.
  - i. All post-petition collections, including, without limitation, all proceeds from the disposition of assets, will be deposited into a DIP Account. None of the Debtors will deposit any funds to which any of the Debtors holds or asserts an interest other than in a DIP Account.
  - ii. Any recovery by the Debtors from the assertion of litigation claims will be deposited into a DIP Account, to the extent not so deposited before the Agreement Execution Date. Without limiting the generality of the foregoing, the approximately \$2.0 million of recoveries from the Stonefield Josephson litigation will be transferred from the client-trust

- account of the Law Offices of Mesrop G. Khoudagoulian to a DIP Account within 2 business days after the Agreement Execution Date.<sup>4</sup>
- iii. The Debtors and Global will use their respective best efforts to cause all collections of the Debtors' international sales to be remitted directly by customers into a DIP Account. Any payment made by a foreign customer of the Debtors to Global must be transferred within 4 business days after receipt into a DIP Account. The Debtors will provide weekly reports regarding, among other things, their compliance with these obligations.
  - iv. All DIP Accounts will be monitored by and will be under the control of the CFO and the CRO. The CFO and the CRO will have online access to all such DIP Accounts in order to monitor each DIP Account and at least one of them must authorize each disbursement.
- g. Agreements Regarding Corporate Governance Issues.
- i. Board Determinations. The Board must approve all material transactions. All determinations of the Board regarding any such transaction must be unanimous. In the event of any deadlock of the Board, the Debtors will have the right to seek from the Bankruptcy Court an order resolving such deadlock. If the Debtors do not locate financing in an amount sufficient to satisfy the Allowed Claim on the terms set forth in the Settlement, then the Board will approve the highest and best proposed transaction, if any, that will provide proceeds in an amount sufficient to satisfy the Allowed Claim in accordance with the terms of the Settlement; the Committee reserves the right to object.
  - ii. Independent Director. The Debtors will employ the Independent Director as an independent board member. The Independent Director will monitor and report to the Board, Cerberus, and the Committee regarding, among other things, the performance of the Debtors' business and the Debtors' management team and whether sufficient and appropriate controls are in place. The Independent Director will use his reasonable best efforts to refrain from retaining any additional attorneys and will, if necessary, use only independent counsel not employed by any other party in the Bankruptcy Cases.
  - iii. No Changes. No additions may or will be made to the Board, other than the appointment of the Independent Director, and no changes may or will be made with respect to the retention of the CFO and the CRO, through the processes/milestones set forth in the Settlement.

---

<sup>4</sup> As of the date of the Motion, such funds have been transferred to a DIP Account.

- h. Agreements Regarding Information and Reviews. The Debtors have agreed to provide Cerberus and the Committee with information updates and reviews as set forth in the Settlement and in the Agreed Final Cash Collateral Order.
  
- i. Releases & Acknowledgements.
  - i. Without limiting any provisions of the Agreed Final Cash Collateral Order, the Debtors agree and acknowledge that (i) they owe the amount of the Allowed Claim, with no defenses or offsets of any nature, and (ii) the Allowed Claim is secured by valid, perfected, and unavoidable prepetition liens and security interests encumbering all of the Debtors' assets and properties, other than the Avoidance Actions.
  
  - ii. Subject to the occurrence of the Actual Payment Date, on and as of the Actual Payment Date, Cerberus, on the one hand, and the Debtors, the Committee, and Global, on the other hand, will exchange mutual releases of any and all claims that they may have against each other.
  
  - iii. In the event that the Debtors fail to satisfy the Allowed Claim pursuant to the terms of the Settlement, any trustee appointed in the Bankruptcy Cases and the Committee (but no other party in interest) will have the right to assert an objection to or otherwise challenge the amount of Cerberus's claims and the validity, scope, and perfection of Cerberus's interests and assert any other claims the Debtors' estates may have against Cerberus and shall have standing to do so pursuant to the Agreed Final Cash Collateral Order, and all of Cerberus's rights will be reserved with respect to any such objection or challenge. Any such objection or challenge must be filed by the Committee or a trustee, as the case may be, with the Bankruptcy Court on or before the date that is 60 calendar days after the event described in the Settlement. In the absence of a timely-filed challenge (and to the extent not subject to any timely-filed challenge), the claims, liens, and interests of Cerberus will be deemed allowed, valid, perfected, and enforceable to the full extent set forth in the Settlement and in the Agreed Final Cash Collateral Order, and will not be subject to further challenge by any person or entity, including any chapter 11 trustee or chapter 7 trustee.
  
  - iv. Under enumerated circumstances in the Settlement, Cerberus will receive complete releases from the Debtors' estates, which will be binding on the Debtors, the Debtors' estates, the Committee, any bankruptcy trustee, and all other parties in interest, and no party will have the right to assert an objection to or otherwise challenge Cerberus's claims, liens, perfection, and interests.

- j. Agreements Regarding Certain Additional Issues. The Settlement includes and addresses certain additional agreements and issues, including, but not limited to, the amendment of the Existing License Agreement, the Debtors' use of cash collateral, the agreement of the Debtors and Committee that they will not prepare a chapter 11 plan unless and until there is a Bona Fide Proposal that could support a chapter 11 plan, the provision of the terms and conditions of defaults and remedies under the Settlement (including the potential appointment of a chapter 11 trustee or the deemed resignation of non-independent members of the Debtors' board on an expedited basis), and the Parties' agreement to preserve the confidentiality of certain information contained in the Settlement.<sup>5</sup>

### **RELIEF REQUESTED**

20. By this Motion, the Debtors request entry of the Proposed Orders pursuant to sections 105(a), 361, 362, and 363 of the Bankruptcy Code and Bankruptcy Rule 9019: (i) authorizing and directing the Debtors to enter into and perform each of their obligations under the Settlement, (ii) authorizing and approving the Agreed Final Cash Collateral Order, and (iii) granting related relief.

21. The Debtors also request that the Proposed Orders be effective immediately upon its entry notwithstanding any stay of effectiveness provided by Bankruptcy Rules or otherwise.

### **BASIS FOR RELIEF**

22. Bankruptcy Rule 9019(a) provides that "on motion by the trustee and after a hearing, the Court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). Bankruptcy Rule 9019(b) provides that the Court may "fix a class or classes of controversies and authorize the [debtor in possession] to compromise or settle controversies within such class or classes without further hearing or notice." Fed. R. Bankr. P. 9019(b).

23. The settlement of time-consuming and burdensome litigation, especially in the bankruptcy context, is encouraged. See, e.g., In re Penn Central Transp. Co., 596 F.2d 1002 (3d

---

<sup>5</sup> Contemporaneously herewith, the Debtors have filed a motion seeking authority to file a redacted version of the Settlement.

Cir. 1979). The Supreme Court has recognized that “in administering a reorganization proceeding in an economical and practical manner, it will often be wise to arrange the settlement of claims in which there are substantial and reasonable doubts.” In re Protective Comm. for Indep. Stockholders of TMT Ferry, Inc. v. Anderson, 390 U.S. 414 (1986).

24. Approval of a proposed settlement is within the “sound discretion” of the Bankruptcy Court. In re Neshaminy Office Building Associates, 62 B.R. 798, 803 (Bankr. E.D. Pa. 1986). The Court must determine whether the proposed settlement is in the “best interests of the estate.” See In re Energy Cooperative, Inc., 886 F.2d 921, 927 (7th Cir. 1989). In determining the fairness and equity of a compromise in bankruptcy, the United States Court of Appeals for the Third Circuit has stated that it is important that the bankruptcy court “apprise[] itself of all facts necessary to form an intelligent and objective opinion of the probabilities of ultimate success should the claims be litigated, and estimated the complexity, expense and likely duration of such litigation, and other factors relevant to a full and fair assessment of the [claims].” In re Penn Central Transportation Co., 596 F.2d 1127, 1153 (3d Cir. 1979); see also In re Marvel Ent’mt Group, Inc., 222 B.R. 243 (D. Del. 1998) (describing “the ultimate inquiry to be whether ‘the compromise is fair, reasonable, and in the interest of the estate’” (quoting In re Louise’s Inc., 211 B.R. 798, 801 (D. Del. 1997))).

25. In particular, the Third Circuit Court of Appeals has enumerated four factors that should be considered in determining whether a settlement should be approved, namely: “(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.” Meyers v. Martin (In re Martin), 91 F.3d 389, 393 (3d

Cir. 1996); accord Will v. Northwestern Univ. (In re Nutraquest, Inc.), 434 F.3d 639, 644 (3d Cir. 2006).

26. In deciding whether to approve a settlement, the bankruptcy court should not substitute its judgment for that of the debtor. Neshaminy, 62 B.R. at 803. Nor should it decide the numerous questions of law or fact raised by litigation. Rather, it should canvass the issues to see whether the settlement falls below the lowest point in the range of reasonableness. See In re W.T. Grant and Co., 699 F.2d 599, 608 (2d Cir. 1983), cert. denied, 464 U.S. 22 (1983); see also In re World Health Alternatives, Inc., 344 B.R. at 296 (“[T]he court does not have to be convinced that the settlement is the best possible compromise. Rather, the court must conclude that the settlement is within the reasonable range of litigation possibilities.”) (internal citations and quotations omitted)).

27. In the Debtors’ considered judgment, with which the Committee concurs, the resolutions embodied in the Settlement are reasonable and in the best interest of the Debtors, their estates, their creditors and other parties in interest. The proposed Settlement provides for a fair and practical resolution of numerous complex issues currently in dispute which, if litigated to their conclusion, would consume vast amounts of the Debtors’ limited resources, dilute recoveries to creditors in these Chapter 11 Cases, and, in all likelihood, lead to significant delay and uncertainty regarding the conclusion of the Chapter 11 Cases. The Settlement was the product of significant and lengthy discussions and negotiations among the Debtors, the Committee, and Cerberus, over the course of several weeks, culminating in the execution of the Settlement, all terms of which fall well within the range of reasonable litigation outcomes as to each of the issues encompassed by the Settlement. In addition, as discussed below, each of the applicable Martin factors weighs in favor of approving the settlement.

**A. The Probability of Success in Litigation**

28. While the Debtors believe the legal positions taken in the Cash Collateral Motion, and their as yet-to-be-filed opposition to the Trustee Motion, are strong, Cerberus has raised numerous complex issues of fact and law which will necessitate additional extensive discovery, litigation and trial. There is, therefore, a material risk that continued litigation in this Court with respect to the Cash Collateral Motion and the Trustee Motion could result in rulings unfavorable to the estates on any number of the issues being litigated. In light of the foregoing, the first Martin factor weighs significantly in favor of approving the Settlement, including entry of the Agreed Final Cash Collateral Order.

**B. The Likely Difficulties in Collection**

29. Under the Settlement, the Parties have reached an agreement governing the Debtors' use of cash collateral on a final basis, which agreement is memorialized in the Agreed Final Cash Collateral Order. Entry of the Agreed Final Cash Collateral Order will allow the Debtors to continue to operate their businesses in the ordinary course, including the undisturbed completion of the four new manufacturing lines. Accordingly, on its face, the Settlement results in certainty concerning the Debtors' continued use of cash collateral, which is absolutely necessary for the Debtors to maintain their business operations and to continue their reorganization efforts. In the absence of a negotiated resolution, among other things, Cerberus would continue to oppose the Debtors' use of cash collateral, and therefore place the Debtors reorganization at risk. In light of these uncertainties, the second Martin factor also weighs in favor of approving the Settlement, including entry of the Agreed Final Cash Collateral Order.

**C. The Complexity of the Litigation Involved, and the Expense, Inconvenience and Delay Necessarily Attending It**

30. As is already apparent from the papers filed thus far in the Chapter 11 Cases (which encompasses but a fraction of the issues resolved by the Settlement), litigation to resolve all the issues among the Parties would be extraordinarily complex, costly, and would likely involve extensive motion (and potentially appellate) practice before any concrete relief would be afforded to the Debtors. Such complicated litigation and uncertainty would be at a tremendous expense to the Debtors' estate and creditors, in terms of cost of the litigation itself, the cost of continuing the Chapter 11 Cases pending conclusion of the litigation, and the distraction of the Debtors and their officers and directors from the operation of the Debtors' businesses in the ordinary course. Entry into the Settlement, thus, will preserve the value of the Debtors' estates. Accordingly, the third Martin factor also weighs in favor of approving the Settlement, including entry of the Agreed Final Cash Collateral Order.

**D. The Paramount Interest of Creditors**

31. In these Chapter 11 Cases, the paramount interest of creditors will be best served by approving the Settlement and the Agreed Final Cash Collateral Order, both of which will ultimately facilitate the Debtors' continued business operations and the reorganization of the Debtors. The proposed Settlement presents the clearest path to resolution of these Chapter 11 Cases within a reasonable time and, as noted above, results in both an immediate use of cash collateral and the elimination of extensive and time consuming litigation with Cerberus. And importantly, it has the full support of the Committee, the statutory representative of the unsecured creditor body. Accordingly, the fourth Martin factor weighs in favor of approving the Settlement, including entry of the Agreed Final Cash Collateral Order.

**E. Conclusion**

32. A review of the four Martin factors set forth above clearly demonstrates that the Settlement is in the best interest of the Debtors, their estates, and their creditors. The resolution and compromise of the disputes and issues between the Parties as embodied in the Settlement: (i) is fair and equitable; (ii) represents a settlement that rests well above the lowest point in the reasonable range of potential litigation outcomes; (iii) obviates the expense, delay, inconvenience and uncertainty that would attend any litigation of the issues between the Parties; and (iv) advances the paramount interests of creditors. Therefore, the Settlement satisfies the requirements of Bankruptcy Rule 9019 and should be approved by the Court.

**NOTICE**

62. The Debtors have provided notice of this Motion to: (a) the United States Trustee for the District of Delaware; (b) counsel to the Creditors' Committee; (c) counsel to Cerberus; (d) Global; and (e) all parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, and under the circumstances, the Debtors submit that no further notice is required or needed.

CONCLUSION

WHEREFORE, the Debtors respectfully requests the Court to enter the Proposed Orders, substantially in the forms attached hereto as Exhibits A and B, granting the Motion and granting the Debtors such other and further relief as is just and proper.

Dated: July 15, 2014  
Wilmington, Delaware

/s/ Maris J. Kandestin  
Michael R. Nestor (No. 3526)  
Maris J. Kandestin (No. 5294)  
Ian J. Bambrick (No. 5455)  
YOUNG CONAWAY STARGATT & TAYLOR, LLP  
Rodney Square  
1000 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 571-6600  
Facsimile: (302) 571-1253

-and-

Marc J. Winthrop (CA No. 63218)  
Robert A. Opera (CA No. 101182)  
Peter W. Lianides (CA No. 160517)  
WINTHROP COUCHOT PROFESSIONAL  
CORPORATION  
660 Newport Center Drive, 4th Floor  
Newport Beach, CA 92660  
Telephone: (949) 720-4100  
Facsimile: (949) 720-4111

*Proposed Counsel to the Debtors and  
Debtors in Possession*