

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

-----x	:	
	:	
In re:	:	Chapter 11
	:	
LEAF123, INC. (f/k/a NATROL, INC.), et al.,	:	Case No. 14-11446 (BLS)
	:	
Reorganized Debtors. ¹	:	(Jointly Administered)
	:	
	:	Hearing Date: February 3, 2016 at 9:30 a.m. (ET)
-----x	:	Objection Deadline: January 27, 2016 at 4:00 p.m. (ET)

REORGANIZED DEBTORS’ MOTION FOR ENTRY OF AN ORDER, IN AID OF IMPLEMENTATION OF THE PLAN, (A) APPROVING THE RELEASE OF CERTAIN RESERVES ESTABLISHED UNDER THE PLAN, (B) FINDING THAT THE DEBTORS’ TAX LIABILITIES FOR THE TAX YEAR ENDED DECEMBER 31, 2014 HAVE BEEN DISCHARGED PURSUANT TO 11 U.S.C. § 505(b)(2); AND (C) GRANTING RELATED RELIEF

Leaf123, Inc. (f/k/a Natrol, Inc.) and its affiliated reorganized debtors in the above-captioned chapter 11 cases (collectively, prior to the Effective Date (as defined below), the “Debtors,” and thereafter, the “Reorganized Debtors”) hereby move (the “Motion”) this Court, pursuant to sections 502(c), 505(b)(2), and 1124 of title 11 of the United States Code (the “Bankruptcy Code”), in aid of implementation of the *Second Amended Joint Liquidating Plan of Leaf123, Inc. (f/k/a Natrol, Inc.) and its Affiliated Debtors* [Docket No. 1220, Exhibit A] (the “Plan”),² for entry of the proposed order attached hereto as Exhibit G (the “Proposed Order”):

(a) approving and directing the release of approximately \$20,150,836.28 in reserves established

¹ The Reorganized Debtors in these chapter 11 cases and the last four digits of each Reorganized Debtor’s taxpayer identification number are as follows: Leaf123, Inc. (f/k/a Natrol, Inc.) (0780); Leaf123 Holdings, Inc. (f/k/a Natrol Holdings, Inc.) (4614); Leaf123 Products, Inc. (f/k/a Natrol Products, Inc.) (7823); Leaf123 Direct, Inc. (f/k/a Natrol Direct, Inc.) (5090); Leaf123 Acquisition Corp. (f/k/a Natrol Acquisition Corp.) (3765); Leaf123 Nutrition, Inc. (f/k/a Prolab Nutrition, Inc.) (3283); and Leaf123 Research Institute (f/k/a Medical Research Institute) (2825). The Reorganized Debtors’ principal offices are located at 333 South Hope Street, Suite 3625, Los Angeles, CA 90071.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan or the New Natrol Settlement Agreement (as defined below), as applicable.

under the Plan and the distribution thereof, (b) finding that the Debtors' tax liabilities for the tax year ended December 31, 2014 have been discharged by operation of section 505(b)(2) of the Bankruptcy Code as set forth more fully herein, and (c) granting related relief. In support of this Motion, the Reorganized Debtors respectfully represent as follows:

Jurisdiction

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012, and section 11 of the Plan. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Reorganized Debtors consent, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, 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.

2. The statutory and procedural predicates for the relief requested herein are sections 502(c), 505, and 1142 of the Bankruptcy Code and the Plan, as confirmed by this Court [Docket No. 1220] (the "Confirmation Order").

Background

A. Procedural Background

3. On June 11, 2014, each of the Debtors commenced a voluntary case (the "Chapter 11 Cases") under chapter 11 of the Bankruptcy Code. Pursuant to sections 1107(a) and

1108 of the Bankruptcy Code, during the Chapter 11 Cases, the Debtors continued to manage their financial affairs as debtors in possession.

4. On June 19, 2014, the United States Trustee (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Committee”). No trustee or examiner was appointed in the Chapter 11 Cases. Following the Effective Date, the Committee was dissolved consistent with section 12.15 of the Plan.

5. Information regarding the Debtors’ history and former business operations, capital structure and primary secured indebtedness, and the events leading up to the commencement of the Chapter 11 Cases can be found in the *Disclosure Statement for First Amended Liquidating Plan of Leaf123, Inc. (f/k/a Natrol, Inc.) and its Affiliated Debtors* [Docket No. 1032] (the “Disclosure Statement”).

B. Corporate Structure of the Debtors and Debtors in Possession

6. Debtor Leaf123, Inc. (f/k/a Natrol, Inc.), a Delaware corporation, is a wholly-owned subsidiary of Debtor Leaf123 Holdings, Inc. (f/k/a Natrol Holdings, Inc.), and, in turn, directly or indirectly owns the other Debtors. Leaf123 Holdings is owned twenty-five percent (25%) by Plethico Global Holdings B.V., a Dutch company (“Plethico Netherlands”), and seventy-five percent (75%) by Plethico US Holdings, Kft, a Hungarian company (“Plethico Hungary”).³ Plethico Netherlands owns one hundred percent (100%) of Plethico Hungary. As described in the Disclosure Statement, Plethico Hungary is the subject of an involuntary insolvency proceeding in Hungary (the “Hungarian Proceedings”). Plethico Pharmaceuticals Limited (“Plethico India”) owns one hundred percent (100%) of Plethico Netherlands, and is the ultimate shareholding parent of Debtor Leaf123 Holdings. Consistent with the Plan, since the

³ Plethico Netherlands is referred to as “Plethico” and Plethico Hungary is referred to as “Plethico US” in the New Natrol Settlement Agreement and Plan.

Effective Date (as defined below), the Reorganized Debtors have been dissolved in the relevant jurisdictions.

C. The Sale of Substantially All of the Debtors' Assets

7. On November 12, 2014, the Court entered an order approving the sale of substantially all of the Debtors' assets (the "Sale Transaction") to Aurobindo Pharma USA Inc. ("Aurobindo") for a purchase price of \$132.5 million plus the assumption of certain liabilities and other consideration [Docket No. 709] (the "Sale Order"). Aurobindo subsequently assigned its rights under the Sale Transaction to Natrol LLC ("New Natrol," and together with Aurobindo, the "Aurobindo Parties").

8. On November 24, 2014, the Debtors and Aurobindo entered into a Claims Administration Protocol to, among other things, clarify how disputes with respect to Assumed Liabilities would be addressed. The Court entered an order approving the Claims Administration Protocol on December 2, 2014 [Docket No. 764].

9. On December 4, 2014, the Sale Transaction closed. On December 23, 2014, the Debtors and New Natrol filed a *Notice of List of Assumed, Excluded, and Disputed Liabilities Pursuant to Claims Administration Protocol* [Docket No. 828], which, among other things, listed certain liabilities that the Aurobindo Parties disputed as being Assumed Liabilities under the Purchase Agreement (collectively, the "Disputed Liabilities").

10. On March 5, 2015, the Debtors filed the *Debtors' Motion Seeking an Order Finding, Pursuant to the Claims Administration Protocol, that Certain Disputed Liabilities are Assumed Liabilities* [Docket No. 948] (the "Disputed Liabilities Motion"), which was ultimately resolved through the New Natrol Settlement Agreement (as defined and described below).

D. The TRO and Complaint

11. On April 6, 2015, New Natrol filed a complaint in the Chapter 11 Cases (the "Complaint") against Plethico Netherlands, Plethico Hungary, and Plethico India (collectively, the "Plethico Parties," and together with the Debtors, the "Defendants") and the Debtors (Adv. Pr. No. 15-50258 (BLS) (the "Adversary Proceeding"), alleging, among other things, various fraud-based causes of action stemming from the Sale Transaction. Contemporaneously therewith, New Natrol also filed a motion seeking the imposition of a temporary restraining order and preliminary injunction against the Defendants (the "TRO Motion") to prevent them from taking any action to transfer or cause to be transferred any funds from the Debtors' bank accounts, with the exception of ordinary course transfers not to exceed \$250,000 per week.

12. Two days later, on April 8, 2015, New Natrol on the one hand, and the Plethico Parties on the other hand, entered into that certain *Settlement Agreement and Release* (the "Plethico/Natrol Settlement Agreement"), which, among other things, provided for an understanding between the parties on how distributions of cash would be directed under a plan of liquidation or otherwise on account of the Plethico Parties' Equity Interests in the Debtors. The Debtors are not a party to the Plethico/Natrol Settlement Agreement.

E. The Plan and New Natrol Settlement Agreement

13. On May 8 and 22, 2015, the Court held hearings to consider confirmation of the Plan. Among many other features, the Plan authorized, approved, and incorporated by reference a settlement agreement (the "New Natrol Settlement Agreement") by and among the Debtors, on the one hand, and the Aurobindo Parties on the other, which fully resolved, among other things, the issues raised in the Complaint, the Adversary Proceeding, the TRO Motion, and

the Disputed Liabilities Motion. Confirmation Order, at ¶ 1.⁴ On May 22, 2015, the Court entered the Confirmation Order. On June 17, 2015 (the “Effective Date”), the Plan became effective. Below is a description of the portions of the Plan and, where applicable, the New Natrol Settlement Agreement, that are relevant to the relief requested in this Motion.⁵

i. Establishment of Wind-Down Committee

14. The Wind-Down Committee was created on the Effective Date pursuant to the terms of the Plan. *See* Plan, at § 6.2. The Wind-Down Committee is “responsible for winding up the affairs of the Estates and liquidating the assets held by, or transferred to, the Reorganized Debtors on or after the Effective Date[.]” and has “all duties, powers, and standing authority necessary to implement the Plan and to administer and liquidate the Assets of the Reorganized Debtors for the benefit of the Holders of Allowed Claims.” *See id.* More specifically, the Wind-Down Committee has authority to, among other things, perform under the New Natrol Settlement Agreement, administer the non-tax reserves established under the Plan, make interim and final distributions, and take “any other actions that the Co-Chairs of the Wind-Down Committee, in their reasonable discretion, determine to be in the best interest of the Estates.” *See id.* On the Effective Date, Bradley E. Scher and Jeffrey C. Perea were appointed as Co-Chairs of the Wind-Down Committee and continue to serve in that role to date.

ii. Reserves Under the Plan

15. The following Reserves were established under the Plan:

- a. Alleged Class Action Claims Reserve - \$5.1 million;

⁴ A true and correct copy of the New Natrol Settlement Agreement is attached hereto as Exhibit A.

⁵ The description provided herein is intended only as a summary and in the event of a conflict between this summary and the Plan or the New Natrol Settlement Agreement, as applicable, the latter two documents shall control in all respects.

- b. Disputed Liabilities Reserve - \$1.702 million;⁶
- c. General Unsecured Claims Reserve – \$1.812 million;
- d. Administrative Expense Claims Reserve - \$280,000;
- e. Fee Claim Reserve - \$4 million;
- f. GUC Representative Reserve - \$125,000;
- g. Wind-Down Expense Reserve - \$3.93 million;⁷ and
- h. Tax Liability Reserve - \$20.1 million;

(collectively, the reserves described in paragraph 15(a) through 15(g) are referred to herein as the “Non-Tax Reserves”); *see* Plan, at § 7.8.⁸

16. Section 7.8 of the Plan provides for the release of the Reserves “following the liquidation, satisfaction, disallowance, or other disposition, as appropriate, of one or more of the Claims in any of the Reserves.” *See id.* Upon the release or series of releases of funds held in the Reserves, such funds revert back to the Reorganized Debtors to be used for the payment of Wind-Down Expenses and to make Distributions to Creditors and Holders of Equity Interests in accordance with the terms of the Plan and the New Natrol Settlement Agreement. *See id.*, at § 7.8(c).

17. With one exception—the Tax Liability Reserve—the Reorganized Debtors are not required to obtain prior approval from the Court to reduce and distribute the funds in a Reserve. *See id.* More specifically, the Reorganized Debtors must obtain approval from this Court prior to undertaking any reductions of the Tax Liability Reserve. *See* New Natrol

⁶ The Disputed Liabilities Reserve was liquidated upon the Effective Date and utilized to make one or more of the Initial Distributions (as defined below).

⁷ In accordance with the Plan, following the Effective Date, the Wind-Down Committee increased the Wind-Down Expense Reserve from \$2.885 million to \$3.93 million.

⁸ The Reserves have been reduced since the Effective Date to satisfy Allowed Claims and other obligations of the estates.

Settlement Agreement, at p. 6 (the “Tax Liability Reserve may be reduced only with the approval of the Bankruptcy Court . . .”). Additionally, the New Natrol Settlement Agreement requires that the Aurobindo Parties “provide a letter of credit, security or other guarantee of repayment . . . as a result of a reduction in the Tax Liability Reserve.” *See id.* The New Natrol Settlement Agreement requires that such letter of credit remain in place:

until the earlier of (i) a final determination by the applicable U.S. federal and state taxing authorities with respect to what amount of tax, inclusive of interest, penalties, and fines, is due as a result of the Sale Transaction or income generated from 2014 operations, or (ii) a Final Order of the Bankruptcy Court or a U.S. court of competent jurisdiction determining the extent of the Debtors’ 2014 federal and state income tax liability. . . .

Id., at p. 6.

iii. **Distributions Under the New Natrol Settlement Agreement**

18. The New Natrol Settlement Agreement establishes a “waterfall” of how funds will be distributed (the “Waterfall”). The Waterfall provides that, following the payment in full of all Allowed General Unsecured Claims,

any monetary Distributions under the Plan that otherwise would have to be made to Holders of Equity Interests in the Debtors [i.e., Plethico Netherlands and Plethico Hungary], shall be distributed as follows, with the first distribution on account of Equity Interests in the amount of not less than \$1 million and up to \$ 6 million (the “Initial Cash Payment”) to occur not less than five (5) Business Days after the Effective Date (the “Initial Cash Payment Date”):

1. First, up to \$700,000 to pay the Necessary Expenses;
2. Second, up to \$500,000 to pay the actual outstanding invoices and a retainer for future work to U.S. legal counsel of the Plethico Parties (“U.S. Plethico Counsel”) so that they may continue to be represented in these Chapter 11 Cases; provided, however, that U.S. Plethico Counsel shall agree to use their best efforts to effectuate (a) the transfer of the Natrol Global IP License (as defined in the Natrol/Plethico Settlement Agreement) as provided for in the Natrol/Plethico Settlement Agreement, and (b) a resolution of the Hungarian Proceeding[s] and all matters related thereto.

3. Third, on a pro rata basis, (x) to [New] Natrol (using \$23.3 million (plus Unpaid Costs, if any) as the aggregate amount [New] Natrol is entitled to receive, subject to the other terms of this Settlement and the terms of the Natrol/Plethico Settlement Agreement; (y) to Mesrop Khoudagoulian⁹ on account of the Khoudagoulian Incentive Payment (using \$3.8 million in the aggregate as the amount Mesrop Khoudagoulian is entitled to receive subject to the other terms of this Settlement and the terms of the Natrol/Plethico Settlement Agreement); and (z) to the Plethico Professionals (using \$1.5 million as the aggregate amount they are entitled to receive under this Settlement), provided that all Distributions that would have been made to the parties in this clause (z) shall be reallocated to [New] Natrol until [New] Natrol receives \$6 million plus any Unpaid Costs on account of Distributions made on account of Equity Interests.¹⁰ For purposes of this Settlement, the parties identified in (x), (y), and (z) of this subsection 3, shall be referred to as the “Recipients.” Each Recipient’s respective pro rata allocation shall be adjusted, as appropriate, as a result of any cash payments indefeasibly received by one or more Recipients under this Settlement Agreement (excluding any amounts received on account of the Tax Refund pursuant to the allocation set forth below) that other Recipients did not also receive, including with respect to the Plethico Professionals, such amounts they receive pursuant to section (2) above.

New Natrol Settlement Agreement, pp. 7-8.

⁹ As noted above, the Plethico/Natrol Settlement Agreement is an agreement by and among the Plethico Parties and the Aurobindo Parties. The Reorganized Debtors are not a party to the Plethico/Natrol Settlement Agreement.

¹⁰ Payments to the “Plethico Professionals” under the New Natrol Settlement Agreement are subordinated to the payments to New Natrol until New Natrol receives \$6 million in proceeds.

19. On June 26, 2015 and August 21, 2015, following the payment in full of all Allowed General Unsecured Claims, the Reorganized Debtors made the following Distributions (the “Initial Distributions”) in accordance with the Waterfall from cash on hand and/or a reduction in certain Non-Tax Reserves:

Recipient	Date	Gross Amounts¹¹	Total
Necessary Expenses ¹²	6/26/15	\$654,230.59	\$ 654,230.59
U.S. Plethico Counsel	6/26/15	\$483,474.02	483,474.02
New Natrol ¹³	6/26/15	\$217,781.13	
New Natrol	8/21/15	\$3,628,265.68	3,846,046.81
M. Khoudagoulian	6/26/15	\$35,571.95	
M. Khoudagoulian	8/21/15	\$591,799.32	<u>627,317.27</u>
Aggregate Initial Distributions			<u>\$5,611,068.69</u>

20. The Necessary Expenses included the payment of the fees and expenses of certain Hungarian and Dutch professionals. The Plethico Parties’ United States counsel (the “U.S. Plethico Counsel”) also received payments as part of the Initial Distributions.¹⁴ Because

¹¹ The amounts set forth herein represent the gross amounts distributed to the respective recipients. With respect to the professionals who received payments of Necessary Expenses, U.S. Plethico Counsel, and Mr. Khoudagoulian, the Reorganized Debtors withheld Foreign Withholding Taxes (as defined below) and remitted same to the IRS (as defined below) in the following amounts: \$22,251.52 for professionals who received payments as Necessary Expenses, \$145,042.21 for U.S. Plethico Counsel, and \$188,240.69 in the aggregate for Mr. Khoudagoulian, consistent with the tax rate set forth in paragraph 20, below.

¹² The majority of the funds that comprised the Necessary Expenses (\$580,033.87) were funded to a Hungarian escrow account (the “Hungarian Escrow”) held by the Reorganized Debtors’ Hungarian counsel pending the resolution of the Hungarian Proceedings. The funds in the Hungarian Escrow were disbursed as follows: (1) \$414,061.12 to the applicable Hungarian taxing authorities; (2) \$49,753.72 for liquidation costs to Istvanovszki Kft., which was engaged by the Hungarian liquidator to prepare a valuation of Plethico Hungary’s assets; (3) \$3,097.14 to UCMS Group Hungary Kft.; and (4) \$21,954.37 to the SBGK law firm. In addition, \$32,796.68 remains in the Hungarian Escrow for payment of the Hungarian liquidator’s fee. The balance of the Hungarian Escrow has been released from the Hungarian Escrow, was returned to the Reorganized Debtors on January 6, 2016, the distribution of which may be subject of a further motion.

¹³ Because the payments to New Natrol are not on account of the Plethico Parties’ Equity Interests, but based upon the settlement of a claim, New Natrol received previously, and will receive through this Motion (if approved), the gross amounts of the funds set forth herein, pursuant to the Plan. New Natrol bears sole responsibility for any and all liabilities, tax or otherwise, associated with any distributions received or to be received under the Plan and New Natrol Settlement Agreement.

¹⁴ As Plethico Hungary is subject to involuntary liquidation proceedings in Hungary, unless and until that proceeding is resolved, the Debtors/Reorganized Debtors are not permitted to make any distributions on account of the Equity Interests of Plethico Hungary. Once the Hungarian Proceedings have been resolved, the

certain of these Initial Distributions were paid on behalf of the foreign equity holders of the Debtors, they constituted dividends to foreign corporate shareholders of a United States Corporation under section 1442 of the Internal Revenue Code of 1986, as amended (the “IRC”), and they were subject to mandatory tax withholdings at the rate of 5% (the Hungarian withholding rate) with respect to Plethico Hungary and 30% (the Dutch withholding rate) with respect to Plethico Netherlands (together, the “Foreign Withholding Taxes”). In light of Plethico Hungary’s pending insolvency proceeding, the distributions were made based on the Equity Interests in Plethico Netherlands, which resulted in a 30% rate of withholding. As such, the Reorganized Debtors, in accordance with their obligations under the Plan, withheld the Foreign Withholding Taxes at the time that they made the Initial Distributions. *See* Plan, at § 7.11 (discusses Reorganized Debtors’ withholding obligations with respect to Distributions under the Plan). On July 2, 2015, the Reorganized Debtors remitted the Foreign Withholding Taxes to the Internal Revenue Service (the “IRS”).

21. The New Natrol Settlement Agreement requires the payment of up to \$700,000 in Necessary Expenses and up to \$500,000 to U.S. Plethico Counsel. Rather than deduct the applicable Foreign Withholding Taxes from the face amounts reflected in the New Natrol Settlement Agreement (i.e. \$500,000 and \$700,000), the Wind-Down Committee initially intended to pay the full invoice amounts to the professionals and separately pay, from cash on hand, the Foreign Withholding Taxes. The Aurobindo Parties objected and, as a result, the Wind-Down Committee agreed to pay the Necessary Expenses and U.S. Plethico Counsel’s fees net of the Foreign Withholding Taxes. In doing so, the Debtors and the Aurobindo Parties agreed that the Debtors would retain \$284,741.25 (the “Plethico Professional Gross Up Funds”)

Reorganized Debtors will be able to make distributions on account of Plethico Hungary’s Equity Interests, in accordance with the Plan and the New Natrol Settlement Agreement.

to account for the payment of the Foreign Withholding Taxes so that, should there be a subsequent agreement or adjudication of this issue, the face amounts of the professionals' invoices could be paid without deducting the Foreign Withholding Tax amounts from the professionals' invoices. As of the date hereof, this issue remains unresolved. The Reorganized Debtors estimate that the amount of the Plethico Professional Gross Up Funds necessary to pay U.S. Plethico Counsel and the other affected professionals to be approximately \$186,000 (of the \$284,741.25 originally retained).¹⁵

F. Update on the Hungarian Proceedings

22. Prior to the Petition Date, Plethico Hungary was placed into the Hungarian Proceedings upon petition of the Hungarian taxing authorities. Under the New Natrol Settlement Agreement, no Distributions on account of the Equity Interests in Plethico Hungary are to be made unless and until the Hungarian Proceedings are resolved to the satisfaction of the Independent Director. *See* New Natrol Settlement Agreement, at pp. 4 and 8.

23. Other than the fixed fee to be paid to the liquidator (which is currently being held in an escrow account in Hungary), all amounts necessary to resolve and dismiss the Hungarian Proceedings have been paid. Accordingly, prior to the hearing on this Motion, it is anticipated that the Hungarian Proceedings will be dismissed.¹⁶

¹⁵ As noted below, the Aurobindo Parties and Mr. Khoudagoulian have approved the calculations set forth herein and the form and manner of this Motion but have advised the Reorganized Debtors and their counsel that they reserve all rights with respect to the Plethico Professional Gross Up Funds, including, but not limited to, the right to object thereto. Mr. Khoudagoulian contends that the taxes paid in connection with distributions to him do not constitute part of a gross up distribution to him.

¹⁶ To the extent the Hungarian Proceedings have not been resolved prior to the hearing on this Motion, the Reorganized Debtors will – at their sole election – either adjourn the hearing to consider the relief requested herein or proceed with a hearing on the Motion and, to the extent the Court is inclined to grant the relief requested, submit the Proposed Order under certification of counsel at such time that the Hungarian Proceedings have been dismissed.

G. Debtors' 2014 Returns and Requests for Prompt Determination in Accordance with 11 U.S.C. § 505(b)(2)¹⁷

24. On March 15, 2015, the Debtors applied for an extension of their deadline to file their 2014 tax returns through and including September 15, 2015, and made estimated tax payments in the aggregate amount of \$19.1 million to the IRS and the applicable state taxing authorities in accordance with applicable tax law (the "Estimated Tax Payment").

25. Under the Plan, the Debtors reserved an additional \$20.1 million in the Tax Liability Reserve to account for any potential additional federal and state income tax liabilities (including potential penalties, interest, and withholding taxes, as well as an additional 20% cautionary reserve. *See id.* at 13.

26. On September 15, 2015,¹⁸ the Reorganized Debtors filed their federal tax return with the IRS for the tax year ended December 31, 2014 (the "2014 Federal Return") and made a payment in the amount of \$1,710,379, which represented all additional liabilities due and owing to the IRS in connection with the 2014 Federal Return.¹⁹ On September 16, 2015, the Reorganized Debtors served a letter on the IRS, pursuant to section 505(b)(2) of the Bankruptcy Code and the procedures set forth in Rev. Proc. 2006-24 and Announcement 2011-77, requesting a prompt determination of any tax liability of the Debtors and their estates for the tax year ended December 31, 2014. *See Exhibit B-1* (the "Federal Section 505 Request"); *see also Declaration*

¹⁷ Because the Debtors filed their Chapter 11 Cases in June of 2014, any claim by any governmental entity relating to tax liabilities for the calendar year ended December 31, 2013 or prior, was required to be filed on or prior to December 8, 2014 (the "Governmental Claims Bar Date"). *See* Docket No. 396, ¶ 6. Prior to the Governmental Claims Bar Date, 29 claims were filed by the federal government and the state and/or municipal taxing authorities of Wisconsin, California, Virginia, New Jersey, Rhode Island, Delaware, Texas, Oregon, and Missouri. Of these 29 claims, 22 were liabilities assumed by New Natrol and are no longer the Reorganized Debtors' responsibility and the remaining 7 assert no liability against the Reorganized Debtors. Accordingly, as of the filing of this Motion, any and all of the Debtors' pre-petition tax liabilities have been eliminated, paid, or otherwise resolved.

¹⁸ The IRS received the 2014 Federal Return on September 22, 2015.

¹⁹ New Natrol's business representatives and legal and tax advisors were consulted and provided with several opportunities to review, analyze, and provide feedback on the Reorganized Debtors' draft 2014 Federal Return.

of Joseph M. Barry in Support of Reorganized Debtors' Motion for Entry of an Order, in Aid of Implementation of the Plan, (A) Approving the Release and/or Reduction of Certain Reserves Established Under the Plan, (B) Finding that the Debtors' Tax Liabilities for the Tax Year Ended December 31, 2014 Have Been Discharged, and (C) Granting Related Relief (the "Barry Declaration"), which is attached hereto as Exhibit E. The IRS received the request on September 23, 2015 at its Philadelphia office, and on September 25, 2015 at its Baltimore office. *See Exhibit B-2, see also Barry Declaration.* On or about January 12, 2016, the Reorganized Debtors received a letter from the IRS indicating that the Reorganized Debtors' 2014 Federal Return had not been selected for examination.

27. Starting on September 15, 2015 and ending on October 15, 2015, the Reorganized Debtors filed state tax returns with the applicable state taxing authorities with respect to their tax liabilities for the tax year ended December 31, 2014 (collectively, the "2014 State Returns," and together with the 2014 Federal Return, the "2014 Returns"). The 2014 State Returns reflect that the Reorganized Debtors do not owe any additional amounts to any state taxing authorities and instead are owed refunds from various state taxing jurisdictions. Starting on October 15, 2015 and ending on October 28, 2015, the Reorganized Debtors served letters on the applicable state taxing authorities, pursuant to section 505(b)(2) of the Bankruptcy Code, requesting a prompt determination of any tax liabilities of the Debtors and their estates for the tax year ended December 31, 2014. *See Exhibit C-1* (the "State Section 505 Requests"); *see also Barry Declaration.* The Reorganized Debtors served the State Section 505 Requests on the state taxing authorities at the addresses where the 2014 State Returns were submitted, as well as any additional addresses delineated on the list maintained by the clerk in accord with section 505(c) of the Bankruptcy Code. The applicable states received the State Section 505 Requests starting

on October 19, 2015 and ending on November 2, 2015. *See Exhibit C-2; see also Barry Declaration.*²⁰

28. Pursuant to section 505(b)(2) of the Bankruptcy Code, a debtor is discharged from its tax liability after a section 505 request is made if the governmental unit to which the 505 request was directed “does not notify the trustee, within 60 days after such request, that such return has been selected for examination.” 11 U.S.C. § 505(b)(2)(A)(i). With the exception of the states of Oklahoma and California, the Reorganized Debtors have not received any such notifications and the 60-day deadline for any taxing authority to select the 2014 Returns for examination has expired, and as noted above, the Reorganized Debtors received correspondence from the IRS providing that their 2014 Federal Return had not been selected for examination. *See Barry Declaration.*

29. On November 10, 2015, the Oklahoma Tax Commission notified the Reorganized Debtors that their Oklahoma state return had been selected for examination, thereby triggering the 180-day examination period prescribed by section 505(b)(2)(A) of the Bankruptcy Code. However, on November 19, 2015, the Oklahoma Tax Commission further notified the Reorganized Debtors that its examination of the Oklahoma 2014 State Return had been completed and there were no tax liabilities due and owing for 2014. *See Barry Declaration, Exhibit I.*

30. On December 18, 2015, the State of California Franchise Tax Board informed the Reorganized Debtors that their 2014 State Return had been selected for examination, pursuant to section 505(b) of the Bankruptcy Code. The Reorganized Debtors’

²⁰ The states that received a State Section 505 Request are: Alabama, Arkansas, Arizona, Colorado, Connecticut, Florida, Georgia, Kansas, Iowa, Illinois, Indiana, Massachusetts, Maryland, Michigan, Missouri, Mississippi, North Carolina, New Jersey, New York, Oklahoma, Rhode Island, South Carolina, Texas, Utah, Virginia, Wisconsin, and West Virginia. Each of these jurisdictions will be served with this Motion.

2014 State Return for California reflects that a refund in excess of \$1.2 million (after applying credits to satisfy the Reorganized Debtors' 2015 tax liability) is owed to the Reorganized Debtors and that no amounts are or could be due and owing by the Reorganized Debtors for 2014. *See* Barry Declaration, *Exhibit II*. For this reason, the Reorganized Debtors submit that it not necessary to reserve any funds in the Tax Liability Reserve on account of the examination of the 2014 State Return by the California Franchise Tax Board.²¹

31. Based on the foregoing, with the exception of California, any additional 2014 federal and state tax liabilities have been discharged by operation of section 505(b)(2) of the Bankruptcy Code.

H. The Debtors' 2015 Return, Amended Prior Returns, and Tax Refunds

32. The Reorganized Debtors are in the process of preparing their 2015 federal and state income tax returns and, on December 10, 2015 and December 16, 2015, respectively, submitted their amended 2014 Federal Return (the "Amended 2014 Federal Return") and their amended 2013 federal tax return (the "Amended 2013 Federal Return," and together with the Amended 2104 Federal Return, the "Amended Federal Returns"), both of which reflected zero additional tax liabilities. As a result of the filing of the Amended Federal Returns and the anticipated filing of their 2015 returns, the Reorganized Debtors will be entitled to several tax refunds resulting from additional applied tax credits. The Amended Federal Returns, and the amendments to the 2013 and 2014 State Returns will have no bearing on the Debtors' tax *liabilities* because the amendments do not or will not result in an increase in the Debtors' tax liabilities for 2013 or 2014, and the taxing authorities' rights to review and evaluate

²¹ Although the Reorganized Debtors are not, at this time, requiring Aurobindo Parties to post a letter of credit, security or other guarantee of payment in accordance with the terms of the New Natrol Settlement Agreement, the Aurobindo Parties agree that the Reorganized Debtors have not waived their right to do so either prior to or subsequent to the Court's adjudication of this Motion and that the Reorganized Debtors' right to demand a letter of credit, security or other guarantee of payment is fully preserved.

any credit or refund is fully preserved and not eliminated by virtue of this Motion or the Proposed Order.²²

33. As noted above, the Reorganized Debtors are expected to receive refunds in connection with the 2014 State Returns. In addition, as just noted, the Reorganized Debtors anticipate additional refunds following the filing of their 2015 income tax returns as a result of the filing of their Amended Federal Returns (collectively, the “Tax Refunds”). Any Tax Refunds based on the tax years 2013, 2014 and 2015 have or will revert to the Reorganized Debtors, to be distributed in accordance with the Plan and may be the subject of a future motion. The Reorganized Debtors are seeking no relief with respect to any Tax Refunds through this Motion.

RELIEF REQUESTED AND BASIS THEREFOR

34. Through this Motion, the Reorganized Debtors are seeking entry of an order, in aid of implementation of the Plan, approving the following reductions and/or releases of funds from the Reserves:²³

- a. Tax Liability Reserve. The Reorganized Debtors are seeking authority and direction to release the full Tax Liability Reserve (the “TLR Funds”). \$18,001,643.96 remains in the Tax Liability Reserve.²⁴ The Reorganized Debtors request authority and direction to distribute the TLR Funds as set forth herein.

As noted above, the Reorganized Debtors have been discharged from their federal and state tax liabilities relating to the tax year

²² Section 505(b) of the Bankruptcy Code deals with a debtor’s tax *liabilities*, and does not address tax attributes or anticipatory refunds. As the Amended Federal Returns, in conjunction with the anticipated filing of their 2015 return, will result in *refunds* being owed to the Reorganized Debtors, section 505(b) is inapplicable to the 2013 and 2014 amendments that the Reorganized Debtors have filed. The rights of the IRS and applicable state taxing authorities to challenge any claimed refund or application of net operating loss carry forwards is not impacted by the relief requested herein.

²³ As noted above, with the exception of the Tax Liability Reserve, the Reorganized Debtors do not need Court authority to liquidate or reduce the amounts of the following Reserves and seek it herein out of an abundance of caution and to provide interested parties with notice of the proposed distributions.

²⁴ This is the amount remaining in the Tax Liability Reserve after the Reorganized Debtors submitted the remaining outstanding federal tax liability amounts due as reflected in the 2014 Federal Tax Return. *See supra*, ¶ 25.

ended December 31, 2014 (other than with respect to California). Further, all Priority Tax Claims were either (i) assumed by New Natrol as Disputed Liabilities under the New Natrol Settlement Agreement, (ii) otherwise asserted no liabilities against the Debtors, or (iii) are barred by virtue of the Governmental Bar Date, and thus, do not represent ongoing obligations of the Reorganized Debtors. *See* Confirmation Order, at ¶ 19 and Plan, at § 5.2.

- b. Fee Claim Reserve: The Fee Claim Reserve was established to ensure sufficient funds to pay the estimated, reasonable Professional Fees that would not have been billed by the Effective Date.

The Reorganized Debtors request authority and direction to fully release all funds currently in the Fee Claim Reserve. Pursuant to the Plan, Professionals were obligated to file Fee Claims on or before July 17, 2015 (the “Fee Claim Bar Date”). On August 21, 2015, the Court entered an *Omnibus Order Approving Final Fee Applications* [Docket No. 1345] (the “Final Fee Order”), approving, on a final basis, all Fee Claims that were filed before the Fee Claim Bar Date.

\$1,598,141.74 remains in the Fee Claim Reserve. As the Fee Claim Bar Date has passed and the Final Fee Order is final and non-appealable, there are no additional Fee Claims that would be paid from the Fee Claim Reserve. As such, there is no longer a need to maintain the Fee Claim Reserve.

- c. General Unsecured Claims Reserve: The General Unsecured Claims Reserve was established to reserve for the full face amount of the General Unsecured Claims filed against the Debtors by the applicable bar date, with Interest, plus a 15% cautionary excess reserve.

The Reorganized Debtors request authority and direction to fully release all funds currently in the General Unsecured Claims Reserve. \$140,959.34 remains in the General Unsecured Claims Reserve. All Allowed General Unsecured Claims have been satisfied and paid in full, with Interest, and accordingly, there are no outstanding, unresolved General Unsecured Claims against the estates. As such, there is no longer a need to maintain the General Unsecured Claims Reserve.

- d. GUC Representative Reserve: The GUC Representative Reserve was established for the sole purpose of ensuring sufficient funds to pay the reasonable fees and expenses of the GUC Representative.

The Reorganized Debtors request authority and direction to fully release all funds currently in the GUC Representative Reserve, which is \$84,768.87. On the Effective Date, the GUC Representative was appointed, pursuant to section 6.3 of the Plan. On September 11, 2015, the GUC Representative was released and discharged of and from all authorities, duties, responsibilities and obligations related to, or arising from, and in connection with, these Chapter 11 Cases, in accordance with all terms and conditions of the Plan. See *Notice of Discharge of GUC Representative* [Docket No. 1353]. In addition, all outstanding invoices of the GUC Representative and/or any professionals retained by the GUC Representative, have been paid in full and no amounts are due or outstanding. As such, there is no longer a need to maintain the GUC Representative Reserve.

- e. Alleged Class Action Claims Reserve: The Class Action Claims Reserve was established to ensure sufficient funds to pay the aggregate face amount of all Alleged Class Action Claims, plus Interest, and a 15% cautionary reserve. \$45,412.37 remains in the Alleged Class Action Reserve, which represents funds in excess of the amounts of all Allowed Alleged Class Action Claims.

The Reorganized Debtors request authority and direction to fully release all funds currently in the Alleged Class Action Reserve. All of the Alleged Class Action Claims have been expunged and/or settled and paid, pursuant to orders of this Court. See Docket Nos. 897, 1331, & 1333. As such, there is no longer a need to maintain this Reserve.

- f. Administrative Expense Claims Reserve: The Administrative Expense Claims Reserve was established to ensure sufficient funds to pay any administrative claims filed against the estates by the Administrative Expense Claim Bar Date.

The Reorganized Debtors request authority and direction to fully release all funds currently in the Administrative Expense Claims Reserve, which is \$279,910.00.

The Administrative Expense Claim Bar Date passed on August 20, 2015. See Confirmation Order, at ¶ 44; Plan, at § 2.2. No Administrative Expense Claims were filed by the Administrative Expense Claim Bar Date. As such, there is no longer a need to maintain this Reserve.

- 35. In summary, the amounts and Reserves that the Reorganized Debtors propose to release through this Motion are as follows:

Reserve	Amount
Tax Liability Reserve	\$18,001,643.96
Fee Claim Reserve	1,598,141.74
General Unsecured Claims Reserve	140,959.34
GUC Representative Reserve	84,768.87
Alleged Class Action Claims Reserve	45,412.37
Administrative Expense Claims Reserve	279,910.00
TOTAL	<u>\$20,150,836.28</u>

36. By this Motion, the Reorganized Debtors request authority and direction to make the following Distributions (the “Approved Distributions”),²⁵ consistent with the terms of the Plan and the New Natrol Settlement Agreement:

Recipient	Gross Amounts²⁶	Source of Funding
New Natrol	\$16,595,714.91	Non-Tax Reserves and TLR Funds
Mr. Khoudagoulian	2,706,541.83 ²⁷	Non-Tax Reserves and TLR Funds
Plethico Professionals	<u>848,579.54²⁸</u>	Non-Tax Reserves and TLR Funds
TOTAL APPROVED DISTRIBUTIONS	<u>\$20,150,836.28</u>	

²⁵ Subject to footnote 15, the calculations and distributions set forth herein have been reviewed and approved by the Aurobindo Parties and Mr. Khoudagoulian. With respect to the payment of the Plethico Professional Gross Up Funds, such payment is subject to agreement among the parties or a subsequent Court order.

²⁶ Of these amounts, 5% of the Approved Distribution amounts to Mr. Khoudagoulian and the Plethico Professionals (\$135,327.09 and \$42,428.98, respectively) will be withheld and remitted to the IRS for Foreign Withholding Taxes given these distributions are being made on account of the Plethico Parties’ Equity Interests in the Debtors. Until the Hungarian Proceedings have been dismissed, none of the Approved Distribution payments will be made, and once the Hungarian Proceedings are dismissed, prior to making the Approved Distributions, withholdings in connection with same will be at the Hungarian rate of 5%, as described above and consistent with the US-Hungary Tax Treaty, which reduces the 30% Dutch withholding rate provided in Section 1442 of the IRC to the 5% Hungarian withholding rate.

²⁷ Consistent with the treatment proposed herein with respect to the Plethico Professional Gross Up Funds, amounts paid on account of Foreign Withholding Taxes on prior and subsequent distributions to Mr. Khoudagoulian are not calculated to reduce the \$3.8 million cap amount payable to Mr. Khoudagoulian. Given the Aurobindo Parties’ reservation of rights with respect to the Plethico Professional Gross Up Fund payments proposed herein, the Reorganized Debtors reserve their rights with respect to the proposed treatment of Mr. Khoudagoulian.

²⁸ This amount is subject to final reconciliation if and to the extent the Reorganized Debtors are authorized to distribute the Plethico Professional Gross Up Funds.

37. These Approved Distributions are based on the following *pro rata* allocation established by the New Natrol Settlement Agreement and calculated by the Wind-Down Committee: 82.03% to New Natrol (up to \$23.3 million, inclusive of funds already received), 13.38% to Mr. Khoudagoulian (up to \$3.8 million, inclusive of funds already received), and 4.59% to the Plethico Professionals (up to \$1.5 million, less the funds remitted to the U.S. Plethico Counsel).²⁹ See New Natrol Settlement Agreement, p. 8.

38. Thus, the aggregate distributions based on the Initial Distributions and the Approved Distributions (together, the “Aggregate Distributions”) will be as follows:

Recipient	Cap Amount Under New Natrol Settlement Agreement	Gross Aggregate Distributions
New Natrol	\$23,300,000.00	\$20,441,761.72
Mr. Khoudagoulian	3,800,000.00	3,333,859.10
Plethico Professionals	<u>1,500,000.00</u>	<u>1,332,053.56</u>
TOTALS	<u>\$28,600,000.00</u>	<u>\$25,107,674.38</u>

39. Through the Proposed Order, the Reorganized Debtors are also seeking a finding that their tax liabilities for the tax year ended December 31, 2014 have been discharged, pursuant to applicable law, including section 505(b)(2) of the Bankruptcy Code.

40. Section 505(b)(2) of the Bankruptcy Code provides, in pertinent part, that a debtor

may request a determination of any unpaid liability of the estate for any tax incurred during the administration of the case by submitting a tax return for such tax and a request for such a determination to the governmental unit charged with responsibility for collection or determination of such tax at the address and in the manner designated in paragraph (1). Unless such return is fraudulent, or contains a material misrepresentation, the estate, the trustee, the debtor, and any successor

²⁹ This pro rata allocation gives effect to the portion of the Waterfall providing that the Plethico Professionals may not receive distributions under the New Natrol Settlement Agreement unless and until New Natrol receives \$6 million. A chart showing the gross calculation of all distributions, (including those proposed herein) is attached hereto as Exhibit D. Subject to footnote 15, counsel for the Aurobindo Parties and counsel to Mr. Khoudagoulian have reviewed and approved the calculations set forth herein, as well as the form and content of this Motion and the Proposed Order.

to the debtor ***are discharged from any liability for such tax***...upon payment of the tax shown on such return, if...such governmental unit does not notify the trustee, within 60 days after such request, that such return has been selected for examination....

11 U.S.C. § 505(b)(2)(A)(i) (emphasis supplied). Section 505(b)(1)(A) and (B) provide that

The clerk shall maintain a list under which a Federal, State, or local governmental unit responsible for the collection of taxes within the district may...designate an address for service of requests under this subsection...If such governmental unit does not designate an address and provide such address to the clerk...any request made under this subsection may be served at the address for the filing of a tax return or protest with the appropriate taxing authority of such governmental unit.

11 U.S.C. § 505(b)(1). As discussed in detail above, although the Reorganized Debtors have complied with all of the requirements of section 505(b)(2) and, therefore, have been discharged from any tax liability for 2014, entry of an order with respect thereto is necessary in order to comply with the letter of credit provisions of the New Natrol Settlement Agreement. *See, generally, In re: PT-1 Communications, Inc.*, 357 B.R. 217 (Bankr. E.D.N.Y. 2006) (confirming discharge of debtor's tax liability upon expiration of the 60-day period set forth in 11 U.S.C. § 505(b)(2)(A)(1) and expunging IRS's claim filed after the 60-day period had run).

41. As noted above and as set forth on page 6 of the New Natrol Settlement Agreement, in order to release and distribute funds from the Tax Liability Reserve, New Natrol must post a letter of credit or other form of security (the "Natrol Letter of Credit") unless a final determination has been made with respect to the Debtors' 2014 tax liability by the federal and state taxing authorities, or this Court enters an order determining the extent of the Debtors' tax liability for 2014. In light of the fact that the Debtors' tax liability for 2014 has been discharged by operation of section 505(b) of the Bankruptcy Code, it is not necessary for New Natrol to post a letter of credit at this time.

42. As such, the Reorganized Debtors request that the Court enter an order consistent with the New Natrol Settlement Agreement so that approved distributions can be made without New Natrol having to post the Natrol Letter of Credit.

43. Section 1142 of the Bankruptcy Code provides that “any entity organized . . . for the purpose of carrying out the plan shall carry out the plan and shall comply with any orders of the court,” and that the Court may direct any necessary party to “perform any act that is necessary for the consummation of the Plan.” 11 U.S.C. § 1142(a)-(b). Consistent with this authority, the Court retained jurisdiction pursuant to the Plan to, among other things, “hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan[.]” and “hear and determine disputes with respect to the New Natrol Settlement Agreement.” Plan at §§ 11.1(i) & (k).

44. In light of section 1142 and the Court’s retained jurisdiction under the Plan, the Court has the power to authorize the Reorganized Debtors to release the Tax Liability Reserve. Further, pursuant to the New Natrol Settlement Agreement, which was incorporated into the Plan as a Plan Document, the Reorganized Debtors may not reduce the Tax Liability Reserve absent an order of this Court. *See* New Natrol Settlement Agreement, at p. 6.

45. Since the Effective Date, the Reorganized Debtors have made significant strides in winding-up the affairs of the estates, and have reached the point where nearly all of the Reserves have been fully administered or have been rendered obsolete based on the current facts and circumstances of these Chapter 11 Cases. Indeed, after the Reorganized Debtors file their 2015 and 2016 federal and state tax returns, and potentially file a motion to distribute the Tax Refunds, they anticipate being able to make final distributions under the Plan and close these Chapter 11 Cases.

46. Further, the Reorganized Debtors requested prompt consideration of their 2014 income tax liabilities pursuant to section 505 of the Bankruptcy Code and neither the IRS nor the applicable state taxing authorities (with the exception of Oklahoma, whose examination has been concluded, and the California Franchise Tax Board, which is discussed above) indicated that they required additional time to review the Federal Tax Return or the State Tax Returns.

47. As such, other than with respect to the California Franchise Tax Board, the Debtors' income tax liabilities for the tax year ended December 31, 2014 have been discharged, and a reduction in the Tax Liability Reserve, for purposes of making Distributions under the Plan and New Natrol Settlement Agreement, is appropriate and justified. Moreover, the Reorganized Debtors will maintain sufficient funds to meet all anticipated obligations, including obligations to the U.S. Trustee until such time that the Wind-Down Committee completes all Plan obligations. Finally, section 505(b) of the Bankruptcy Code deals with a debtor's tax *liabilities*, and does not address tax attributes or anticipatory refunds. As the Amended Federal Returns, in conjunction with the anticipated filing of their 2015 return, will result in *refunds* being owed to the Debtors, section 505(b) is inapplicable to the 2013 and 2014 amendments that the Reorganized Debtors have filed, and the rights of the IRS and applicable state taxing authorities to challenge any claimed refund or application of net operating loss carry forwards is not impacted by the relief requested herein.

48. Consistent with Article 9.7 of the confirmed Plan, the Reorganized Debtors request that the Court find that the proposed distributions hereunder are consistent with the Plan and the New Natrol Settlement Agreement, and, as such, the Reorganized Debtors request approval of the Proposed Order, attached hereto as Exhibit G, which includes a provision

consistent with Article 9.7 of the Plan that neither the Wind-Down Committee, the Reorganized Debtors, nor any of their representatives, members, officers, directors, employees, agents, counsel or other advisors or professionals shall have or incur any liability as a result of making the Approved Distributions contemplated herein based on the proposed elimination and/or reduction of the Reserves.

49. Lastly, with respect to the Plethico Professional Gross Up Funds, the Reorganized Debtors submit that such payments are subject either to agreement of the parties or and order of the Court. It is the Reorganized Debtors' position that there is no justification for treating such affected professionals disparately from the treatment afforded to other, similarly situated distributees under the New Natrol Settlement Agreement.

NOTICE

50. Notice of this Motion has been provided to (i) the U.S. Trustee; (ii) the Plethico Parties and, if known, their counsel; (iii) the Aurobindo Parties and their respective counsel of record; (iv) the IRS; (v) the state taxing authorities that received State Section 505 Requests, including, but not limited to, the California Franchise Tax Board ; (vi) former counsel to the Committee and the GUC Representative; (vii) the Plethico Professionals; and (viii) any party requesting notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). In light of the nature of the relief requested herein, the Reorganized Debtors submit that no other or further notice is necessary. However, out of an abundance of caution, the Reorganized Debtors intend to serve the notice (the "Notice") attached hereto as Exhibit F on the entire creditor matrix.

WHEREFORE, the Reorganized Debtors respectfully request that the Court enter the Proposed Order granting the relief requested herein and granting the Reorganized Debtors such other and further relief as is just and proper.

Dated: January 13, 2016
Wilmington, Delaware

/s/ Maris J. Kandestin

Michael R. Nestor (No. 3526)

Joseph M. Barry (No. 4221)

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

Counsel to the Reorganized Debtors