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Hearing Date: January 27, 2016 at 10:00 a.m.
Objection Deadline: January 20, 2016 at 4:00 p.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: VIVARO CORPORATION, et al., Debtors.	Chapter 11 Case No. 12-13810 (MG) (Jointly Administered)
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF VIVARO CORPORATION, *et al.*, Plaintiff, v. GUSTAVO M. DE LA GARZA ORTEGA, *et al.*, Defendants.	Adversary Proceeding No. 15-01124 (MG)
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF VIVARO CORPORATION, *et al.*, Plaintiff, v. MARCATEL COM S.A. de C.V., *et al.*, Defendants.	Adversary Proceeding No. 15-01125 (MG)

NOTICE OF JOINT MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND THE DEBTORS FOR AN ORDER APPROVING THE SETTLEMENT AGREEMENT WITH THE DEFENDANTS IN THE ABOVE-CAPTIONED ADVERSARY PROCEEDINGS UNDER RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

PLEASE TAKE NOTICE that the Official Committee of Unsecured Creditors (the "Committee" or "Plaintiff") of the above-captioned debtors and debtors in possession, Vivaro Corporation ("Vivaro"), STi Prepaid, LLC ("STi Prepaid"), Kare Distribution, Inc. ("Kare"), STi Telecom, Inc., TNW Corporation, STi CC 1 LLC, and STi CC 2 LLC (collectively, the "Debtors"), and the Debtors, through their respective undersigned counsel, have filed a joint motion (the "Settlement Motion") for an order (the "Order Approving Settlement"), annexed to the Settlement Motion as Exhibit b, under Rule 9019 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rule(s)"), approving the Settlement Agreement (the "Settlement Agreement"), annexed to the Settlement Motion as Exhibit A, which provides a global settlement between the Committee and the Defendants of Adversary Proceeding No. 15-01124 (MG) (the "D&O Action"), Adversary Proceeding No. 15-01125 (MG) (the "Preference Action"), and of all disputes concerning the claims scheduled or asserted by or on behalf of the Debtors' insiders against these estates.

PLEASE TAKE FURTHER NOTICE that a hearing to consider the Settlement Motion will be held before the Honorable Martin Glenn, United States Bankruptcy Judge for the Southern District of New York at the United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, Courtroom 501, New York, NY 10004, on January 27, 2016 at 10:00 a.m.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Settlement Motion and the proposed Order Approving Settlement Agreement must be in writing, must conform to the Bankruptcy Rules and the Local Rules of the Bankruptcy Court for the Southern District of New York, must set forth the name of the objecting party, must state with particularity the basis

for the objection and the specific grounds therefor, and must be filed with the Clerk of the Bankruptcy Court (with a courtesy copy delivered to Judge Glenn's Chambers) and served upon (a) counsel to the Plaintiff, Arent Fox LLP, 1675 Broadway, New York, New York 10019 (Attn: George P. Angelich, Esq.); (b) counsel for the Debtors, Cozen O'Connor, 277 Park Avenue, New York, NY 10172 (Attn.: Frederick E. Schmidt, Jr., Esq.); (c) counsel to the Defendants, Tarter Krinsky & Drogin LLP, 1350 Broadway, 11th Floor, New York, New York 10018 (Attn: Rocco A. Cavaliere, Esq.); (d) the Office of the United States Trustee, 201 Varick Street, Room 1006, New York, NY 10014 (Attn: Andy Velez- Rivera, Esq.); and (e) all parties who have timely filed requests for notice under Rule 2002 of the Bankruptcy Rules, so as to be filed and actually received not later than January 20, 2016 at 4:00 p.m.

PLEASE TAKE FURTHER NOTICE that if no objections to the Settlement Motion are timely filed, served and received in accordance with this Notice, the Bankruptcy Court may grant the relief requested in the Settlement Motion and enter the proposed Order Approving Settlement Agreement without further notice or hearing.

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Dated: December 28, 2015

ARENT FOX LLP

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: VIVARO CORPORATION, *et al.*, Debtors.	Chapter 11 Case No. 12-13810 (MG) (Jointly Administered)
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF VIVARO CORPORATION, *et al.*, Plaintiff, v. GUSTAVO M. DE LA GARZA ORTEGA, *et al.*, Defendants.	Adversary Proceeding No. 15-01124 (MG)
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF VIVARO CORPORATION, *et al.*, Plaintiff, v. MARCATEL COM S.A. de C.V., *et al.*, Defendants.	Adversary Proceeding No. 15-01125 (MG)

JOINT MOTION FOR APPROVAL OF THE SETTLEMENT AGREEMENT UNDER RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Official Committee of Unsecured Creditors (the "Committee" or "Plaintiff")[1] of debtors and debtors in possession Vivaro Corporation ("Vivaro"), STi Prepaid, LLC ("STi Prepaid"), Kare Distribution, Inc. ("Kare"), STi Telecom, Inc., TNW Corporation, STi CC 1 LLC, and STi CC 2 LLC (collectively, the "Debtors" or, together with the Committee, the "Movants"), and the Debtors, through their respective undersigned counsel, hereby file a joint motion (the "Settlement Motion"), as supported by (i) Declaration of William K. Lenhart In Support of Joint Motion for Approval of the Settlement Agreement Under Rule 9019 of the Federal Rules of Bankruptcy Procedure and (ii) Declaration of Philip Gund In Support of Joint Motion for Approval of the Settlement Agreement Under Rule 9019 of the Federal Rules of Bankruptcy Procedure, which are being filed contemporaneously with the Settlement Motion, under Rule 9019 of the Federal Rules of Bankruptcy Procedure for an order (the "Order Approving Settlement Agreement"), annexed hereto as Exhibit B, approving the settlement agreement annexed hereto as Exhibit A (the "Settlement Agreement"), which provides a global settlement between the Committee and the Defendants[2] of Adversary Proceeding No. 15-01124 (MG) (the "D&O Action"), Adversary Proceeding No. 15-01125 (MG) (the "Preference Action"), and of all disputes concerning the claims scheduled or asserted by or on behalf of the Debtors' insiders against these estates.

In support this motion, the Committee and the Debtors respectfully state as follows:

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Settlement Agreement.

[2] The term "Defendants" refers collectively to (i) the defendants in the D&O action, namely Don Gustavo M. De La Garza Ortega ("Don Gustavo"), Gustavo De La Garza Flores ("Flores"), Roberto X. Margain ("Margain"), Robert K. Lacy ("Lacy"), Victor E. Robles Concha ("Robles"), and Pedro Salinas Arrambide (the "the D&O Defendants") and (ii) the defendants in the Preference Action, namely Marcatel Com, S.A. de C.V. ("Marcatel"), Organizacion Radio Beep S.A. de C.V. n/k/a Unifica Contact Media S.A. de C.V. ("Unifica"), and Progress International LLC (the "Preference Defendants").

I. PRELIMINARY STATEMENT

1. The Movants respectfully submit that the Settlement Agreement, which is the product of extensive settlement discussions and hard work, falls well above the lowest point in the range of reasonableness, is in the best interests of the Debtors' estates, and should be approved. On October 20, 2015, the Committee, the Debtors and the Defendants conducted a mediation before the Honorable Robert D. Drain of the U.S. Bankruptcy Court for the Southern District of New York (the "Mediation"). The Committee and the Defendants each submitted confidential mediation statements to Judge Drain setting forth their respective positions regarding the disputed issues and suggestions on reaching a global settlement.

2. The Mediation concluded after a full day of discussions and several follow up days with terms that were approved by Judge Drain and memorialized in the Settlement Agreement attached as Exhibit A hereto. The Settlement Agreement provides, among other things, for:

- payment to the Debtors of $4,035,000;
- waiver of $157,791.30 in administrative expense claims;
- reclassification of $5,855.00 in administrative expense claims to general unsecured claims;
- reduction of $2,931.00 in priority unsecured claims; and
- waiver and release by the Defendants of their general unsecured claims against the Debtors and the Debtors' estates with a face amount of over $13 million[3].

[3] Pursuant to the Settlement Agreement, Robert K. Lacy shall have an allowed general unsecured claim in the amount of $196,356.00 and an allowed priority unsecured claim in the amount of $8,794.00. Victor E. Robles Concha shall have an allowed administrative expense claim of $10,624.76 and an allowed general unsecured claim in the amount of $5,885.00. The allowed claims of Messrs. Lacy and Robles arise out of their respective employment agreements with the Debtors.

3. The benefits that the proposed settlement would provide to the Debtors' estates and their creditors are substantial. The $4,035,000 settlement payment, combined with the Defendants' waiver of claims, will provide these estates with sufficient funds with which to propose a confirmable plan which should allow for a distribution to unsecured creditors.[4]

4. The benefits provided by the proposed settlement substantially outweigh the costs and litigation risks the Committee would have to face in pursuing the D&O Action and the Preference Action against the Defendants. Many of the Defendants are foreign nationals located in Mexico and would thus require that service of process be effectuated under the Hague Convention. Once served with the complaint in the D&O Action (the "D&O Complaint"), the Defendants in the D&O Action would likely (as they have threatened to do) file a motion to dismiss the D&O Complaint. Assuming the Committee overcame the Defendants' motion to dismiss, the Committee would be faced with the prospect of significant document discovery and depositions of parties and non-parties located in Mexico, at least some of whom would require that the discovery demands be served in accordance with the Hague Convention. Each stage of this process is likely to be heavily litigated, given that the Defendants' legal costs are covered by a $10 million D&O insurance policy.

5. Even if the Committee were eventually able to obtain through discovery the evidence it would need to successfully prosecute the D&O and Preference Actions, there remains the substantial risk that the Committee would encounter difficulty in collecting on any judgment rendered against the foreign Defendants. As such, the $10 million "wasting"[5] D&O insurance

[4] The magnitude of any distributions to general unsecured creditors under a plan will depend upon the final amount of allowed general unsecured claims and other factors that will be more fully explained in a joint plan of liquidation and disclosure statement.

[5] The D&O Policies are "wasting" policies so that every dollar paid to the D&O Defendants and their counsel for payment of legal fees and expenses incurred in connection with the D&O Action reduces the amount of coverage available for payment of the claims asserted against the D&O Defendants in the D&O Action.

policy represents the most likely source of settlement funds. Given this fact, the proposed $4,035,000 settlement payment represents – without taking into account defense costs – at least 40%[6] of the total amount of money that the Committee could safely expect to recover should it win at trial.

6. The Committee and the Debtors respectfully submit that the proposed Settlement Agreement is fair and equitable, in the best interest of these Debtors' estates and their creditors, and does not fall below the lowest point in the range of reasonableness, and therefore respectfully request that the Court enter the proposed Order Approving the Settlement Agreement under Bankruptcy Rule 9019.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over this Settlement Motion under 28 U.S.C. §§ 157 and 1334(b) because the claims asserted in the D&O Action and Preference Action arose in the Debtors' Chapter 11 Cases (defined below). This proceeding is a "core proceeding" within the meaning of 28 U.S.C. § 157(b)(2)(A). Venue is proper in this Judicial District under 28 U.S.C. §§ 1408 and 1409 because the Debtors' Chapter 11 Cases are being administered in this Court.

8. The bases for the relief requested in this Settlement Motion are section 105(a) of title 11 of the United States Code (the "Bankruptcy Code"), Bankruptcy Rule 9019, and the Standing Stipulation and Order that authorizes the Committee to have the "sole and exclusive right and standing to assert, prosecute, and settle, by litigation or otherwise, as an independent representative of the Debtors' estates and for the benefit of the Debtors' estates and their creditors" the Adversary Proceedings. (*See* Standing Stipulation and Order [Bankr. Case No. 12-13810, ECF No. 552] at ¶ 1.)

[6] 40% is $4 million of the $10 million insurance policy.

III. BACKGROUND

9. The Background section contains allegations that the Defendants dispute and therefore many of the contentions herein would be the subject of trial in the absence of a mediated resolution. The Defendants expressly dispute each and every allegation contained in the Complaints and do not agree with many of the statements or characterizations below. In fact, certain named Defendants, namely Victor Robles Concha and Pedro Salinas Arrambide, have disputed that they were ever on the board of directors of the Debtors. However, counsel for the Defendants (on behalf of the Defendants and the D&O insurance carriers) has been involved in the drafting of this motion and has been permitted to vet this motion to an exceptional degree. As such, there should be no dispute about the contents of this motion. This fact should be taken into account in evaluating any objection to this Motion by the Defendants or the D&O carriers.

A. The D&O Action

10. Don Gustavo is the Chairman of the Board of Directors of Vivaro. He is also the indirect 100% owner of Marcatel, a Mexican telecommunications corporation that provides voice and data services primarily in Mexico. The D&O Complaint alleges that in 2010, prompted by a desire to increase U.S. call traffic to Marcatel's networks, Don Gustavo began acquiring financially distressed U.S. international prepaid calling card companies because they were a ready source of call traffic for Marcatel.

11. Vivaro was the first of the calling card companies acquired by Don Gustavo in June 2010. Vivaro produced, marketed, and sold prepaid international calling cards for consumer end-users, primarily in the Hispanic community. Vivaro was acquired through one of Don Gustavo's U.S. holding companies, Progress. Progress purchased Vivaro, which is the holding company of an operating company, Epana Networks LLC n/k/a STi Telecom, Inc. ("Epana"), from Sienna Limited Partnership III, LP ("Sienna") for approximately $10.67 million,

plus a promise to pay 30% of the appraised valuation of Unidos, another company acquired in the transaction. Progress financed the acquisition by borrowing the money from Sienna, pledging all its bank accounts as collateral on a note.[7] Upon information and belief, neither Don Gustavo nor Marcatel paid any money to acquire Vivaro and Epana.

12. In October 2010, Vivaro acquired the second international prepaid calling card company, STi Prepaid, from Leucadia National Corporation ("Leucadia") for $20 million. To finance the acquisition, the D&O Complaint alleges that Don Gustavo caused the allegedly insolvent Vivaro to pay $600,000 in cash to Leucadia and to borrow from Leucadia the remaining $19.4 million of the $20 million purchase price (the "Leucadia Note"), and obligated STi Prepaid to be the guarantor of the Leucadia Note.

13. The repayment of the Leucadia Note was based on what the Committee believes was an aggressive 26-month schedule, which required Vivaro to make an initial payment of $600,000 in October 2010, followed by monthly payments of $400,000 from November 2010 to March 2011; $600,000 from April 2011 to September 2011; $800,000 from October 2011 to March 2012; and $1 million from April 2012 to December 2012.

14. When Progress purchased Vivaro and Epana, the Committee has alleged that such companies were insolvent and experienced decreasing revenues, but were still operational, servicing customers and paying their bills. Similarly, according to the Committee, when Vivaro acquired STi Prepaid, both Vivaro and STi Prepaid were insolvent. As with the acquisition of Vivaro and Epana, the D&O Complaint alleges that neither Don Gustavo nor Marcatel paid any money to acquire STi Prepaid. Moreover, there are disputed questions as to the level or lack of due diligence conducted in connection with the acquisition.

[7] As a result of the purchase, Vivaro became a wholly-owned subsidiary of Progress.

15. Following the acquisition, the D&O Complaint alleges that Vivaro had limited to no ability to service or repay the Leucadia Note. Within just a few months after Vivaro acquired STi Prepaid, it is also alleged that Vivaro was unable to keep up with the original repayment schedule under the Leucadia Note.

16. As a result of the acquisitions, the Complaint alleges that Don Gustavo owned (through their parent, Progress) and controlled the Debtors by installing certain directors and officers. STi Prepaid was made a subsidiary of Vivaro. Epana's name was changed to STi Telecom, Inc. and its business was merged with STi Prepaid's business.

17. By 2011, Vivaro and its subsidiaries (collectively, the "Company") was considered one of the largest providers in the international prepaid calling card market. The Company, however, according to the D&O Complaint, was insolvent, with liabilities exceeding assets by almost $40 million.

18. Facing a default under the Leucadia Note, the D&O Complaint alleges Don Gustavo and the other D&O Defendants caused Vivaro to enter into multiple amendments to the repayment schedule with Leucadia, culminating with the final amendment requiring a $7 million lump sum payment that drained Vivaro of liquidity and much needed operating cash.

19. To raise the $7 million payment, the Committee has alleged that Vivaro auctioned off its most valuable receivables on The Receivables Exchange (the "TRE"). The Committee has alleged that the decision of Don Gustavo and the other D&O Defendants to auction off Vivaro's valuable receivables on the TRE to satisfy the Leucadia Note left the Company starved for working capital.

20. At the end, Vivaro and STi Prepaid were only able to repay $11.8 million of the $19.4 million originally owed under the Leucadia Note, with the rest of the debt retired by

Leucadia. It is alleged that the satisfaction of the Leucadia Note allowed Don Gustavo to retain control of the Company and to conduct business with, and make payments to, Marcatel for the purchase of call minutes, thereby increasing Marcatel's revenues and call traffic, but further exacerbating the Company's deepening insolvency and leading to the Company's bankruptcy filing.

21. As a result of the D&O Defendants' alleged desire to keep the Company operating as Marcatel's "captive" customer, by September 2012, the Committee alleges that Vivaro found itself with $93 million in total liabilities and only $47 million in assets (nearly 50% of which were intangible assets and much of the rest consisting of uncollectable receivables).

22. Based on these events and transactions, the Committee identified certain claims against the D&O Defendants by August 2014. Unable to consensually resolve the claims against the D&O Defendants without litigation, the Committee commenced the D&O Action by filing a complaint on July 10, 2015.

23. Under the complaint, the Committee sought to recover damages in an amount to be determined at trial but in no event less than $25 million for mismanagement and self-dealing in violation of the fiduciary duties of due care, loyalty, and good faith that the D&O Defendants owed to the Debtors and their creditors, as well as disallowance of the claims asserted by the D&O Defendants against these estates [Bankr. Case No. 12-13810, ECF No.762].

24. In the D&O Action, the Committee sought to recover damages suffered as a result of the D&O Defendants' alleged breach of fiduciary duties, including $11.8 million in payments under the Leucadia Note, as well as the Debtors' deepening insolvency and substantial increase in the Debtors' liabilities while under the D&O Defendants' management.

25. On August 12, 2015, after the parties agreed to mediate the D&O Action, the Court entered an order governing mediation procedures and appointing the Honorable Robert D. Drain as the mediator in the D&O Action [Adv. Pro. No. 15-01124, ECF No. 10].

26. Vivaro has two D&O insurance policies: one issued through Hiscox Insurance Company ("Hiscox"), with $5 million in traditional D&O coverage, and another excess policy through State National Insurance Company a/k/a Torus ("Torus") with an additional $5 million in traditional D&O Coverage (the "D&O Policies").[8] The claims reporting period under the D&O Policies was extended through June 18, 2015.

27. The D&O Policies are "wasting" policies so that every dollar paid to the D&O Defendants and their counsel for payment of legal fees and expenses incurred in connection with the D&O Action reduces the amount of coverage available for payment of the claims asserted against the D&O Defendants in the D&O Action. Thus far, $250,000 has been authorized on an interim basis, and upon information and belief, was or will be paid to counsel for the D&O Defendants under the Court's interim order granting the D&O Defendants' Motion for Payment [Adv. Pro. No. 15-01124, ECF No. 18], reducing the total amount of coverage available under the D&O Policies to $9,750,000.[9]

28. All alleged pre-bankruptcy mismanagement acts by Don Gustavo and the other D&O Defendants, as discussed above and as contended in the complaint filed in the D&O Action, fall within the claims reporting period. The D&O insurers did not contest that they

[8] The D&O Action also names each of the two D&O insurance carriers as additional defendants. Since the filing of the Complaint, however, Hiscox and Torus have acknowledged that the claim for coverage under their respective D&O policies was timely filed. As a result, the Committee agreed to dismiss the D&O carriers from this action without prejudice.

[9] The Committee is advised that counsel to the D&O Defendants will seek additional defense costs under the D&O Policies in a final order to be considered at the same hearing that is scheduled on this Settlement Motion.

received timely notice of the claims made by the Committee. The D&O insurers also agreed to participate in the mediation before the Honorable Robert D. Drain.

B. The Preference Action

29. As was previously explained, by December 2011, the Company was having trouble paying its vendors, and many carriers were refusing to extend credit to Vivaro. At the same time, it is alleged that Marcatel began offering to carry call traffic through Marcatel's networks and granting forbearance on payments to Marcatel.

30. The Committee alleged that Marcatel's provision of services to the Company served to benefit Don Gustavo and the entities he owned and controlled, including Marcatel. Specifically, within one year before the Petition Date (defined below), the Debtors made preferential transfers in the total amount of no less than $50.5 million to the following three companies owned and controlled by Don Gustavo: (a) $40,517,428.58 to Marcatel; (b) $2,206,997.16 to Organizacion Radio Beep S.A. de C.V. n/k/a Unifica Contact Media S.A. de C.V. ("Unifica"); and (c) $7,781,997.23 to Progress, as particularly identified in the complaint and related exhibits filed in the Preference Action.

31. In connection with the claims identified in the Preference Action, the Committee and the Preference Defendants exchanged analyses of the claims and application of potential defenses, including the "new value" and "ordinary course of business" defenses under section 547(c)(2) and (4) of the Bankruptcy Code, in an attempt to determine the Preference Defendants' net preference exposure.

32. In response to the Committee's demand for the return of approximately $50.5 million in prepetition preferential transfers made by the Debtors to the Preference Defendants, the Preference Defendants, through their counsel, asserted multiple defenses,

including the "new value" and "ordinary course of business" defenses under section 547(c) of the Bankruptcy Code.

33. Taking into consideration the defenses of the Preference Defendants, and an analysis performed by these estates' professionals, the Preference Defendants' preference exposure was not less than $3.2 million, based on the Committee's professionals' analysis. The Preference Defendants, on the other hand, countered that their preference exposure was approximately $2.2 million, after application of the "new value" defense. The Preference Defendants also argued for the application of the "ordinary course of business" defense to further reduce or eliminate the Preference Defendants' liability. The Committee's professionals disputed that the "ordinary course of business defense" reduced or eliminated the potential recovery. However, if the Preference Defendants were correct in their position, there would be no recovery in the Preference Action, while the Preference Defendants could continue to assert their own significant administrative and unsecured claims against the estates.

34. The Preference Action complaint against the Preference Defendants seeks (a) the avoidance and recovery of various preferential transfers that were made by the Debtors to the defendants during the one-year preference period; (b) the avoidance and recovery of various constructively fraudulent transfers that were made by the Debtors to the defendants during the two-year fraudulent conveyance period; (c) disallowance of the Preference Defendants' claims against these estates; and (d) the equitable subordination and recharacterization of the alleged claims of defendant Marcatel against these estates [Bankr. Case No. 12-13810, ECF No.763].

35. Although the Preference Action was filed, the Committee continued to have global settlement discussions with the D&O Defendants and the Preference Defendants who were all represented by the same attorneys. In the meantime, and subject to a global resolution

of the D&O Action, and in recognition of the costs and risks of litigation, the Preference Action was conditionally settled for a $35,000 payment by the Preference Defendants to these estates, plus a waiver of all of the Preference Defendants' claims against these estates with a face amount of over $13 million.

36. The conditional settlement of the Preference Action against the Preference Defendants was a requirement of the D&O Defendants before agreeing to the mediation of the D&O Action. The parties thus agreed that if mediation of the D&O Action was successful, the Committee's claims against the Preference Defendants would be settled.

37. The Defendants and certain of their affiliates filed claims against these Debtors' estates or had claims scheduled in the Debtors' schedules of assets and liabilities (together, the "Prepetition Claims"), including the following claims:

Claimant Name	Claim Priority	Claim Amount	Claim Number(s)
Marcatel	Unsecured Claim	$12,306,097	Claim No. 389
Unifica	Unsecured Claim	$23,311	Claim No. 386
Unifica	Unsecured Claim	$450,193	Claim No. 387
Unifica	Unsecured Claim	$138,208	Claim No. 388
Gusma Properties, L.P.	Unsecured Claim	$27,880	Claim No. 394, as amended by Claim No. 570
Gusma Investments, L.P.	Unsecured Claim	$128,062	Claim No. 385 as amended by Claim No. 569
Don Gustavo	Unsecured Claim	$30,000	Claim No. 393
Don Gustavo	Unsecured Claim	Unliquidated	Claim Nos. 390 – 392, 400, 671 – 675
Flores	Unsecured Claim	Unliquidated	Claim Nos. 380 – 384 and 676 – 680
Margain	Unsecured Claim	Unliquidated	Claim Nos. 395 – 399 and 743 – 747
Lacy	Unsecured Claim	Unliquidated	Claim Nos. 429 – 435
Lacy	Unsecured Claim (including Priority claim for wages)	$205,150 (including $11,725 priority)	Claim No. 155
Lacy	Unsecured Claim	$19,800	Claim No. 428

38. In addition, the Defendants and certain of their affiliates assert unpaid administrative expense claims against the Debtors (the "Administrative Expense Claims"), including the following:

Claimant Name	Claim Priority	Claim Amount	Claim Number(s)
Unifica	Administrative	$102,453	Claim Nos. 666, 667 and 668
Gusma Properties, L.P.	Administrative	$469.22	Claim No. 669
Gusma Investments, L.P.	Administrative	$19,998.64	Claim No. 670
Progress	Administrative	$34,870.44	Claim No. 665
Robles	Administrative	$5,769.23	Claim Nos. 461 – 467 (Unsecured Priority Claim for wages), amended by Claim Nos. 688 – 694
Robles	Administrative	$4,855.53	Claim Nos. 454 – 460 (Unsecured Priority Claim for wages), amended by Claim Nos. 681 – 687
Robles	Administrative	$5,855.00	Claim Nos. 468 – 474 (Unsecured Priority Claim for wages), amended by Claim Nos. 695 – 701
Robles	Administrative	Unliquidated	Claim Nos. 314 – 320 (Unsecured Claim), amended by Claim Nos. 702 – 708

C. **Mediation Before Judge Drain**

39. Pursuant to an order entered on August 14, 2015, a mediation was scheduled [Adv. Pro. No. 15-01124, ECF No. 4]. On October 20, 2015, the parties mediated the D&O Action before the Honorable Robert D. Drain [*see* Notice of Mediation, Adv. Pro. No. 15-01124, ECF No. 10]. In attendance at the mediation were representatives and attorneys for the Debtors, the Committee, the Committee's financial advisors, the Committee's expert witness, the Defendants, the primary D&O carrier, and the excess D&O carrier. In addition to the Committee's professionals, the mediation was attended by a member of the Committee who had the requisite settlement authority.

40. At the mediation, following a full day of extensive settlement negotiations, the Honorable Robert D. Drain made his recommendation that the D&O Action should be settled for $4 million and allowed the parties an additional three (3) days to consider and respond to the Honorable Robert D. Drain whether they accept the recommended settlement.

41. Ultimately, on October 23, 2015, Judge Drain informed counsel for the Committee that based on the parties' responses, the D&O Action was settled for $4 million and waiver of the Defendants' claims against these Debtors' estates, and a resolution of the Preference Action as previously contemplated as further set forth in the Settlement Agreement.

D. **Terms of the Proposed Global Settlement**

42. Subject to the Court's approval, the Parties entered into the Settlement Agreement.[10] As provided under the attached Settlement Agreement, the proposed global settlement resolves three types of claims: (a) the D&O Action; (b) Preference Action; and (c) the various claims scheduled or asserted by or on behalf of the Insiders on the terms as set forth below. As a result of the global settlement, these Debtors' estates will receive $4,035,000 on account of the D&O Action and Preference Action and the Insiders will (1) waive their general unsecured claims against these estates with a face amount of over $13 million; (2) waive administrative expense claims with a face amount of $157,791.30; and (3) reduce asserted priority unsecured claims by $2,931.00.

43. The following is a brief summary of the terms contained in the Settlement Agreement:[11]

SUMMARY OF TERMS

(a) Settlement Payment: Defendants shall make or cause to be made a settlement payment to the Debtors' estates in the amount of $4,035,000 within twenty-five (25) days of the entry by the Bankruptcy Court of a final non-appealable order approving the Settlement Agreement.

(b) All claims that were or could have been scheduled or asserted by or on behalf of the Defendants and their current or former affiliates, subsidiaries,

[10] The Settlement Agreement has been executed by Mr. Philip Gund in his capacity as the Debtors' Chief Restructuring Officer on behalf of the Debtors; and by Mr. John J. Ross in his capacity as Member of the Official Committee of Unsecured Creditors; by Gerardo A. Medellin as General Counsel for, and on behalf of, Marcatel Com, S.A. de C.V.; by Gerardo A. Medellin as General Counsel for, and on behalf of, Organizacion Radio Beep S.A. de C.V. n/k/a Unifica Contact Media S.A. de C.V.; by Gustavo M. De La Garza Ortega, as sole manager of, and on behalf of, Gusma Properties, L.P.; by Gustavo M. De La Garza Ortega, as sole manager of, and on behalf of, Gusma Investments, L.P.; by Gustavo M. De La Garza Ortega, as sole manager of, and on behalf of, Progress International, LLC; by Gustavo M. De La Garza Ortega, on his own behalf; by Gustavo M. De La Garza Flores; by Roberto X. Margain; by Robert K. Lacy; and by Victor E. Robles Concha. Due to holiday travel, Pedro Salinas Arrambide has not yet provided the Committee and the Debtors with an executed copy of the Settlement Agreement. However, Mr. Salinas' counsel, Rocco Cavaliere, Esq., has represented that Mr. Salinas has agreed to the terms of the Settlement Agreement and will be providing an executed copy as soon as possible, and in any event, well before the hearing date.

[11] This is just a summary. If there is any inconsistency between the Settlement Agreement and this Summary of Terms, the provisions of the Settlement Agreement shall control.

employees, agents, successors and assigns, including, without limitation, Gusma Properties, LP and Gusma Investments, LP (collectively, the "Claimants"), against the Debtors and their estates, the Committee and its members, and each of their respective attorneys, financial advisors, professionals, agents, representatives, affiliates, successors and assigns, are unconditionally and irrevocably released, waived, forever discharged and withdrawn under the Settlement Agreement.

(c) The Defendants and the Claimants further agreed to waive, to the fullest extent permitted by applicable law, any and all rights they may have to file any documents or pleadings whatsoever in these Chapter 11 Cases, including, without limitation, any motions, objections, limited objections, letters, statements, or any other type of document that would otherwise be submitted to, or filed on the docket of, the Bankruptcy Court; provided, however, the Defendants reserve the right to file any document they deem necessary in response to, and to the extent that, any party in interest submits to, or files on the docket of, the Bankruptcy Court a document asserting a position directly adverse to the Defendants in these Chapter 11 Cases.

(d) As of the Effective Date, the Defendants further agreed to waive any right to vote on, or object to, any plan that may be proposed and filed by the Debtors or the Committee in these Bankruptcy Cases, and if any of the Defendants or Claimants do vote, they agreed to have their votes designated in favor of any plan that may be proposed and filed by the Committee. As of the Effective Date, the Defendants and Claimants agreed to irrevocably waive any and all rights to assert any claim in the Chapter 11 Cases under section 502(h) of the Bankruptcy Code.

(e) Notwithstanding the waivers under the Settlement Agreement of any and all claims asserted by Lacy and Robles, (A) Lacy shall be deemed to have the following (and no other) allowed claims against the Debtors: (i) a general unsecured claim in the amount of $196,356.00; and (ii) a priority unsecured claim under 11 U.S.C. 507(a)(4) in the amount of $8,794.00; and (B) Robles shall be deemed to have the following (and no other) allowed claims against the Debtors: (i) an administrative expense claim in the amount of $10,624.76; and (ii) a general unsecured claim in the amount of $5,885.00.

(f) The Claimants further agreed to irrevocably waive, to the fullest extent permitted by applicable law, any and all rights to file or otherwise assert any other claim that arises or arose prior to the Effective Date, in the Bankruptcy Court or any other forum, whether within or outside the United States.

(g) Within seven (7) calendar days from the date the Debtors receive the full amount of the Settlement Payment, the Committee will file a Final Order

in each of the Adversary Proceedings, which are attached to the Settlement Agreement as Exhibit A.

44. If approved, the settlement will shore up the administrative solvency of the Debtors' estates, decrease the pool of unsecured creditors' claims against these estates by more than $13,000,000, reduce the administrative expense claims pool by $157,791.30, reclassify administrative expense claims of $5,855.00 to general unsecured claims, reduce the priority unsecured claims pool by $2,931.00, remove duplicate claims without the need for further claims objection by the Debtors, and allow the Debtors and the Committee to propose a confirmable chapter 11 plan which should result in a distribution to general unsecured creditors.

IV. RELIEF REQUESTED

A. Applicable Legal Standards

45. Bankruptcy Rule 9019 provides, in relevant part, that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Settlements and compromises are "a normal part of the process of reorganization . . . ." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1986) (quoting *Case v. L.A. Lumber Prods. Co.*, 308 U.S. 106, 130 (1939)); *see also In re Adelphia Commc'ns Corp.*, 327 B.R. 143, 159 (decision to accept or reject settlement lies within sound discretion of bankruptcy court), *adhered to on reconsideration*, 327 B.R. 175 (Bankr. S.D.N.Y. 2005).

46. In determining whether a proposed settlement or compromise is in the best interests of a debtor's estate, courts in the Second Circuit generally consider the following seven factors: (1) the balance between the litigation's possibility of success and the settlement's future benefits; (2) the likelihood of complex, costly and protracted litigation; (3) the paramount interests of the creditors, including benefits and the degree to which creditors affirmatively

support the proposed settlement; (4) whether other interested parties support the settlement; (5) the competency and experience of counsel supporting the settlement; (6) the nature and breadth of releases to be obtained by officers and directors under the settlement; and (7) the extent to which the proposed settlement is the product of arm's length bargaining. *Motorola, Inc. v. Official Comm. of Unsecured Creditors and JP Morgan Chase Bank, N.A. (In re Iridium Operating LLC)*, 478 F.3d 452, 462 (2d Cir. 2007) (noting that the factors are based on the original framework announced by the Supreme Court in *TMT Trailer Ferry*); *see also In re WorldCom, Inc.*, 347 B.R. 123, 137 (Bankr. S.D.N.Y. 2006); *accord In re Texaco Inc.*, 84 B.R. 893, 802 (Bankr. S.D.N.Y. 1988).

47. In evaluating a compromise, a court need not determine that all of the foregoing factors favor approval of a compromise, and the proposed compromise need not be the best agreement that could have been achieved under the circumstances. *Adelphia Commc'ns*, 327 B.R. at 159-60; *see also Penn Centr.*, 596 F.2d at 1114. Instead, the court's proper "role is to determine whether the settlement as a whole is fair and equitable," *In re Lee Way Holding Co.*, 120 B.R. 881, 890 (Bankr. S.D. Ohio 1990), and falls "within the reasonable range of litigation possibilities." *In re Telesphere Commc'ns, Inc.*, 179 B.R. 544, 553 (Bankr. N.D. Ill. 1994) (citation omitted). In the Second Circuit, compromises in the bankruptcy context should be approved unless they "'fall below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman*, 699 F.2d 599, 608 (2d Cir. 1983) (citation omitted).

B. The Proposed Settlement Is Fair and Equitable and Does Not Fall Below the Lowest Point in the Range of Reasonableness

48. The proposed global settlement of the D&O Action and Preference Action is fair and equitable and does not fall below the lowest point in the range of reasonableness. The settlement achieves the intended goal of supplementing these estates' cash position to enable

them to propose a plan that should provide for a distribution to general unsecured creditors. Specifically, and as further described below, the benefit of accepting an immediate $4,035,000 payment, plus waiver and reclassification of certain claims (i.e., waiver of $157,791.30 in administrative expense claims, reclassification of $5,855.00 in administrative expense claims to general unsecured claims, the reduction of $2,931.00 in priority unsecured claims, and waiver and release of over $13 million in general unsecured claims) warrants approval of the settlement by the Court, particularly giving weight to the significant risks and hurdles the Committee would have to overcome if prosecution of both litigations were to continue. The settlement is largely based on the recommendation made by the Honorable Robert D. Drain at the October 20, 2015 mediation.

1. Accepting the Settlement Is Beneficial and Preferred to Continued Litigation (*Iridium* Factors #1, 2)

49. The cash infusion to the Debtors' estates of $4,035,000, plus waiver of $157,791.30 in administrative expense claims, reclassification of $5,855.00 in administrative expense claims to general unsecured claims, reduction of $2,931.00 in priority unsecured claims, and waiver of over $13 million in general unsecured claims, will immediately benefit these estates by both increasing the Debtors' cash position while simultaneously reducing the amount of administrative, priority and general unsecured claims asserted against these estates. Thus, the settlement will bring these estates to the point where they can propose a confirmable plan, such that a distribution to the creditors is possible.[12]

50. The global settlement also ends the high cost and risk of continued litigation. Specifically, the balance between closure of the litigation versus the uncertainty of future success sharply tips in favor of settlement approval. Not only is the $4,035,000 a reasonable settlement

[12] *See supra* n.4.

amount, but it ends the risk and cost of the litigation proceedings. This is evident when one considers the myriad of difficulties the Committee faces with the D&O Action. First, the D&O claims are governed by Delaware law. To succeed on the merits, the Committee would need to show the actions of the Debtors' Board of Directors fall outside the business judgment rule. This makes the claims challenging and likely would require expert testimony to establish breach of fiduciary duties and violation of duty of care. Litigation of the claims and defenses would be factually intense and sharply contested, making the action protracted and expensive. The resulting litigation would have to occur in the context of claims involving the foreign Defendants. The case therefore poses additional costs attendant to foreign travel. This also adds significant additional litigation costs and time to fully adjudicate the proceeding. For example, service of the complaint under the Hague Convention alone would be costly and could take between four to six months or longer to effectuate. Hague Convention procedures would also likely be necessary to effectuate discovery on non-parties in Mexico, making the collection of critical evidence both costly and uncertain.

51. Even if the Committee were able to successfully obtain a final judgment against the Preference Defendants in the Preference Action and the D&O Defendants in the D&O Action, collection of that judgment would require overseas enforcement with limited assurance of success. As this Court recently noted, "judgments against foreign defendants that do not have property in the United States may be difficult to enforce." *In re Vivaro Corp.*, No. 12-13810, 2015 WL 7055462, at *2 (Bankr. S.D.N.Y. Nov. 13, 2015).

52. The Debtors have primary and excess D&O insurance coverage of $10 million. The proceeds available under the policies, however, are reduced dollar-for-dollar by defense costs that would likely consume considerable amounts of the $10 million face amount of the

policies. In fact, before all of the complaints had even been served, the D&O Defendants had already sought and obtained a $250,000 charge against the policies for accrued defense costs. Indeed, the litigations to date have been expensive and time-consuming, as exemplified by the Defendants' objections, among other things, to the Committee's standing motion, the Leucadia settlement, and the Defendants' motion to convert these Chapter 11 Cases to chapter 7 cases. There is every indication that continued prosecution of the D&O Action and the Preference Action would be very expensive and could consume substantial amounts of the remaining D&O policies. Hence, approval of the global settlement will avoid future litigation expense and assure an immediate $4,035,000 recovery.

53. If the case were to proceed, the Committee could decide to hire contingency counsel to prosecute the action. Contingency counsel would likely demand a net fee equal to 33 to 40% of the recovery after expenses. If, hypothetically, the litigations were to continue with contingency fee counsel, and if the Committee is able to settle the breach of fiduciary duty claims against the D&O Defendants for $6 million (subject to the funds remaining available under the D&O "wasting" D&O Policies), the net estimated recovery to the Debtors' estates would be roughly $4 million (assuming a 33% contingency fee) or $3.6 million (assuming a 40% contingency fee). Thus, a proposed $4 million settlement is equal to or better than a deferred $6 million settlement at some future date. An approved settlement allows receipt of the funds now without further litigation risk or delay. These are but a handful of the impediments the Committee would face in the event it determined to pursue litigation. These factors, among others, were vetted at the October 20, 2015 mediation and likely contributed to Judge Drain's recommendation to all parties that the $4 million settlement was reasonable and fair.

54. Moreover, the $35,000 payment to settle the Preference Action, plus waiver of $157,791.30 in administrative expense claims and waiver of over $13 million in general unsecured claims represents a reasonable recovery on the Plaintiff's claims against the Preference Defendants. For settlement purposes, the Committee's financial consultant estimated the value of the preference claims at not less than $3.2 million, after application of the "new value" defense. However, as noted above, the Preference Defendants argued that the application of the new value defense, reduced the preference exposure to roughly $2.2 million, and that the balance of such exposure was protected from avoidance by the ordinary course of business defense. In any event, assuming the Committee overcame such claimed defenses and obtained a judgment, the Committee faced obstacles in collecting the judgment from the foreign Defendants in Mexico who, on information and belief, lack sufficient liquidity and assets to satisfy a sizeable judgment. Thus, continued litigation of the preference claims present similar risks, costs and collections issues as described above in connection with the D&O Action.

55. Furthermore, the Committee also recognized that the Preference Defendants were prepared to waive all of their claims in connection with a settlement of this matter. The waiver of such claims reduces the general unsecured claims pool, which has the effect of improving a distribution to unsecured creditors.

56. Finally, it is important to note that the Committee views the $4,035,000 settlement and waiver of more than $13,000,000 of claims as a fair resolution to all D&O and preference claims in the aggregate because the Defendants are basically the same entities or individuals behind the entities and are represented by the same counsel.

2. The Settlement Will Enhance these Estates' Ability to Provide a Distribution to the Creditors Under a Plan and Is Supported by All Known Interested Parties (*Iridium* Factors #3, 4)

57. The Settlement is in the best interest of these Debtors' estates and their creditors. As referenced above, the settlement enables the Debtors and Committee to propose a confirmable plan which should result in a distribution to general unsecured creditors. The settlement will result in an immediate cash infusion to the Debtors' estates in the amount of $4,035,000, plus waiver and reclassification of certain claims (i.e., waiver of $157,791.30 in administrative expense claims, reclassification of $5,855.00 in administrative expense claims to general unsecured claims, the reduction of $2,931.00 in priority unsecured claims, and waiver and release of over $13 million in general unsecured claims) that will reduce the claims pool. The cash infusion will thereby enable the Debtor and the Committee to propose a confirmable plan of liquidation.

58. The settlement is supported by the Committee, the Debtors, and the Defendants. Both the primary and excess D&O carriers also support the settlement. Further, no known constituencies oppose the settlement. When the Standing Order was entered, it granted to the Committee authority to initiate, file, and settle claims. Once this settlement is approved, the Committee and the Debtors will turn to proposing a confirmable plan with a creditor distribution.[13]

[13] It is the Committee's view that the Defendants would have likely voted against any chapter 11 plan and due to the size and amount of their claims would have rendered plan confirmation difficult or impossible. Thus, the waiver of claims presents an important step in removing obstacles to confirmation and distribution. In addition, without the Defendants opposing confirmation, the costs of confirmation should be significantly less than if they did not waive their claims.

3. The Competence of Counsel, the Scope of the Releases and the Extent to which the Settlement Is the Product of Arm's Length Negotiations (*Iridium* Factors #5, 6, 7)

59. Each of these factors is established. First, the parties are separately represented by experienced bankruptcy counsel: the Committee (Arent Fox) and the Debtors (Cozen O'Connor). Second, the settlement was supported by Judge Drain at the mediation as being a fair and reasonable resolution of the parties' disputes. Third, the Settlement Agreement contains customary releases and waivers of all claims that were or could have asserted by the Defendants and their affiliates against these Debtors and their estates, as well as the Committee and its members, and their respective professionals. The release language is standard in this judicial district. In addition, the Defendants agreed to irrevocably waive, to the fullest extent permitted by applicable law, any and all rights to file or otherwise assert any other claim that arises or arose prior to the Effective Date, as such term is defined under the Settlement Agreement, in the Bankruptcy Court or any other forum, whether within or outside the United States. The releases and waivers of claims contained in the Settlement Agreement do not apply to or benefit any entity other than the parties to the Settlement Agreement and their professionals. Thus, the releases and waivers are reasonable and should be approved.

60. In summary, the proposed settlement is fair and equitable and in the best interests of these Debtors' estates and their creditors and falls above the lowest point in the range of reasonableness. Approval of the settlement would result in a substantial cash infusion to these estates and a significant reduction in the administrative expense, priority, and general unsecured claims pools. Accordingly, approval of the Settlement Agreement would allow the Debtors and the Committee to propose a confirmable joint chapter 11 plan which should result in a distribution to general unsecured creditors. For the foregoing reasons, and in light of the

foregoing concerns, litigation risks, costs, and other considerations, the Committee and the Debtors respectfully submit that the proposed global settlement should be approved.

V. NOTICE

61. Notice of this Settlement Motion was provided to (a) counsel to the Defendants, Tarter Krinsky & Drogin LLP (Attn: Scott S. Markowitz, Esq., Rocco A. Cavaliere, Esq., and Linda Roth, Esq.); (b) counsel for the Debtors' D&O insurance carriers, Peabody & Arnold LLP (Attn: E. Joseph O'Neil, Esq.) and Ropers Majeski Kohn & Bentley PC (Attn: Geoffrey Heineman, Esq. and Amber W. Locklear, Esq.); (c) the Office of the United States Trustee, 201 Varick Street, Room 1006, New York, NY 10014 (Attn: Andy Velez- Rivera, Esq.); (d) all parties who filed requests for notice under Bankruptcy Rule 2002; and (e) all creditors.

62. The Movants respectfully submit that such notice is sufficient under the Bankruptcy Code and the Bankruptcy Rules and that no other notice is necessary.

63. No previous motion for the relief sought has been made to this or any other court.

VI. CONCLUSION

64. For the reasons set forth above, the Movants respectfully request that the Court enter the proposed Order Approving the Settlement Agreement and grant such other and further relief as appropriate under the circumstances.

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Dated: December 28, 2015

ARENT FOX LLP

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EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made as of December 23, 2015 between Vivaro Corporation ("Vivaro"), STI Prepaid, LLC ("STI Prepaid"), Kare Distribution, Inc. ("Kare"), STI Telecom, Inc. ("STI Telecom"), TNW Corporation ("TNW"), STI CC 1, LLC ("CC 1"), and STI CC 2, LLC ("CC 2") (collectively with their estates, successors and assigns, the "Debtors"), the Official Committee of Unsecured Creditors (the "Committee"), and Gustavo M. De La Garza Ortega ("Don Gustavo"), Gustavo De La Garza Flores ("Flores"), Roberto X. Margain ("Margain"), Robert K. Lacy ("Lacy"), Victor E. Robles Concha ("Robles"), Pedro Salinas Arrambide ("Salinas"), Marcatel Com, S.A. de C.V. ("Marcatel"), Organizacion Radio Beep S.A. de C.V. n/k/a Unifica Contact Media S.A. de C.V. ("Unifica") and Progress International LLC ("Progress" or collectively, and together with their successors and assigns, "Defendants"[1]) on the other hand. The Debtors, the Committee and the Defendants shall collectively be referred to as the "Parties" and each a "Party."

WHEREAS, on September 5, 2012 (the "Petition Date"), the Debtors each filed voluntary petitions for relief under chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), which cases are being jointly administered under Case No. 12-13810 (collectively, the "Bankruptcy Cases");

WHEREAS, the Debtors continue to manage their assets as debtors-in-possession in the Bankruptcy Cases pursuant to sections 1101 and 1107 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code");

WHEREAS, the Defendants and certain of their affiliates filed claims against the Debtors or had claims scheduled in the Debtors' schedules of assets and liabilities (together, the "Prepetition Claims"), including the following claims:

- Marcatel's unsecured claim in the amount of $12,306,097 (Claim No. 389);
- Unifica's unsecured claim in the amount of $611,712 (Claim Nos. 386, 387, and 388);
- Gusma Properties, L.P.'s unsecured claim in the amount of $27,880 (Claim No. 394, as amended by Claim No. 570);
- Gusma Investments, L.P.'s unsecured claim in the amount of $128,062 (Claim No. 385 as amended by Claim No. 569);
- Don Gustavo's claim regarding unpaid board fees in the amount of $30,000 (Claim No. 393);
- Don Gustavo's unliquidated claims (Claim Nos. 390 – 392, 400, 671 – 675);
- Flores' unliquidated claims (Claim Nos. 380 – 384 and 676 – 680);
- Margain's unliquidated claims (Claim Nos. 395 – 399 and 743 – 747);

[1] There is another entity commonly referred to as "Grupo Marcatel" in a certain tolling agreement between the Parties, but that entity does not exist. Nonetheless, for the avoidance of all doubt, Grupo Marcatel and any misnamed entity that may otherwise be considered an "affiliate" of the Defendants shall hereby be released from any and all claims that may be asserted by the Debtors and the Committee.

- Lacy's claims for indemnification (Claim Nos. 429 – 435);
- Lacy's unsecured claim in the amount of $205,150, including $11,725 which was asserted as a priority claim (Claim No. 155);
- Lacy's general unsecured claim in the amount of $19,800 (Claim No. 428); and
- Robles' claims for indemnification (Claim Nos. 314 – 320 and 702 – 708).

WHEREAS, the Defendants and certain of their affiliates also asserted requests for unpaid administrative expenses against the Debtors (the "Administrative Expense Claims"), including the following:

- Unifica's administrative claims, each filed in the amount of $102,453 (Claim Nos. 666, 667, and 668);
- Gusma Properties, L.P.'s administrative claim in the amount of $469.22 (Claim No. 669); and
- Gusma Investments, L.P.'s administrative claim in the amount of $19,998.64 (Claim No. 670);
- Progress's administrative claim in the amount of $34,870.44 (Claim No. 665)
- Robles' administrative expense claims, each in the amount of $5,769.23 (Claim Nos. 461 – 467, amended by Claim Nos. 688 – 694);
- Robles' administrative expense claims, each in the amount of $4,855.53 (Claim Nos. 454 – 460, amended by Claim Nos. 681 – 687); and
- Robles' administrative expense claims, each in the amount of $5,855.00 (Claim Nos. 468 – 474, amended by Claim Nos. 695 – 701).

WHEREAS, by August 2014, the Committee identified certain claims of these estates and filed a motion ([Bankr. Case No. 12-13810, ECF No. 547] the "Standing Motion") seeking standing to prosecute and settle such claims against certain potential defendants, including: (i) Don Gustavo, Flores, Margain, Lacy, Robles, and Salinas (collectively, the "D&O Defendants"); and (ii) Marcatel, Unifica, and Progress (collectively "Preference Defendants");

WHEREAS, on August 25, 2014, the Committee was granted standing and authority by the Court to commence, prosecute and settle claims against the D&O Defendants and the Preference Defendants under the Standing Stipulation and Order [Bankr. Case No. 12-13810, ECF No. 552], authorizing the Committee to have the "sole and exclusive right and standing to assert, prosecute, and settle, by litigation or otherwise, as an independent representative of the Debtors' estates and for the benefit of the Debtors' estates and their creditors" such claims;

WHEREAS, according to the Debtors' books and records, within one year before the Petition Date (the "Preference Period"), the Debtors made preferential transfers in the total amount of no less than $50.5 million (the "Transfers") to the following three companies owned and controlled by Don Gustavo: (a) $40,517,428.58 to Marcatel; (b) $2,206,997.16 to Unifica; and (c) $7,781,997.23 to Progress, as particularly identified in the complaint and related exhibits filed in the Avoidance Action (defined below);

WHEREAS, on or about July 10, 2015, the Committee commenced an adversary proceeding, entitled *The Official Committee of Unsecured Creditors of Vivaro Corporation v. Marcatel Com, S.A. de C.V., et al.* (Adversary Proceeding No. 15-01125 (MG)) (the "Avoidance Action"), filing a complaint against Marcatel, Unifica, and Progress, seeking, among other things, the avoidance and recovery of the Transfers, disallowance of the Preference Defendants' claims against these Debtors' estates, and the equitable subordination and recharacterization of Marcatel's claims against these Debtors' estates;

WHEREAS, on or about July 10, 2015, the Committee commenced an adversary proceeding, entitled *The Official Committee of Unsecured Creditors of Vivaro Corporation v. Gustavo De La Garza Ortega et al* (Adversary Proceeding No. 15-01124 (MG)) (the "D&O Action", and together with the Avoidance Action, the "Adversary Proceedings"), filing a complaint against Don Gustavo, Flores, Margain, Lacy, Robles, Salinas, Hiscox Insurance Company, Inc. and State National Insurance Company asserting various breaches of fiduciary duties and claims for equitable subordination under section 510(c) of the Bankruptcy Code, and seeking, *inter alia*, damages in an amount to be determined at trial but in no event less than $25 million;

WHEREAS, the Defendants have raised certain defenses in connection with the Avoidance Action, including, among others, the "new value" defense under section 547(c)(4) of the Bankruptcy Code and the "ordinary course of business" defense under section 547(c)(2) of the Bankruptcy Code and subject to a global resolution of the D&O Action, the Defendants and the Committee agreed that the Preference Action would be conditionally settled for $35,000 payment by the Preference Defendants to the estates, plus waiver of all of the Defendants' claims against these Debtors' estates, including the Prepetition Claims and Administrative Expense Claims, with a face value of over $13 million;

WHEREAS, once the Committee was able to confirm that the Debtors' insurance carriers, Hiscox Insurance Company, Inc. and State National Insurance Company (collectively, the "D&O Carriers"), have confirmed coverage, the Committee subsequently agreed to dismiss the D&O Carriers from the D&O Action;

WHEREAS, on October 20, 2015, the Parties participated in a mediation in connection with the D&O Action with the Honorable Robert D. Drain serving as mediator, resulting in an agreed settlement between the Parties;

WHEREAS, the Court entered an Order on November 4, 2013 [Docket No. 448] establishing procedures under which the Debtors may settle claims arising under sections 544, 547, 548 and 550 of the Bankruptcy Code (collectively, the "Avoidance Claims"), including, *inter alia*, acceptable of consideration in the form of a waiver of claims;

WHEREAS, the Parties, having fully participated in mediation in good faith, desire to avoid the risks and expenses attendant to present or future litigation and to settle, on the terms and conditions set forth below, all claims that the Debtors and/or the Committee have asserted or may assert against the Defendants in the D&O Action and the Avoidance Action;

NOW, THEREFOR, in consideration of the mutual promises and undertakings herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties agree as follows:

1. Effective Date. Subject to the full execution hereof by all parties, this Agreement shall become effective and binding upon the Parties hereto upon entry of a final and non-appealable order approving this Agreement under Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Effective Date").

2. Settlement Payment. In full and final satisfaction of the D&O Action and the Avoidance Action, the Defendants shall pay or cause to be paid to the Debtors the amount of $4,035,000.00 (the "Settlement Payment") within twenty-five (25) days of the entry by the Bankruptcy Court of a final non-appealable order approving this Agreement. Within three (3) business days of the entry by the Bankruptcy Court of a final non-appealable order approving this Agreement, counsel for the Defendants will confirm in writing that they are in possession of $235,000.00 reflecting Marcatel's contribution to the Settlement Payment. Counsel for the Defendants will hold those funds in escrow and will release those funds to the Debtors on the date that is no later than the twenty-fifth (25th) day after the entry by the Bankruptcy Court of a final non-appealable order approving this Agreement.

3. Method of Payment. All payments are to be made so as to be received by the Debtors on or before 5:00 p.m. (prevailing eastern time) on the due date, time being of the essence. Payments shall be made via wire transfer in the U.S. currency to the following account, or such other account as designated by the Debtors:

Receiving Bank:	Bank of America P.O. Box 4434 New York, NY 10163-4434
ACH Routing:	[redacted]
Wire Routing:	[redacted]
Account Number:	[redacted]
Account Name:	Vivaro Corporation

4. The Defendants' Waivers

(a) Waiver of Claims. As further consideration hereunder, as of the Effective Date, the Defendants, and their current or former affiliates, subsidiaries, employees, agents, successors and assigns, including, without limitation, Gusma Properties, L.P. and Gusma Investments, L.P. (collectively, the "Claimants"), hereby unconditionally and irrevocably release, waive, forever discharge and withdraw any and all claims, causes of action, debts, liabilities, demands, damages, expenses, costs, losses, suits, and actions, including, without

limitation, the Prepetition Claims, the Administrative Expense Claims, and any post-petition claims, which were or could have been asserted or scheduled against the Debtors and their estates, the Committee and its members, and each of their respective attorneys, financial advisors, professionals, agents, representatives, affiliates, successors, and assigns, and which shall for all purposes be deemed released, waived, discharged and withdrawn with prejudice, and the Claimants further irrevocably waive, to the fullest extent permitted by applicable law, any and all rights to file or otherwise assert any other claim that arises or arose prior to or subsequent to the Effective Date, in the Bankruptcy Court or any other forum, whether within or outside the United States. The Claimants further agree, to the extent requested by the Debtors and the Committee, to execute and cause to be filed on the docket of the Bankruptcy Court a formal withdrawal of the Prepetition Claims, Administrative Expense Claims and/or any other claims.

(b) Waiver of Rights to Appear in Bankruptcy Cases. As of the Effective Date, the Defendants and Claimants hereby waive, to the fullest extent permitted by applicable law, any and all rights they may have to file any documents or pleadings whatsoever in these Bankruptcy Cases, including, without limitation, any motions, objections, limited objections, letters, statements, or any other type of document that would otherwise be submitted to, or filed on the docket of, the Bankruptcy Court; provided, however, the Defendants reserve the right to file any document they deem necessary in response to, and to the extent that, any party in interest submits to, or files on the docket of, the Bankruptcy Court a document asserting a position directly adverse to the Defendants in these Bankruptcy Cases. As of the Effective Date, the Defendants further hereby waive any right to vote on, or object to, any plan that may be proposed and filed by the Debtors or the Committee in these Bankruptcy Cases, and if any of the Defendants or Claimants do vote, they hereby agree to have their votes designated in favor of any plan that may be proposed and filed by the Committee.

(c) Waiver of Section 502(h) Claims. As further consideration hereunder, as of the Effective Date, the Defendants and Claimants hereby irrevocably waive any and all rights to assert any claim in the Bankruptcy Cases under section 502(h) of the Bankruptcy Code.

(d) Waiver and Deemed Allowance of Certain Lacy's Claims. Notwithstanding the waivers hereunder of any and all claims asserted by Lacy, Lacy shall be deemed to have the following (and no other) allowed claims against the Debtors (collectively, the "Lacy Allowed Claims"):

(i) A general unsecured claim in the amount of $196,356.00; and

(ii) A priority unsecured claim under 11 U.S.C. 507(a)(4) in the amount of $8,794.00

(e) Waiver and Deemed Allowance of Certain Robles' Claims. Notwithstanding the waivers hereunder of any and all claims asserted by Robles, Robles shall be deemed to have the following (and no other) allowed claims against the Debtors (collectively, the "Robles Allowed Claims" and, together with the Lacy Allowed Claims, the "Allowed Claims"):

(i) An administrative expense claim in the amount of $10,624.76; and

(ii) A general unsecured claim in the amount of $5,885.00.

5. Events of Default. The failure to make the Settlement Payment as required in paragraphs 2 and 3 of this Agreement shall constitute an "Event of Default" under this Agreement. Upon the occurrence of an Event of Default, provided such Event of Default is not cured within fifteen (15) days, and after notice served by express, registered or certified mail, addressed to counsel to the Defendants, the Committee may elect to either (i) deem the Settlement null and void and continue the Adversary proceedings against the Defendants; or (ii) move to enforce the Agreement in the Bankruptcy Court; and:

(i) if the Committee elects to deem the Settlement null and void and continue the Adversary proceedings against the Defendants, service of any notice to deem the settlement null and void will be effective when served by express, registered or certified mail, addressed to counsel to the Defendants; or

(ii) if the Committee elects to enforce the Agreement in the Bankruptcy Court, service of any motion to enforce the Agreement will be effective when served by express, registered or certified mail, addressed to counsel to the Defendants.

6. No Admission of Wrongdoing. Without admitting fault or liability, the Parties have mutually agreed to resolve the dispute in accordance with the terms set forth herein. The Defendants have denied and still deny liability on the merits of the claims asserted in the Adversary Proceedings and that this Agreement is entered into purely as a compromise of disputed matters for the purpose of avoiding the uncertainly associated with the Adversary Proceedings and the further costs of defending such Adversary Proceedings. The settlement of the claims asserted in the Adversary Proceedings and the obligations created by this Agreement are not, and shall not be, construed as an admission of liability of the Parties or any other person or entity on any claim whether or not asserted in the Adversary Proceedings. Nothing contained in this Agreement shall be construed at any time as an admission by any Party of any wrongdoing or liability to any of the Parties. The Parties each acknowledge that they are not a prevailing party for any purpose and expressly waive any claims for attorneys' fees and costs.

7. No Actions or Proceedings Filed or Pending. The Parties represent that they have not filed or caused to be filed any complaints, charges, applications, actions, claims or grievances against each other with any local, state or federal agency, court, regulatory or self-regulatory agency or other body, and that they will not at any time hereafter file or cause to be filed any complaint, charge, application, action, claim or grievance against each other based on any act, omission or other thing arising or accruing on or prior to the date of signing this Agreement, whether known or unknown at the time of signing, except as set forth herein.

8. Bankruptcy Court Jurisdiction and Choice of Law. Without limiting any of the Parties' rights to appeal any Order of the Bankruptcy Court, the Parties and Claimants agree that (i) the Bankruptcy Court shall retain exclusive personal and subject matter jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes that may arise or result from, or be connected with, this Agreement, or any breach or default hereunder; and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court to enforce this Agreement; *provided, however*, that if the Bankruptcy Cases have been closed and cannot be reopened for any reason, the parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in New York County or the Commercial Division, Civil Branch of the Supreme Court of the State of New York sitting in New York County and any appellate court from any thereof, for the resolution of any such claim or dispute. Defendants hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. The Defendants agree that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. This Agreement shall be construed in accordance with and governed by the laws of the State of New York (excluding the laws applicable to conflicts or choice of law).

9. Ownership of Claims. The Claimants represent that they are the owners of the Prepetition Claims and the Administrative Expense Claims and that they have not sold, alienated or otherwise transferred the Prepetition Claims and the Administrative Expense Claims.

10. Mutual Releases.

(a) The Debtors, the Committee, the Claimants and Defendants, and their respective Released Entities and Parties, as defined below, hereby release and discharge each other and all of their respective present and former parent corporations, predecessors, joint venturers, partners, affiliates, subsidiaries, successors, assigns and otherwise related entities, and all of their respective incumbent or former shareholders, officers, directors, members, managers, employees, consultants, insurers, reinsurers, attorneys (including all professionals retained by the Debtors' estates in the Bankruptcy Cases), agents, representatives, and their respective successors and assigns (collectively, the "Released Entities and Persons" and each, a "Released Entity or Person"), from any and all claims, liabilities, demands or causes of action of whatever nature, known or unknown, inchoate or otherwise, liquidated or unliquidated, accrued or contingent, foreseen or unforeseen, whether based in contract (written, oral, express, implied or otherwise) and/or any local, state or federal statute, regulation or other law (including common law) or in equity, that either Party (or its Released Entities and Persons) had, ever had, or could have had against the other Party (or its Released Entities or Persons) as of the Effective Date.

(b) The mutual releases set forth in Section 10(a) shall not be effective until Debtors' receipt of the full amount of the Settlement Payment.

(c) Nothing herein shall be construed to release any obligation arising out of or under this Agreement.

11. Severability. Should any provisions of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions, including the release of all claims, shall not be affected thereby and said illegal or invalid parts, term or provision shall be modified by the court so as to be legal or, if not reasonably feasible, shall be deleted.

12. Entire Agreement. This Agreement constitutes the entire understanding by and between Parties with respect to the subject matter hereof, and supersedes any prior agreements or understandings between the Parties oral or written with respect to the subject matter hereof.

13. No Representations. No statements, promises or representations have been made by any Party to any other, or relied upon, and no consideration has been offered, promised, expected or held out other than as may be expressly provided herein. Each Party hereby represents and warrants to the other Parties that such Party has not, as an inducement to such Party's entrance into this Agreement, relied on any representation, assertion, guaranty, warranty, collateral contract or other assurance made by or on behalf of another Party or any other person or entity whatsoever, other than the express covenants, representations and warranties set forth in this Agreement. Each Party hereby waives all claims, whether known or unknown, arising out of and/or otherwise relating to any such representation, assertion, guaranty, warranty, collateral contract or other assurance.

14. Representation by Counsel. The Parties hereto each acknowledge and agree that they have had the opportunity to consult with legal counsel of their choice prior to execution of this Agreement, have in fact done so, and have been specifically advised by counsel of the consequences of this Agreement and their respective rights and obligations hereunder.

15. Interpretation. The Parties further acknowledge and agree that this Agreement is the result of negotiations between the Parties and that no Party shall be considered the drafter for the purposes of any statute, case law or rule of interpretation that would or might cause any provision to be construed against the drafter.

16. Effect of Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

17. Amendment to Agreement. This Agreement may not be amended, supplemented, modified or waived except by an instrument in writing signed by a duly authorized officer on behalf of each of the Parties, which amendment, supplement, modification or waiver shall be approved by the Court.

18. Counterparts. This Agreement may be executed and delivered in two or more counterparts, each of which when so executed and delivered shall be the original, but such counterparts together shall constitute but one and the same instrument. The Agreement shall be final and binding upon the execution and delivery of the Agreement by all Parties. It is specifically agreed by all Parties that a facsimile or electronic mail copy of this Agreement shall

have the same effect and may be accepted with the same authority as the original, and that this Agreement may be executed electronically and in counter-parts.

19. Rule 9019 Motion. The Debtors and the Committee shall seek approval of this Agreement by the Bankruptcy Court pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.

20. Preservation of Claims and Defenses. If the Bankruptcy Court declines to enter an order approving this Agreement or the Effective Date does not occur, then:

(a) The Agreement shall be deemed null and void;

(b) The Parties shall not be deemed to have waived any right or to have settled any controversy between the Parties that existed before the execution of the Agreement;

(c) The Parties shall be restored to their respective positions immediately before the execution of the Agreement;

(d) Neither this Agreement nor any exhibit, document, or instrument delivered hereunder, nor any statement, transaction, or proceeding in connection with the negotiation, execution, or implementation of this Agreement, shall be (i) with prejudice to any person or Party hereto, (ii) deemed to be or construed as an admission by any Party of any act, matter, proposition, or merit or lack of merit of any claim or defense, or (iii) referred to or used in any manner or for any purpose in any subsequent proceeding in this action, or in any other action in any court or in any other proceeding; and

(e) All negotiations, proceedings, and statements made in connection with the negotiation of this Agreement (i) shall be without prejudice to any person or party herein, (ii) shall not be deemed as or construed to be an admission by any party herein of any act, matter, proposition, or merit or lack of merit of any claim or defense, and (iii) shall not be offered in evidence in this or any other action or proceeding, except in connection with this Agreement or the enforcement thereof.

21. Dismissal of Pending Adversary Proceedings. Attached hereto as Exhibit A are Final Orders in each of the Adversary Proceedings, which the Committee will file within seven (7) calendar days from the date the Debtors receive the full amount of the Settlement Payment.

22. Notices. All notices, requests and other communications pursuant to this Agreement shall be in writing and shall be deemed to have been duly given, if delivered in person or by courier, telegraphed, telexed or by facsimile transmission or sent by express, registered or certified mail, postage prepaid, addressed as follows:

If to Debtors and Committee:

Vivaro Corporation
1250 Broadway, 25th Floor
New York, New York 10001
Attn: Philip J. Gund

with a copy to:

Cozen O'Connor
277 Park Avenue
New York, NY 10172
Attn: Frederick E. Schmidt, Esq.

-and-

Arent Fox LLP
1675 Broadway
New York, New York 10019
Attn: George P. Angelich, Esq.

If to Claimants:

Marcatel Com, S.A. de C.V.
Ave. San Jeronimo 210 Pte.
Colonia San Jeronimo
Monterrey, N.L. Mexico, 64640
Attn: Gustavo M. de la Garza Ortega

Unifica Contact Media, S.A. de C.V.
Ave. San Jeronimo 210 Pte.
Colonia San Jeronimo
Monterrey, N.L. Mexico, 64640
Attn: Gustavo M. de la Garza Ortega

Gusma Investments, L.P.
10190 Katy Freeway
Suite 410
Houston, TX 77043
Attn: Gustavo M. de la Garza Ortega

Gusma Properties, L.P.
10190 Katy Freeway
Suite 410
Houston, TX 77043
Attn: Gustavo M. de la Garza Ortega

Marcatel International, LLC
10190 Katy Freeway
Suite 410
Houston, TX 77043
Attn: Gustavo M. de la Garza Ortega

Gustavo M. de la Garza Ortega
Marcatel Com, S.A. de C.V.
Ave. San Jeronimo 210 Pte.

Colonia San Jeronimo
Monterrey, N.L. Mexico, 64640

Gustavo de la Garza Flores
Marcatel Com, S.A. de C.V.
Ave. San Jeronimo 210 Pte.
Colonia San Jeronimo
Monterrey, N.L. Mexico, 64640

Roberto X. Margain
Marcatel Com, S.A. de C.V.
Ave. San Jeronimo 210 Pte.
Colonia San Jeronimo
Monterrey, N.L. Mexico, 64640

Robert K. Lacy
12122 Westwood Hills Road
Herndon, Virginia 20171

Victor E. Robles Concha
10314 Monticello Hill Dr.
Katy, Texas 77494

Pedro Salinas Arrambide
Salinas Arrambide & Asociados
No. 1870
Col Lomas de Chapultepec
C.P. 11000
Delegacion Miguel Hidalgo
Mexico, Distrito Federal

with a copy to:

Tarter Krinsky & Drogin LLP
1350 Broadway
11th Floor
New York, New York 10018
Attn: Rocco A. Cavaliere, Esq.

If to the D&O Carriers:

Hiscox Insurance Company
Concourse Parkway, Suite 2150
Atlanta, GA 30328
Attn: Christopher McNulty, Esq.,
Senior Vice President – Atlanta Claims Division

State National Insurance Company
c/o Starstone
Harborside Financial Center
Plaza 5
Suite 2600
Jersey City, NJ 07311
Attn: Margaret Porcelli

with a copy to:

Peabody & Arnold LLP
600 Atlantic Ave
Boston, MA 02210-2261
Attn: E. Joseph O'Neil, Esq.
Robert A. McCall, Esq.
Counsel to Hiscox Insurance Company

Ropers Majeski Kohn & Bentley PC
750 Third Avenue 25th Floor
New York, NY 10017
Attn: Geoffrey Heineman, Esq.
Amber W. Locklear, Esq.
Counsel to State National Insurance Company and Torus US Intermediaries, Inc.

IN WITNESS WHEREOF, the Parties have executed this instrument on the dates indicated below.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Vivaro Corporation

By: /s/ Philip J. Gund
Printed Name: Philip J. Gund
Title: CRO
Date: December 24, 2015

STi Prepaid LLC

By: /s/ Philip J. Gund
Printed Name: Philip J. Gund
Title: CRO
Date: December 24, 2015

Kare Distribution, Inc.

By: /s/ Philip J. Gund
Printed Name: Philip J. Gund
Title: CRO
Date: December 24, 2015

STi Telecom, Inc.

By: /s/ Philip J. Gund
Printed Name: Philip J. Gund
Title: CRO
Date: December 24, 2015

TNW Corporation

By: /s/ Philip J. Gund
Printed Name: Philip J. Gund
Title: CRO
Date: December 24, 2015

Marcatel Com S.A. de C.V.

By: /s/ Gerardo A. Medellin
Printed Name: Gerardo A. Medellin
Title: General Counsel
Date: December 23, 2015

Unifica Contact Media de C.V. f/k/a Organizacion Radio Beep, S.A. de C.V.

By: /s/ Gerardo A. Medellin
Printed Name: Gerardo A. Medellin
Title: General Counsel
Date: December 23, 2015

Gusma Properties, L.P. (As to Paragraphs 1, 4, 8–18, 20–22 Hereof)

By:/s/ Gustavo M. de la Garza Ortega
Printed Name: Gustavo M. de la Garza Ortega
Title: Sole Manager
Date: December 23, 2015

Gusma Investments, L.P. (As to Paragraphs 1, 4, 8–18, 20–22 Hereof)
By:/s/ Gustavo M. de la Garza Ortega

Printed Name: Gustavo M. de la Garza Ortega
Title: Sole Manager
Date: December 23, 2015

Progress International, LLC

By:/s/ Gustavo M. de la Garza Ortega
Printed Name: Gustavo M. de la Garza Ortega
Title: Sole Manager
Date: December 23, 2015

The Official Committee of Unsecured Creditors

By: /s/ John J. Ross
Printed Name: John J. Ross, in his capacity as Committee Member
Title: Committee Member
Date: December 24, 2015

/s/ Gustavo M. de la Garza Ortega
Gustavo M. de la Garza Ortega

/s/ Gustavo M. de la Garza Flores
Gustavo M. de la Garza Flores

/s/ Roberto X. Margain
Roberto X. Margain

/s/ Robert K. Lacy
Robert K. Lacy

/s/ Victor E. Robles Concha
Victor E. Robles Concha

____
Pedro Salinas Arrambide

Exhibit A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
VIVARO CORPORATION, *et al.*,	Case No. 12-13810 (MG)
Debtors.	(Jointly Administered)
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF VIVARO CORPORATION, *et al.*, Plaintiff,	Adv. Pro. No. 15-01124 (MG)
v.	
GUSTAVO M. DE LA GARZA ORTEGA, GUSTAVO DE LA GARZA FLORES, ROBERTO X. MARGAIN, ROBERT K. LACY, VICTOR E. ROBLES CONCHA, PEDRO SALINAS ARRAMBIDE, HISCOX INSURANCE COMPANY, INC., AND STATE NATIONAL INSURANCE COMPANY Defendants.	

FINAL ORDER FOR DISMISSAL WITH PREJUDICE

Based upon the Settlement Agreement (the "Agreement") entered by and between (i) Plaintiff and Debtors; and (ii) Defendants Gustavo M. de la Garza Ortega, Gustavo M. de la Garza Flores, Roberto X. Margain, Robert K. Lacy, Victor E. Robles Concha, and Pedro Salinas Arrambide (collectively, the "Defendants", together with the Plaintiff and Debtors, the "Parties") which was approved by this Court's *Order Approving Settlement* [ECF No. __], it is hereby

ORDERED that the Adversary Proceeding in its entirety and all claims against all the Defendants in the Adversary Proceeding, including Hiscox Insurance Company, Inc. and State National Insurance Company, are hereby dismissed with prejudice; and it is further

ORDERED that the Parties will pay their own respective costs of court in the Adversary Proceeding and their own attorneys' fees incurred in connection with the Adversary Proceeding, except for any necessary payment to enforce the Settlement Agreement.

Dated: New York, New York
____________, 2016

____
HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
VIVARO CORPORATION, *et al.*,	Case No. 12-13810 (MG)
Debtors.	(Jointly Administered)
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF VIVARO CORPORATION, *et al.*,	
Plaintiff,	Adv. Pro. No. 15-01125 (MG)
v.	
MARCATEL COM, S.A. DE C.V., ORGANIZACION RADIO BEEP S.A. DE C.V. N/K/A UNIFICA CONTACT MEDIA S.A. DE C.V., and PROGRESS INTERNATIONAL LLC,	
Defendants.	

FINAL ORDER FOR DISMISSAL WITH PREJUDICE

Based upon the Settlement Agreement (the "Agreement") entered by and between (i) Plaintiff and Debtors; and (ii) Defendants Marcatel Com, S.A. de C.V., Organizacion Radio Beep S.A. de C.V. n/k/a Unifica Contact Media S.A. de C.V., and Progress International LLC (collectively, the "Defendants", together with the Plaintiff and Debtors, the "Parties") which was approved by this Court's *Order Approving Settlement* [ECF No. __], it is hereby

ORDERED that the Adversary Proceeding in its entirety and all claims against the Defendants in the Adversary Proceeding are hereby dismissed with prejudice; and it is further

ORDERED that the Parties will pay their own respective costs of court in the Adversary Proceeding and their own attorneys' fees incurred in connection with the Adversary Proceeding, except for any necessary payment to enforce the Settlement Agreement.

Dated: New York, New York
____________, 2016

____
HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUGE

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: VIVARO CORPORATION, *et al.*, Debtors.	Chapter 11 Case No. 12-13810 (MG) (Jointly Administered)
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF VIVARO CORPORATION, *et al.*, Plaintiff, v. GUSTAVO M. DE LA GARZA ORTEGA, *et al.*, Defendants.	Adversary Proceeding No. 15-01124 (MG)
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF VIVARO CORPORATION, *et al.*, Plaintiff, v. MARCATEL COM S.A. de C.V., *et al.*, Defendants.	Adversary Proceeding No. 15-01125 (MG)

ORDER APPROVING SETTLEMENT

Upon the joint motion by the Official Committee of Unsecured Creditors of Vivaro Corporation, *et al.* ("Plaintiff") and the Debtors in the underlying bankruptcy proceedings (the "Settlement Motion")[1] for an order under Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") authorizing and approving the Settlement Agreement (the "Settlement Agreement"), annexed to the Settlement Motion as Exhibit A, which provides a

[1] To the extent not otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Settlement Motion.

global settlement between the Committee and the Defendants[2] of Adversary Proceeding No. 15-01124 (MG) (the "D&O Action"), Adversary Proceeding No. 15-01125 (MG) (the "Preference Action", and together with the D&O Action, the "Adversary Proceedings"), and of all disputes concerning the claims scheduled or asserted by or on behalf of the Debtors' insiders against these estates; and the Court having jurisdiction to consider the Settlement Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and upon consideration of the Settlement Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court finding that reasonable notice of the Settlement Motion was provided to all necessary parties; and the Court having determined that no other or further notice of the Settlement Motion is required; and the Parties having consented to the entry of final orders or judgments by this Court; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and upon consideration of two declarations admitted into evidence: (i) Declaration of William K. Lenhart In Support of Joint Motion for Approval of the Settlement Agreement Under Rule 9019 of the Federal Rules of Bankruptcy Procedure [ECF No. ___], and (ii) Declaration of Philip Gund In Support of Joint Motion for Approval of the Settlement Agreement Under Rule 9019 of the Federal Rules of Bankruptcy Procedure [ECF No. ___]; and the Court having reviewed the Settlement Motion; and approval of the Settlement Agreement being within the sound discretion of the Court; and no objections to the relief sought in the Settlement Motion having been timely filed; and the Agreement being fair and equitable, in the best interests of the Debtors' estates and their creditors, and above the lowest point in the range of reasonableness; and for the reasons set forth on the record at the hearing held on January 27, 2015; and after due deliberation and sufficient cause appearing therefor, it is hereby

[2] The term "Defendants" refers collectively to the D&O Defendants and the Preference Defendants.

ORDERED that the Settlement Agreement and all of the releases and other provisions therein are approved under Bankruptcy Rule 9019, and the terms of the Settlement Agreement, annexed to the Settlement Motion as Exhibit A, are fully incorporated herein, and the Parties are authorized to take all actions provided under the Settlement Agreement; and it is further

ORDERED that this Order shall be in full force and effect upon its entry; and it is further

ORDERED that, to the extent this Order is inconsistent with the terms and conditions of the Settlement Agreement, the terms and conditions of the Settlement Agreement shall control.

Dated: New York, New York
____________, 2016

____
UNITED STATES BANKRUPTCY JUDGE

ARENT FOX LLP
George P. Angelich
David Wynn
Eric Roman
George V. Utlik
1675 Broadway
New York, NY 10019
(212) 484-3900

Counsel for the Official Committee Of Unsecured Creditors

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: VIVARO CORPORATION, *et al.*, Debtors.	Chapter 11 Case No. 12-13810 (MG) (Jointly Administered)
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF VIVARO CORPORATION, *et al.*, Plaintiff, v. GUSTAVO M. DE LA GARZA ORTEGA, *et al.*, Defendants.	Adversary Proceeding No. 15-01124 (MG)
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF VIVARO CORPORATION, *et al.*, Plaintiff, v. MARCATEL COM S.A. de C.V., *et al.*, Defendants.	Adversary Proceeding No. 15-01125 (MG)

DECLARATION OF WILLIAM K. LENHART IN SUPPORT OF JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT UNDER RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

Pursuant to 28 U.S.C. § 1746, I, William K. Lenhart, declare under penalty of perjury that:

1. I was the partner in charge of the restructuring practice at BDO USA, LLP, a Delaware registered limited liability partnership, a national accounting, tax, and consulting firm with offices located at 100 Park Avenue, New York, NY and other locations through the United States, with over 25 years of accounting, bankruptcy, and insolvency experience. I retired as a partner of BDO, effective February 28, 2013, and remained employed by BDO until June 30, 2013.[1] I was the lead partner for BDO in its capacity as a financial advisor to the Official Committee of Unsecured Creditors (the "Committee" or "Plaintiff") of the above-captioned debtors and debtors in possession (the "Debtors"). Thereafter, I remained involved in these chapter 11 cases in my new capacity as an independent contractor of BDO. Thus, I have been involved in the Debtors' chapter 11 cases from the beginning and have relevant expertise and personal knowledge about these cases.

2. I submit this declaration ("Declaration") in support of the joint motion (the "Motion")[2] of the Committee and the Debtors for approval, under Rule 9019 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rule"), of a settlement agreement attached to the Motion as Exhibit A (the "Settlement Agreement"), which contains a global settlement between the

[1] *See* Affidavit of Marlene H. Rabinowitz in Support of the Supplemental Disclosure Statement Regarding Retention of BDO Consulting, a Division of BDO USA, LLP, as Financial Advisors of the Official Committee of Unsecured Creditors [Bankruptcy Case, ECF No. 420] at ¶¶ 3-5.

[2] Capitalized terms used herein but not defined shall have the meaning ascribed to them in the Motion.

Committee and the Defendants[3] of the Adversary Proceeding No. 15-01124 (MG) (the "D&O Action") and Adversary Proceeding No. 15-01125 (MG) (the "Preference Action"), and of all disputes concerning the claims scheduled or asserted by or on behalf of the Debtors' insiders against these estates. In this Declaration, I address the Committee's options, process and benefits of the settlement under the Agreement.

3. On behalf of the Committee, I participated in negotiations and discussions with the Committee's counsel, the Committee's expert witness, the Debtors' CRO and counsel, counsel for the Defendants, and counsel for the Debtors' D&O carriers, before and after complaints were filed in the D&O Action and the Preference Action. I also participated in the mediation of the D&O Action held before the Honorable Robert D. Drain, which resulted in the settlement. I am familiar with the Committee's claims against the Defendants and the Defendants' defenses raised in the D&O Action and Preference Action. I have knowledge of the facts and representations set forth in the Motion regarding the terms of the Settlement Agreement, the Committee's investigation of the Debtors' books and records, and the relevant factual background set forth in the Motion.

4. The Settlement Agreement was reached by the parties after good faith, arm's-length negotiations and was signed by and between (i) both the Debtors and the Committee; and (ii) the Defendants, each of which is represented by their independent, experienced and competent legal counsel. I respectfully submit that the Settlement Agreement represents a reasonable resolution of the parties' legal and factual disputes (as discussed in detail in the Motion), provides for the immediate $4,035,000 settlement payment to the Debtors' estates, plus the Defendants' waiver of claims against these estates with a face amount of over $13 million,

[3] The term "Defendants" refers collectively to the D&O Defendants and the Preference Defendants, as such terms are defined in the Motion.

and contains releases and waivers with prejudice of all claims that were or could have been brought by the Committee on behalf of these estates against the Defendants (as further set forth in the Settlement Agreement). I therefore respectfully submit that the Agreement represents a fair and equitable compromise, is in the best interest of the Debtors' estates and all of their creditors, and therefore should be approved by the Court.

A. The Settlement Is a Product of the Mediation before Judge Drain

5. The proposed settlement is a product of the mediation held before the Honorable Robert D. Drain, which focused on addressing the D&O claims between the Committee and the Debtors' directors and officers. In addition to the Committee's professionals, the mediation was attended by a member of the Committee who had the requisite settlement authority. Before the mediation, counsel for the Committee and counsel for certain of the Debtors' insiders resolved the Preference Action, but the preference settlement was conditioned on a global settlement with the D&O Defendants. Entering the mediation, the Committee essentially had two options: (a) to settle both the D&O Action and the Preference Action for a $4,035,000, plus waiver, reclassification and reduction of certain claims of the Defendants against these estates; or (b) to litigate both the D&O Action and the Preference Action.

6. The mediation concluded after a full day of discussions and several follow up days with terms that were approved by Judge Drain and memorialized in the Settlement Agreement, which provides, among other things, for:

- payment to the Debtors of $4,035,000;
- waiver of $157,791.30 in administrative expense claims;
- reclassification of $5,855.00 in administrative expense claims to general unsecured claims;

- reduction of $2,931.00 in priority unsecured claims; and
- waiver and release by the Defendants of their general unsecured claims against the Debtors and the Debtors' estates with a face amount of over $13 million[4].

7. The benefits that the proposed mediated settlement would provide to the Debtors' estates and their creditors are substantial. The $4,035,000 settlement payment, combined with the Defendants' waiver of claims, will provide these estates with sufficient funds with which to propose a confirmable plan which should allow for a distribution to unsecured creditors.[5]

8. The benefits provided by the proposed settlement substantially outweigh the significant costs and litigation risks the Committee would have to face in pursuing the D&O Action and the Preference Action against the Defendants. Both the breach of fiduciary duty and preference claims, for example, would require document discovery and depositions of parties and non-parties located in Mexico, at least some of whom would require service of process to be effectuated under the Hague Convention, based upon consultation with the Committee's counsel. In addition, the Defendants would have the incentive to heavily litigate every issue, given their access to the Debtors' $10 million "wasting"[6] D&O insurance policy for defense costs, thereby significantly increasing the potential costs as well as the length of litigation.

[4] Pursuant to the Settlement Agreement Robert K. Lacy shall have an allowed general unsecured claim in the amount of $196,356.00 and an allowed priority unsecured claim in the amount of $8,794.00. Victor E. Robles Concha shall have an allowed administrative expense claim of $10,624.76 and an allowed general unsecured claim in the amount of $5,885.00. The allowed claims of Messrs. Lacy and Robles arise out of their respective employment agreements with the Debtors.

[5] The magnitude of any distributions to general unsecured creditors under a plan will depend upon the final amount of allowed general unsecured claims and other factors that will be more fully explained in a joint plan of liquidation and disclosure statement.

[6] The D&O Policies are "wasting" policies so that every dollar paid to the D&O Defendants and their counsel for payment of legal fees and expenses incurred in connection with the D&O Action reduces the amount of coverage available for payment of the claims asserted against the D&O Defendants in the D&O Action.

B. **The Settlement Is Fair and Equitable and Does Not Fall Below the Lowest Point in the Range of Reasonableness**

9. The proposed global settlement of the D&O Action and Preference Action is fair and equitable and does not fall below the lowest point in the range of reasonableness. The settlement achieves the intended goal of supplementing these estates' cash position to enable them to propose a plan that should provide for a distribution to general unsecured creditors. Specifically, and as described further below, the benefit of accepting an immediate $4,035,000 payment, together with the waiver and reclassification of approximately $164,000 in administrative expense claims, the reduction of $2,931.00 in priority unsecured claims, and the waiver of general unsecured claims with a face amount of over $13 million, warrants approval by this Court, particularly giving weight to the significant risks and hurdles the Committee would have to overcome if prosecution of both litigations were to continue.

1. **Accepting the Settlement Is Beneficial and Preferred to Continued Litigation (*Iridium* Factors #1, 2)**

10. The settlement is largely based on the recommendation made by the Honorable Robert D. Drain at the October 20, 2015 mediation. The cash infusion to the Debtors' estates of $4,035,000, plus waiver and reclassification of certain claims (i.e., waiver of $157,791.30 in administrative expense claims, reclassification of $5,855.00 in administrative expense claims to general unsecured claims, the reduction of $2,931.00 in priority unsecured claims, and waiver and release of over $13 million in general unsecured claims) will immediately benefit these estates by both increasing the Debtors' cash position while simultaneously reducing the amount of administrative, priority and general unsecured claims asserted against these estates. Thus, the settlement will bring these estates to the point where the Debtors and the Committee can propose

a confirmable chapter 11 plan which should result in a distribution to general unsecured creditors.[7]

11. The global settlement also ends the high cost and risk of continued litigation. Specifically, the balance between closure of the litigation versus the uncertainty of future success sharply tips in favor of settlement approval. Not only is the $4,035,000 a reasonable settlement amount, but it ends the risk and cost of the litigation proceedings. This is evident when one considers the myriad of difficulties the Committee faces with the D&O Action. First, the D&O claims are governed by Delaware law. To succeed on the merits, the Committee would need to show the actions of the Debtors' Board of Directors fall outside the business judgment rule. This makes the claims challenging and likely would require expert testimony to establish breach of fiduciary duties and violation of duty of care. Litigation of the claims and defenses would be factually intense and sharply contested, making the action protracted and expensive. The resulting litigation would have to occur in the context of claims involving the foreign Defendants. The case therefore poses additional costs attendant to foreign travel. This also adds significant additional litigation costs and time to fully adjudicate the proceeding. For example, service of the complaint under the Hague Convention alone would be costly and could take between four to six months or longer to effectuate. Hague Convention procedures would also likely be necessary to effectuate discovery on non-parties in Mexico, making the collection of critical evidence both costly and uncertain. Moreover, even if the Committee were able to successfully obtain a final judgment against the D&O Defendants in the D&O Action, collection of that judgment would require overseas enforcement with limited assurance of success.

[7] *See supra* n.5.

12. The Debtors have primary and excess D&O insurance coverage of $10 million. The proceeds available under the policies, however, are reduced dollar-for-dollar by defense costs that would likely consume considerable amounts of the $10 million face amount of the policies. In fact, before all of the complaints have even been served, the D&O Defendants sought and were allowed a $250,000 charge against the policies for accrued defense costs. Indeed, the litigations to date have been expensive and time-consuming, as exemplified by the Defendants' objections, among other things, to the Committee's standing motion, the Committee's settlement with Leucadia National Corporation, and the Defendants' motion to convert these Chapter 11 Cases to chapter 7 cases. There is every indication the continued prosecution of the D&O Action and the Preference Action would be very expensive and could consume substantial amounts of the remaining D&O policies. Hence, approval of the global settlement will avoid future litigation expense and assure an immediate $4,035,000 recovery.

13. If the case were to proceed, the Committee could decide to hire contingency counsel to prosecute the action. Contingency counsel would likely demand a net fee equal to 33 to 40% of the recovery after expenses. If, hypothetically, the litigations were to continue with contingency fee counsel, and if the Committee is able to settle the breach of fiduciary duty claims against the D&O Defendants for $6 million (subject to the funds remaining available under the D&O "wasting" D&O Policies), the net estimated recovery to the Debtors' estates would be roughly $4 million (assuming a 33% contingency fee) or $3.6 million (assuming a 40% contingency fee). Thus, a 2015 proposed $4 million settlement is equal to or better than a deferred $6 million settlement at some future date. An approved settlement allows receipt of the funds now without further litigation risk or delay. These are but a handful of the impediments the Committee would face in the event it determined to pursue litigation. These factors, among

others, were vetted at the October 20, 2015 mediation and likely contributed to Judge Drain's recommendation to all parties that the $4 million settlement was reasonable and fair.

14. Moreover, the $35,000 payment to settle the Preference Action, plus waiver of $157,791.30 in administrative expense claims and waiver of over $13 million in general unsecured claims represents a reasonable recovery on the Plaintiff's claims against the Preference Defendants. For settlement purposes, as part of our analysis as the Committee's financial consultant, we estimated the value of the preference claims at not less than $3.2 million, after application of the "new value" defense. However, the ability to actually recover $3.2 million in the Preference Action is premised on the success on the merits (including defeating the Preference Defendants' alleged "ordinary course of business" defense) and ability to recover the transfers and to collect the judgment from the foreign Defendants in Mexico who, on information and belief, lack sufficient liquidity and assets to satisfy a sizeable judgment. Thus, continued litigation of the preference claims present similar risks, costs and collections issues as described above in connection with the D&O Action.

15. It is important to note that the Committee views the $4,035,000 settlement and waiver of more than $13,000,000 of claims as a fair resolution to all D&O and preference claims in the aggregate because the Defendants are basically the same entities or individuals behind the entities and are represented by the same counsel.

2. **The Settlement Will Enhance these Estates' Ability to Provide a Distribution to the Creditors Under a Plan and Is Supported by All Known Interested Parties (*Iridium* Factors #3, 4)**

16. The Settlement is in the best interest of these Debtors' estates and their creditors. As referenced above, the settlement enables the Debtors and Committee to propose a confirmable plan of liquidation. The settlement will result in an immediate cash infusion to the Debtors' estates in the amount of $4,035,000, plus waiver and reclassification of certain claims

(i.e., waiver of $157,791.30 in administrative expense claims, reclassification of $5,855.00 in administrative expense claims to general unsecured claims, the reduction of $2,931.00 in priority unsecured claims, and waiver and release of over $13 million in general unsecured claims) that will reduce the claims pool and will thereby enable the Debtor to propose a confirmable plan of liquidation.

17. The settlement is supported by the Committee, the Debtors, and the Defendants. Both the primary and excess D&O carriers also support the settlement. Further, no known constituencies oppose the settlement. When the Standing Order was entered, it granted to the Committee authority to initiate, file, and settle claims. Once this settlement is approved, the Committee and the Debtors will turn to proposing a confirmable plan with a creditor distribution.[8]

3. The Competence of Counsel, the Scope of the Releases and the Extent to which the Settlement <u>Is the Product of Arm's Length Negotiations (*Iridium* Factors #5, 6, 7)</u>

18. Each of these factors is established. First, the parties are separately represented by experienced bankruptcy counsel: the Committee (Arent Fox) and the Debtors (Cozen O'Connor). Second, the settlement was supported by Judge Drain at the mediation as being a fair and reasonable resolution of the parties' disputes. Third, the Settlement Agreement contains certain customary releases and waivers of all claims. In addition, the Defendants agreed to irrevocably waive their rights to file or otherwise assert any other claim that arises or arose prior to the Effective Date, as such term is defined under the Settlement Agreement, in the Bankruptcy Court or any other forum, whether within or outside the United States. The releases and waivers

[8] It is the Committee's view that the Defendants would have likely voted against any chapter 11 plan and due to the size and amount of their claims would have rendered plan confirmation difficult or impossible. Thus, the waiver of claims presents an important step in removing obstacles to confirmation and distribution. In addition, without the Defendants opposing confirmation, the costs of confirmation should be significantly less than if they did not waive their claims.

of claims contained in the Settlement Agreement do not apply to or benefit any entity other than the parties to the Settlement Agreement and their professionals. Thus, the releases and waivers are reasonable and should be approved.

C. <u>Conclusion</u>

19. In summary, and as further set forth in the Motion, the totality of the record demonstrates that the Motion should be granted as it is in the best interests of the Debtors' estates and all of the Debtors' creditors. The proposed settlement is fair and equitable and in the best interests of these Debtors' estates and their creditors and falls above the lowest point in the range of reasonableness. The proposed settlement is in line with the Committee's strategy to achieve administrative solvency of the Debtors' estates and to provide recovery for these estates' general unsecured creditors. Approval of the settlement would result in a substantial cash infusion to these estates and a significant reduction in the administrative, priority and general unsecured claims pools.

20. As a result, I respectfully submit that the Settlement Agreement should be approved by the Court.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
December 28, 2015

/s/ William K. Lenhart
William K. Lenhart

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: VIVARO CORPORATION, et al., Debtors.	Chapter 11 Case No. 12-13810 (MG) (Jointly Administered)
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF VIVARO CORPORATION, *et al.*, Plaintiff, v. GUSTAVO M. DE LA GARZA ORTEGA, *et al.*, Defendants.	Adversary Proceeding No. 15-01124 (MG)
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF VIVARO CORPORATION, *et al.*, Plaintiff, v. MARCATEL COM S.A. de C.V., *et al.*, Defendants.	Adversary Proceeding No. 15-01125 (MG)

DECLARATION OF PHILIP J. GUND IN SUPPORT OF JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT <u>UNDER RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE</u>

Philip J. Gund, declares, under penalty of perjury, as follows:

1. I am the Chief Restructuring Officer of Vivaro Corporation and its related debtors and debtors in possession (collectively, the "Debtors") and submit this declaration in connection with the joint motion (the "Motion")[1] of the Debtors and the Official

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Committee of Unsecured Creditors of the Debtors (the "Committee" or "Plaintiff") seeking approval, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, of a settlement agreement attached to the Motion as Exhibit A (the "Settlement Agreement"), which provides a global settlement betpween the Committee and the Defendants[2] of Adversary Proceeding No. 15-01124 (MG) (the "D&O Action"), Adversary Proceeding No. 15-01125 (MG) (the "Preference Action"), and of all disputes concerning the claims scheduled or asserted by or on behalf of the Debtors' insiders against these estates.

2. The purpose of this declaration is to advise the Court of the current status of the claims against the Debtors' estates and the impact that the proposed settlement would have on the Debtors' financial ability to propose a confirmable plan.

3. Below is a chart containing the different types of claims that have been filed and/or scheduled in these cases together with the Debtors' estimates, arrived at after having reviewed the claims and the Debtors' potential defenses thereto, of the amounts that will ultimately be allowed.

	Administrative[3]	Priority	Secured
Filed Claims	$7,868,058	$14,400,742	$23,830,472
Allowable - low	$2,738,180	$1,622,734	$0
Allowable – high	$2,980,177	$2,082,980	$0

4. The Debtors are currently holding cash in the amount of approximately $2,457,227. Based on the Debtors' estimates of allowable claims as set forth above, the additional $4,035,000 in proceeds, coupled with the cash already being held by the

[2] The term "Defendants" refers collectively to the D&O Defendants and the Preference Defendants, as such terms are defined in the Motion.

[3] Includes approximately $2,029,430 in invoiced but unpaid professional fees through October 31, 2015.

Debtors would, on both the low end and the high end of the claims estimates set forth above, fully cover all administrative and priority claims.

Dated: New York, New York
December 28, 2015

/s/ Philip J. Gund
Philip J. Gund

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