IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

JODI RILEY and ARLENE CZOP, Individually and as Class Representatives,	)	
Plaintiffs.	)	
vs.	)	
HOBOKEN WOOD FLOORING LLC; HWF HOLDINGS LLC; SPI FLOORS LLC; GARDEN STATE SUPPLIES LLC; WFA, LLC; and CODE HENNESSY& SIMMONS LLC	)	Case No. 2:07-cv-05666-JAG-MCA
	)	Jury Trial Demanded
Defendants.	)	

FIRST AMENDED CLASS ACTION COMPLAINT

Jodi Riley and Arlene Czop, individually and as class representatives for all similarly situated[1] non-bargaining unit former employees of Defendants and International Brotherhood of Teamsters, Local 311 ("Local 311") on behalf of its former bargaining unit employees of Defendants (collectively "Plaintiffs"), as and for their First Amended Complaint allege as follows:

[1] The undersigned counsel has presently been directly retained by 133 former employees of Hoboken Wood Flooring, LLC and its related entities. These names can be provided at the court's request.

INTRODUCTION

1. Plaintiffs Jodi Riley and Arlene Czop, and all other similarly situated non-bargaining unit members of the class they seek to represent, along with the former bargaining unit employees represented by Local 311, were employees of either Defendants Hoboken Wood Flooring LLC, HWF Holdings LLC, SPI Floors LLC, Garden State Supplies LLC and/or WFA, LLC, who were terminated without cause as part of, or as a result of, plant shutdowns and/or mass layoffs by Hoboken Wood Flooring LLC, HWF Holdings LLC, SPI Floors LLC, Garden State Supplies LLC, WFA, LLC and - - single employer - - Code, Hennessy & Simmons LLC, which took place concurrently with the shutdown of several of the Defendants' facilities in New Jersey, New York, Massachusetts and Maryland. The Defendants violated the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101 *et seq.* (the "WARN Act") by failing to give the Plaintiffs and other persons similarly situated, who are members of the Class the Plaintiffs seek to represent, at least 60 days prior notice of termination of their employment as required by the WARN Act. As a consequence, the Plaintiffs, and other members of the class they seek to represent, are entitled to recover from the Defendants, under the WARN Act, their wages and other employee benefits for 60 working days following the termination of their employment, which wages and benefits have not been paid.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. 1331, and 29 U.S.C. 2101 et seq., the Worker Adjustment Retraining and Notification Act.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

PARTIES

4. The Plaintiffs Jodi Riley and Arlene Czop, and other similarly situated non-bargaining unit members of the proposed class they seek to represent, had been employed by the Defendants, acting as a single employer, until their termination on various dates in later October 2007 or thereafter.

5. At all relevant times, Local 311 was a labor organization as defined by Section 301 of the Labor Management Relations Act ("LMRA") of 1947, 29 U.S.C. § 185, and the "affected [bargaining unit] employees'" "representative" as defined by 29 U.S.C. § 2101 of the WARN Act and maintains its office at 416 Eastern Boulevard, Baltimore, Maryland 21221.

6. Local 311 is authorized to maintain a lawsuit as an independent legal entity under § 502(d)(1) of ERISA 29 U.S.C. § 1132(d)(1).

7. Local 311, as representative of its bargaining unit employees, is authorized to bring suit on behalf of the employees it represents for violation of the WARN Act under 29 U.S.C. §2104(a)(5) against Defendants, who were acting as a single employer.

8. The Plaintiffs bring this action on their own behalf and, pursuant to the WARN Act, 29 U.S.C. § 2104(a)(5) and Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of all other persons similarly situated.

9. Hoboken Wood Flooring LLC ("Hoboken Wood Flooring") is a Delaware Corporation and a single employer as defined by the WARN Act.

10. HWF Holdings LLC is a Delaware Corporation and a single employer as defined by the WARN Act.

11. SPI Floors LLC is a Delaware Corporation and a single employer as defined by the WARN Act.

12. Garden State Supplies LLC is a Delaware Corporation and a single employer as defined by the WARN Act.

13. WFA, LLC is a Delaware Corporation and a single employer as defined by the WARN Act.

14. Code, Hennessy & Simmons LLC ("Code Hennessy") is an Illinois Corporation and a single employer as defined by the WARN Act.

FACTUAL ALLEGATIONS

15. Defendants employed in excess of 500 employees at various locations.

16. Defendants regularly conducted business throughout the United States including New Jersey.

17. Upon information and belief, in May 2005, Defendant Code Hennessy obtained an 80% stake in Hoboken Wood Flooring and its related entities.

18. Upon information and belief, throughout the period of its ownership, Code Hennessy provided significant input and oversight into the day to day operations of Hoboken Wood Flooring and its related entities.

19. Upon information and belief, Code Hennessy installed AEG Partners - a restructuring firm - as day to day overseers of Hoboken Wood Flooring's operations.

20. Upon information and belief, in or about June 2007, Code Hennessy instructed Hoboken Wood Flooring to offer retention bonuses to senior level executives who agreed to remain employed with Hoboken Wood Flooring through October 2007.

21. Upon information and belief, in the Spring of 2007, Code Hennessy engaged in discussions with Belknap, LLC regarding the potential sale of Hoboken Wood Flooring and its affiliated entities.

22. Upon information and belief, as part of the agreement between Belknap and Code Hennessy/Hoboken Wood Flooring regarding the sale negotiations, Belknap agreed not to hire any Hoboken Wood Flooring employees until after November 1, 2007.

23. Defendants recognized that it was likely they would be required to shut down on or about November 1, 2007.

24. Defendants willfully, negligently or recklessly failed to give adequate notice of the potential shutdown/layoffs as required by the WARN Act.

CLASS ALLEGATIONS

25. Plaintiffs Riley and Czop, on behalf of themselves and the members of the Class, repeat and re-allege the allegations of the preceding paragraphs as though fully restated herein.

A. DEFINITION OF THE CLASS

26. Plaintiffs Riley and Czop and the other similarly situated former employees constitute a class within the meaning of Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure.

27. The Class is defined as all of those non-bargaining unit employees who were employed by one of the Defendants in facilities with greater than 50 employees, and who became "affected employees" because they suffered "employment losses" as a direct and proximate

result of the plant closing and/or mass layoffs in October, 2007 or thereafter, and to whom the Defendants failed to provide notice in compliance with the WARN Act.

B. NUMEROSITY

28. The Class is so numerous as to render joinder of all members impracticable as there are currently over 133 non-bargaining unit former employees known to be in the Class and we believe there are several hundred other persons who are included in the Class. The identities of a majority of the Class members are unknown but are ascertainable through appropriate discovery.

C. EXISTENCE AND PREDOMINANCE OF COMMON ISSUES

29. Common questions of law and fact are applicable to all members of the Class.

30. The common questions of law and fact arise from and concern the following facts and actions:

a. all Class members enjoyed the protection of the WARN Act;

b. all Class members were employees of one of the Defendants;

c. the Defendants, as a single employer, terminated the employment of all the members of the Class;

d. the Defendants, as a single employer, terminated the employment of the members of the Class without providing at least 60 days' prior written notice as required by the WARN Act; and

e. the Defendants, as a single employer, failed to pay wages to the Class members and failed to provide other employee benefits for the 60 working day period following the respective terminations of their employment.

31. The questions of law and fact common to the members of the Class, as above noted, predominate over any questions affecting only individual members, and thus, this class action is superior to other available methods for the fair and efficient adjudication of this controversy.

D. TYPICALITY

32. Plaintiffs Riley and Czop's claims are typical of the claims of other members of the Class. All such claims arise out of the Defendants' failure to provide notice under the WARN Act and its failure to timely disclose to employees that they would be laid off as a result of the plant closing and/or mass layoffs. Plaintiffs and other Class members have suffered a common injury arising out of the Defendants' common course of conduct as alleged herein.

E. ADEQUATE REPRESENTATION

33. Plaintiffs Riley and Czop will fairly and adequately protect and represent the interests of the Class and have no interest antagonistic to or in conflict with those of other Class members.

34. Plaintiffs Riley and Czop have the time and resources to prosecute this action and have retained qualified counsel who have had extensive experience in matters involving employee rights, the WARN Act, and federal court litigation. Plaintiffs Riley and Czop intend to prosecute this action vigorously for the benefit of the class.

F. SUPERIORITY

35. A class action is superior to other available methods for a fair and efficient adjudication of this controversy because individual joinder of all members of the Class is impractical. Furthermore, damages suffered by members of the Class may be relatively small

when compared to the expense and burden of individual litigation, which would make it difficult or impossible for individual members of the Class to obtain relief. The interests of judicial economy favor adjudicating the claims of the Class on a classwide basis rather than an individual basis.

G. RISKS OF INCONSISTENT OR VARYING ADJUDICATION

36. Class treatment is proper in this proceeding in order to avoid inconsistent or varying adjudications with respect to individual Class members. Separate actions by individual members of the Class would create a risk that adjudication of disputed issues of law or fact as to some of the former non-bargaining unit employees would be binding upon other Class members not party to the adjudication, or would otherwise substantially impair or impede their ability to protect their interests.

37. Pursuant to Fed. R. Civ. P. 23(a), the Class meets all the requirements for class certification.

38. Class certification is also authorized by the WARN Act, 29 U.S.C. § 2104 (a)(5).

FIRST CLAIM

(Claim of the Named Plaintiffs)

39. The Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein. Plaintiff Local 311 brings this action pursuant to 29 U.S.C. § 2104(a)(5).

40. At all relevant times, Defendants had more than 100 full-time employees within the United States.

41. At all relevant times, Defendants employed more than 100 employees who, in the aggregate, worked at least 4,000 hours per week, exclusive of hours of overtime, within the United States.

42. At all times relevant, Defendants were "employers" as that term is defined in 29 U.S.C. § 2101(a)(1) and 20 C.F.R. § 639.3(a).

43. On or about October 25, 2007 and thereafter, Defendants effected one or more "plant closings" or "mass layoffs," as those terms are defined by 29 U.S.C. § 2101(a)(2) and (3).

44. The complete shutdown of the offices as "facilities or operating units" constitutes a "plant closing" within the meaning of 29 U.S.C. § 2101(a)(2), making all persons "affected employees" as a direct and proximate result of the failure to give notice as required under the WARN Act.

45. Alternatively, layoffs resulted in an employment loss of: more than 1/3 of the Defendants' employees, at pertinent "single sites of employment," and as such constituted "mass layoffs" within the meaning of 29 U.S.C. § 2101(a)(3) in that at least 33% of the total employees (excluding any part-time employees) and at least 50 employees (again excluding any part-time employees) experienced an "employment loss" at single sites of employment; or at least 500 employees (company-wide).

46. Plaintiffs Riley and Czop were employees of Defendants, as were the bargaining unit employees represented by Local 311.

47. Plaintiffs Riley and Czop were discharged on or about October 25, 2007 without cause on their part as part or as the reasonably foreseeable consequence of a plant closing and/or

mass layoffs ordered by Defendants and are "affected employees" within the meaning of 29 U.S.C. § 2101(a)(5).

48. Bargaining unit employees represented by Local 311 were terminated on or about November 5, 2007, without cause on their part as the reasonable foreseeable consequence of the mass layoff or plant closing ordered by Defendants and are "affected employees" within the meaning of 29 U.S.C. § 2101(a)(5).

49. The plant closings and/or mass layoffs resulted in "employment losses," as that term is defined by 29 U.S.C. § 2101(a)(6), at one or more single sites of employment. The Defendants failed to give written notice of the plant closing and/or mass layoffs to the "affected employees" and to the affected employees' representative, Local 311, as required by the WARN Act, 29 U.S.C. § 2102, prior to the actual date of the closings and/or layoffs.

50. The WARN Act required that Defendants give Plaintiffs Riley and Czop at least 60 days prior written notice of termination of employment. The WARN Act also required Defendants to give at least 60 days prior written notice to Local 311 of the termination of the employment of its bargaining unit members.

51. Prior to the termination of employment, the named Plaintiffs did not receive written notice from Defendants that complied with the requirements of the WARN Act.

52. Defendants failed to pay Plaintiffs Riley and Czop and those former bargaining unit employees represented by Local 311their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for 60 working days following the respective terminations of their employment.

53. Defendants also failed to make pension and 401(k) contributions as required, and failed to provide health insurance coverage and other employee benefits under ERISA to the Plaintiffs Riley and Czop and those former bargaining unit employees represented by Local 311 for 60 calendar days from and after the dates of the respective terminations of their employment.

54. Defendants' failure to provide Plaintiffs Riley and Czop with at least sixty (60) days prior written notice of the termination of employment and Defendants' failure to provide Local 311 with at least 60 days prior written notice of the termination of the employment of those bargaining unit employees represented by Local 311 was a violation of federal law, the WARN Act. The WARN Act specifically provides employers that violate the WARN Act are liable for "back pay" for each day of violation. 11 U.S.C. § 2104(a)(i)(A).

55. Because of Defendants' failure under the WARN Act, Plaintiffs Riley and Czop and the former bargaining unit employees represented by Local 311 are entitled to payment for their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for "the period for the violation, up to a maximum of sixty (60) days." 11 U.S.C. § 2104(a)(1).

56. As a result of Defendants' violation of the WARN Act, Plaintiffs Riley and Czop and the former bargaining unit employees represented by Local 311 have been damaged in amounts equal to the sum of: (a) their respective lost wages, salaries, commissions, bonuses, accrued holiday pay, accrued vacation pay, pension contributions and 401(K) contributions for 60 working days; (b) the health and medical insurance and other fringe benefits under the Employee Retirement Income Security Act ("ERISA") that they would have received or had the benefit of receiving, for a period of 60 working days after the date of their termination; and (c)

the medical expenses incurred during such period by them that would have been covered and paid under the Defendants' employee benefit plans had that coverage continued for that period.

SECOND CLAIM

(Claim of Other Similarly Situated Employees)

57. Plaintiffs Riley and Czop, on behalf of themselves and other non-bargaining unit employees of Defendants who were similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

58. At or about the time that the Plaintiffs Riley and Czop were discharged or shortly thereafter, Defendants also discharged hundreds of other non-bargaining unit employees who are not the named Plaintiffs ("Other Similarly Situated Former Employees") and who worked for one of the Defendants.

59. Pursuant to 29 U.S.C. § 2104(a)(5), the Plaintiffs Riley and Czop assert the claims raised in this proceeding on behalf of each of the Other Similarly Situated Former Employees for them or their benefit.

60. Each of the Other Similarly Situated Former Employees is similarly situated to the named Plaintiffs in respect to their rights under the WARN Act.

61. At all relevant times, Defendants employed more than 100 employees who, in the aggregate, worked at least 4,000 hours per week, exclusive of hours of overtime, within the United States.

62. At all times relevant, each Defendant was an "employer" as that term is defined in 29 U.S.C. § 2101(a)(1) and 20 C.F.R. § 639.3(a).

63. In or about October 25, 2007 and thereafter, Defendants effected one or more "plant closing" or "mass layoffs," as those terms are defined by 29 U.S.C. § 2101(a)(2) and (3).

64. The complete shutdown of the offices as "facilities or operating units" constitutes a "plant closing" within the meaning of 29 U.S.C. § 2101(a)(2), making all persons "affected employees" as a direct and proximate result of the failure to give notice as required under the WARN Act.

65. Alternatively, the layoffs by Defendants resulted in an employment loss of more than 1/3 of the Defendants' employees, at pertinent "single sites of employment," and as such constituted a "mass layoff" (or layoffs) within the meaning of 29 U.S.C. § 2101(a)(3) in that at least 33% of the total employees (excluding any part-time employees) and at least 50 employees (again excluding any part-time employees) experienced an "employment loss" at single sites of employment; or at least 500 employees (company-wide).

66. Defendants discharged each of the Other Similarly Situated Former Employees on or after October 25, 2007 without cause on his or her part as part of a plant closing and/or mass layoffs.

67. The plant closings and/or mass layoffs resulted in "employment losses," as that term is defined by 29 U.S.C. § 2101(a)(6), at one or more single sites of employment. The Defendants failed to give written notice of the plant closings and/or mass layoffs to the "affected employees" as required by the WARN Act, 29 U.S.C. § 2102, prior to the actual date of the closings and/or mass layoffs.

68. Defendants are required by the WARN Act to give each of the Other Similarly Situated Former Employees at least 60 days prior written notice of the termination of their employment.

69. Prior to the termination of their employment, the Other Similarly Situated Former Employees did not receive written notice from Defendants that complied with the requirements of the WARN Act.

70. Defendants failed to pay the Other Similarly Situated Former Employees their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for 60 working days following the respective terminations of their employment.

71. Defendants also failed to make the pension and 401(k) contributions and to provide health insurance coverage and other employee benefits under ERISA to the Other Similarly Situated Former Employees for 60 days from and after the dates of the respective terminations of their employment.

72. Defendants' failure to provide the Other Similarly Situated Former Employees with at least sixty (60) days prior written notice of the termination of their employment was a violation of federal law, the WARN Act. The WARN Act specifically provides employers that violate the WARN Act are liable for "back pay" for each day of violation. 11 U.S.C. § 2104(a)(i)(A).

73. Because of Defendants' failure under the WARN Act, the Other Similarly Situated Former Employees are entitled to payment for their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for "the period for the violation, up to a maximum of sixty (60) days." 11 U.S.C. § 2104(a)(1).

74. As a result of Defendants' violation of the WARN Act, the Other Similarly Situated Former Employees, have been damaged in amounts equal to the sum of: (a) their respective lost wages, salaries, commissions, bonuses, accrued holiday pay, accrued vacation

pay, pension contributions and 401 (k) contributions for 60 working days; (b) the health and medical insurance and other fringe benefits under the Employee Retirement Income Security Act ("ERISA") that they would have received or had the benefit of receiving, for a period of 60 working days after the dates of the respective terminations of their employment; and (c) the medical expenses incurred during such period by such persons that would have been covered and paid under the Defendants' employee benefit plans had that coverage continued for that period.

WHEREFORE, Plaintiffs' request the following relief:

A. Damages in favor of Plaintiffs Riley and Czop, each Other Similarly Situated Former Employee and each bargaining unit employee represented by Local 311, equal to the sum of: (a) unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay and pension and 401(k) contributions for 60 working days; (b) the benefit of health and medical insurance and other fringe benefits under ERISA for 60 working days; and (c) any medical or other expenses incurred during the 60 working days since the respective terminations of their employment that would have been covered and paid under the Defendants' employee benefit plans had that coverage continued for that period, all determined in accordance with the WARN Act, 28 U.S.C. § 2104 (a)(1)(A);

B. Certification that Plaintiffs Riley and Czop and the Other Similarly Situated Former Employees constitute a single class and that Charles A. Ercole of the law firm of Klehr, Harrison, Harvey, Branzburg & Ellers, LLP, Stuart J. Miller of the law firm of Lankenau & Miller, LLP, and Mary E. Olsen and M. Vance McCrary of the Gardner Firm, P.C. be appointed as co-lead Class Counsel;

C. Interest as allowed by law on the amounts owed under the preceding paragraphs;

D. Reasonable attorneys' fees and the costs and disbursements incurred in prosecuting this action, as authorized by the WARN Act, 29 U.S.C. 2104 (a)(6); and

E. Such other and further relief as this Court may deem just and proper.

Dated: January ___, 2008

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SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is made by and between Defendants Hoboken Wood Flooring LLC, HWF Holdings LLC, Garden State Supplies LLC, WFA, LLC, SPI Floors LLC, and Code, Hennessy & Simmons LLC, (collectively referred to herein as "Defendants"), and International Brotherhood Of Teamsters, Local 311 (the "Union") and Jodi Riley and Arlene Czop (the "Non-Union Plaintiffs"), individually and as Class Representatives, on behalf of all Plaintiffs and members of the Class of plaintiffs as defined in their First Amended Class Action Complaint in Case No. 2:07-CV-05666, before the Honorable Judge Joseph A. Greenway, Jr. in the U.S. District Court for the District of New Jersey.

WHEREAS, Defendants Hoboken Wood Flooring LLC and SPI Floors LLC closed their operations on or about October 29, 2007 and November 5, 2007, resulting in the termination of 481 employees at facilities with 50 or more employees;

WHEREAS, a First Amended Class Action Complaint alleging WARN Act claims was filed on or about January 10, 2008 in the United States District Court for the District of New Jersey, styled JODI RILEY and ARLENE CZOP, Individually and as Class Representatives, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 311 v. HOBOKEN WOOD FLOORING LLC; HWF HOLDINGS LLC;SPI FLOORS LLC; GARDEN STATE SUPPLIES LLC; WFA, LLC; and CODE HENNESSY & SIMMONS LLC, Case No. 2:07-CV-05666;

WHEREFORE, in order to avoid the time and expense of protracted litigation, intending to be legally bound, for and in consideration of the covenants and promises in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Definitions.** As used in this Agreement, the following terms have the meanings described below:

(a) "Bargaining Unit Employee" means any employee who was employed by Defendant SPI Floors LLC at any facility where more than 50 employees (excluding part-time employees as defined by the WARN Act) suffered an employment loss (as defined by the WARN Act) during or within 30 days of the time period between October 29, 2007 and November 5, 2007 and for whom the Union (as defined below) served as the collective bargaining representative. The Bargaining Unit Employees are listed on Exhibit A to this Agreement.

(b) "Settlement Class" means all non-bargaining unit employees who have not waived their rights under the WARN Act and who have not timely opted out of the Class who were employed by Hoboken Wood Flooring LLC or SPI Floors LLC at any facility where more than 50 employees (excluding part-time employees as defined by the WARN Act) suffered an employment loss (as defined by the WARN Act) during or within 30 days of the time period between October 29, 2007 and November 5, 2007. The "Class" includes, subject to waivers and timely opt-outs, the 411 named individuals listed on Exhibit B to this Agreement.

(c) "Class Counsel" shall mean the following: Charles A. Ercole of the law firm Klehr, Harrison, Harvey, Branzburg & Ellers, LLP, 260 South Broad Street, Fourth Floor, Philadelphia, PA 19102.

(d) "Class Member" or "Member of the Class" means an individual within the Class.

(e) "Defendants" means Hoboken Wood Flooring LLC, HWF Holdings LLC, Garden State Supplies LLC, WFA, LLC, SPI Floors LLC, and Code, Hennessy & Simmons LLC, collectively.

(f) "Fee Award" means an order of the Court making an award from the Settlement Fund to Class Counsel for their professional efforts and expenses incurred in initiating and prosecuting the Litigation, and to the Class Representatives for their services in assisting Class Counsel.

(g) "Final Judgment" means the issuance of Court orders in the Litigation which shall:

(i) Approve the Parties' settlement as fair, just, reasonable, and adequate;

(ii) Certify the Class as a settlement class pursuant to Rule 23 of the Federal Rules of Civil Procedure;

(iii) Dismiss with prejudice each and every claim raised in the Litigation against each and all Defendants;

(iv) Adjudge that the Union, the Non-Union Plaintiffs and Class Members have released the Released Claims against the Defendants and all Related Parties to the fullest extent permitted by law;

(v) Bar and permanently enjoin the Releasing Parties from prosecuting any Released Claims against Defendants and all Related Parties; and

(vi) Enter final judgment pursuant to Fed. R. Civ. P. 58.

(h) "Litigation" means the case now pending in the U.S. District Court for the District of New Jersey, with the caption Jodi Riley and Arlene Czop, Individually and as Class Representatives, International Brotherhood Of Teamsters, Local 311, Plaintiffs v. Hoboken Wood Flooring LLC; HWF Holdings LLC; SPI Floors LLC; Garden State Supplies LLC; WFA, LLC; and Code Hennessy & Simmons LLC, Defendants, Case No. 2:07-CV-05666.

(i) "Non-Union Plaintiffs" means Jodi Riley and Arlene Czop.

(j) "Notice of Class Action and Settlement" or "Notice" means a document to be drafted by Class Counsel, in consultation with counsel for the Defendants, and approved by the Court, by which the Settlement Class shall be notified of this Settlement Agreement and the Settlement Administration Plan, and given an opportunity to "opt out" of the Settlement Class. Counsel shall endeavor to agree on the terms of the Notice; any disagreement shall be resolved by the Court.

(k) "Payment Date" means the first date by which each and all of the following conditions have occurred:

(i) Final Judgment is entered in the Litigation;

(ii) Entry of an order finally disposing of the applications for fees and costs in the Litigation; and

(iii) The Final Judgment and the order(s) disposing of the applications for fees and costs in the Litigation have each become final because of the expiration of the time for reviews or appeals therefrom without any review or appeal having been taken or, if review or appeal of any of said judgments or orders, or any portion thereof, is sought by any person or entity, the final order and Final Judgment and the orders of dismissal with

prejudice have been fully and finally affirmed by the highest court to which such review or appeal is taken, or when a Stipulation of Dismissal with Prejudice signed by all parties is filed.

(l) "Person" means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives or assignees.

(m) "Related Parties" means each of a Defendant's past or present officers, directors, employees, partners, members, principals, agents, insurers, attorneys, accountants, consultants, advisors, auditors, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, or related or affiliated entities (including by way of example, as relates to Code Hennessy & Simmons LLC, any investment fund managed by it or its subsidiaries or otherwise affiliated with it).

(n) "Released Claims" shall mean the claims of the Union and each Bargaining Unit Employee they represent and each Class Member, for any alleged failure to provide adequate notice under the WARN Act and any claims arising out of the termination of their employment with Hoboken Wood Flooring, LLC and/or SPI Floors, LLC and/or the shutdown of Hoboken Wood Flooring, LLC and/or SPI Floors LLC, whether based on the WARN Act or any other federal, state or local law, regulation or ordinance. Not included in Released Claims are (i) any obligation created by or arising out of this Settlement; (ii) any rights that the Union or any Bargaining Unit Employee or any Class Member may have to continued medical coverage under COBRA; (iii) any rights that the Union or any Bargaining Unit Employee or any Class Member may have under a qualified or nonqualified retirement plan sponsored or maintained by any

Defendant (including, without limitation, any 401(k), deferred compensation, and supplemental retirement benefits); and (iv) any rights that the Union or any Bargaining Unit Employee or any Class Member may have to benefits or coverage under any employee welfare benefit plan (as that term is defined in Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended).

(o) "Releasing Parties" means all Non-Union Plaintiffs as defined in paragraph 1(i), above, all Class Members as defined in paragraphs 1(b) and 1(d), above and the Union and Bargaining Unit Employees as defined in Paragraphs 1(q) and 1(a), respectively, herein..

(p) "Settling Parties" or "Parties" means, collectively, each of the Defendants, the Non-Union Plaintiffs, Class Members and Union.

(q) "Union" means International Brotherhood Of Teamsters, Local 311.

(r) "Union Counsel" shall mean the following: Mary Olsen and Vance McCrary of the law firm The Gardner Firm, PC, 1119 Government Street, Post Office Drawer 3103, Mobile, AL 36652 and Stuart J. Miller of the law firm Lankenau & Miller, LLP, 132 Nassau Street, Suite 423, New York, NY 10038.

(s) "WARN Act Class Action Settlement Fund" means the proceeds paid by Defendants pursuant to this Agreement, to be deposited into an account in a reputable financial institution jointly agreed to by Defendants, Class Counsel and Union Counsel.

2. **Non-Admission by Defendants.** This Agreement constitutes the compromise and settlement of highly disputed claims. Nothing contained herein, nor any actions taken by any party hereto in connection herewith, shall constitute, be construed as, or be deemed to be, an admission of fault, liability or wrongdoing of any kind whatsoever on the part of any party hereto. All parties hereto expressly deny any fault, liability, or wrongdoing, and enter into this

settlement merely to avoid the expense of litigation. Defendants have denied and continue to deny all of the claims and contentions alleged by the Non-Union Plaintiffs, the Class and the Union in the Litigation and deny that these claims have merit. Defendants have expressly denied and continue to deny all charges of wrongdoing or liability against them arising out of any conduct, statements, acts, or omissions alleged, or that could have been alleged, on a class or individual basis in the Litigation. Defendants have further asserted and continue to assert that at all times, Defendants followed all applicable laws and collective bargaining agreements. Further, there has been no adverse determination by any court as to the merits of the claims asserted by the Non-Union Plaintiffs and/or Union against any of the Defendants. Nonetheless, Defendants have concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable for the Litigation to be fully and finally settled in accordance with this Agreement. Defendants have taken into account the uncertainty and risks inherent in any litigation, especially complex cases like this Litigation where the Non- Union Plaintiffs and Union are represented by experienced counsel.

3. **Claims of the Plaintiffs and Benefits of Settlement.** Class Counsel and Union Counsel have conducted discovery and investigation during the prosecution of the Litigation. This discovery and investigation has included, among other things: interviews of hundreds of former Hoboken Wood Flooring and SPI Flooring employees, service upon Defendants' counsel of interrogatories and requests for documents under Fed. R. Civ. P. 33 and 34, the review of thousands of pages of documents produced by Defendants, numerous conversations and informal responses to discovery from Defendants' counsel, the taking of the depositions of Andrew Code and Craig Dean, and monitoring information from other sources. Non-Union Plaintiffs and the Union believe that the claims asserted in the Litigation have merit and that the evidence

developed to date supports the claims asserted. However, Non-Union Plaintiffs and the Union recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Litigation against Defendants through trial and appeals. Non-Union Plaintiffs and the Union have taken into account the uncertain outcome and risk of any litigation, especially in complex actions such as this Litigation, as well as the difficulties and delays inherent in such litigation. Non-Union Plaintiffs and the Union are mindful of the inherent problems of proof under, and possible defenses to, the violations asserted in the Litigation. Non-Union Plaintiffs and the Union believe that, in consideration of all of the circumstances and after prolonged and serious arm's length negotiations by Class Counsel and Union Counsel with Defendants, this Agreement is fair, reasonable and adequate, and confers substantial benefits on, and is in the best interest of, Non-Union Plaintiffs,the Class and the Union.

4. **Release of Claims and Covenant Not to Sue.** The Releasing Parties hereby release and forever discharge Defendants and the Related Parties from and with respect to any and all Released Claims. The Releasing Parties hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished and discharged any and each of the Defendants and the Related Parties from any and all Released Claims. The Releasing Parties agree and covenant that they will never, directly or indirectly, institute any lawsuits or other claims against any of the Defendants and/or the Related Parties with respect to any Released Claims. In giving this release and covenant, the Releasing Parties acknowledge that they are aware that facts may be discovered in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Released Claims, but it is their respective intention to, and they do hereby fully, finally, and forever settle and release any and

all Defendants and their Related Parties from any and all Released Claims without regard to the subsequent discovery or existence of such additional or different facts.

5. **Procedure For Preliminary Settlement & Class Approval and Notice of Class Action and Settlement. Right of Defendant Code Hennessy & Simmons LLC to Cancel and Rescind This Settlement Agreement If 5% or More of Class Members Timely Opt Out.** The Non-Union Plaintiffs and Defendants shall file a joint motion within 10 business days of the execution of this Agreement requesting preliminary approval by the Court of the proposed certification of the Class as a settlement class pursuant to Federal Rule of Civil Procedure 23 and of a Notice of Class Action and Settlement, and the setting of a final fairness hearing for this Settlement Agreement. If 5% or more of the Class Members give timely notice, prior to the expiration of the opt-out deadline, of their intention to opt-out of the Class, Defendant Code Hennessy & Simmons LLC shall have the option, in its sole discretion, to cancel and rescind this Agreement in its entirety within 10 business days of receiving written notice from Class Counsel of the final list of opt-outs. In the event that Defendant Code Hennessy & Simmons LLC exercises this right to cancel and rescind this Agreement, the Parties contemplate using their best efforts to negotiate a mutually-acceptable amendment to this Settlement Agreement to reflect the changed circumstances presented by any opt-out election(s), but no Party shall be obligated or bound to agree to such an amendment.

6. **Financial Consideration & Allowed Deductions Prior to Distribution of Settlement Proceeds.** On the Payment Date or within five (5) days thereafter, in full and final settlement of all Released Claims, Defendants will pay, or cause to be paid, a total of One Million and Fifty Thousand Dollars ($ 1,050,000.00) to an account at a mutually acceptable financial institution to be invested in securities backed by the full faith and credit of the United

States Government or fully insured by the United States Government or any agency thereof, which account shall be established by Class Counsel and Union Counsel for the purpose of effectuating payments, as follows:

(a) The WARN Act Class Action Settlement Fund is inclusive and covers:

(i) Costs and expenses of administering this Agreement and the distribution of monies under this Agreement;

(ii) The Fee Award. In recognition of the efforts of Class Counsel in this Litigation, Defendants agree that they will not object to Class Counsel's application for a Fee Award.

(iii) Any federal, state or local taxes to be paid by the employer of the Non-Union Plaintiffs, Class Members, and Bargaining Unit employees on the net settlement payment to be distributed to the Class and/or the Union. Defendant Code Hennessy & Simmons LLC will determine, in its sole discretion, the amount of any employer taxes that will become due and owing by any of the Defendants. Any such taxes will revert back to Defendant Code Hennessy & Simmons LLC from the Settlement Fund and will be paid promptly to the appropriate taxing authorities;

(iv) Distributions to Non-Union Plaintiffs and Class Members shall be calculated as an equal share of $898,000, which represents the portion of the WARN Act Class Action Settlement Fund attributable to the Class, before deduction of Class Counsel fees, taxes and costs of administration. Distributions to Bargaining Unit Employees shall be calculated as an equal

share of $152,000, which represents the portion of the WARN Act Class Action Settlement Fund attributable to the Bargaining Unit Employees, before deduction of Union Counsel fees, costs and taxes. Each Class Member and Non-Union Plaintiffs' claim shall be recognized and paid according to the method described above (after deductions for the amounts described in subparagraphs (ii), (iii) and (v), below). Each Bargaining Unit Employee's claims shall be recognized and paid according to the method described above, after the deduction of Union Counsel fees, costs and taxes and in accordance with subparagraphs (v) and (vi), below; and

(v) Any employee payroll tax withholdings required by federal, state or local law will be withheld from distributions to Class Members, Non-Union Plaintiffs and Bargaining Unit employees receiving payment under this Agreement, and such individuals will be issued a Form W-2 reflecting such payment. Defendant Code Hennessy & Simmons LLC, as the sole solvent defendant acting on behalf of the other Defendants, will determine, in its sole discretion, the amount of any employee taxes that will become due and owing. Any such employee taxes will revert back to Defendant Code Hennessy & Simmons LLC from the Settlement Fund and will be paid promptly to the appropriate taxing authorities. Defendant Code Hennessy & Simmons LLC or its agent will be responsible for the reporting of same, as well as the provision of W-2 Forms on behalf of one or more of the Defendants; and

(vi) Local 311 will be responsible for distributing the funds and the W-2 forms to Bargaining Unit members.

7. **Distribution of Remaining Net Settlement Proceeds To Non-Union Plaintiffs, Class Members and Bargaining Unit Employees.** Following the completion of the payment of the counsel fees and costs, settlement administration and distribution expenses, and employer taxes and employee tax withholding set forth in paragraph 6 above, the net settlement proceeds shall be distributed to Non-Union Plaintiffs, Class Members and Bargaining Unit Employees. If approved by the Court, Plaintiffs Jodi Riley and Arlene Czop will receive additional payments of $2,500 each for agreeing to serve as Lead Plaintiffs and for assisting Class Counsel with the litgation. Plaintiffs shall each receive an IRS 1099 form for this portion of their distribution. Class Counsel shall be responsible for the administration and distribution of the settlement proceeds to the eligible Class Members, provided, however, that distributions to such individuals shall be made through a mutually acceptable settlement distribution administrator. Union Counsel shall be responsible for the administration and distribution of the settlement proceeds to the Bargaining Unit Employees. Class Counsel and Union Counsel shall timely provide to Defendants' counsel: (i) the name of the financial institution and account number established for the WARN Act Class Action Settlement Fund; and (ii) an Excel spreadsheet containing the following information for each such individual: first name, last name, last known address, and gross payment amount.

8. **Defendants Not Responsible for Calculation or Distribution of Net Settlement Proceeds to Non-Union Plaintiffs, Class Members and Bargaining Unit Employees.** Defendants and the Related Parties shall have no responsibility for, and no liability whatsoever with respect to: (i) the calculation of any individual Class Member or Bargaining

Unit Employee's distribution under this Agreement; and (ii) the allocation among Plaintiffs' various counsel, Class Counsel, and/or any other Person who may assert some claim thereto, of any award of attorneys' fees and/or costs that the Court may make in the Litigation.

9. **Reversion of Monies.** For each Class Member whose distribution is deemed undeliverable (e.g., because of change of address, the employee fails to cash his/her check within the 180 days of receipt, etc.) after all reasonable efforts have been made by Class Counsel/administrator to locate such Class Member, the amount of the undeliverable distribution will be retained in the WARN Act Class Action Settlement Fund. The "undeliverable" amount(s) shall divided equally between Code Hennessy and Class Counsel. Final reconciliation of the undeliverable amounts shall occur no later than nine (9) months from the date of the approval of the Settlement.

10. **Return of Documents.** No later than 60 days after the Payment Date, all documents produced in the Litigation must be returned to the producing party, and any work product containing or summarizing those materials must be returned or destroyed. Each Party shall certify compliance with this requirement within 90 days of the Payment Date.

11. **Counterparts.** This Agreement may be executed by the Parties in separate counterparts (including by means of facsimile or other electronic signature) and will have the same force and effect as if the parties had executed it as a single document.

12. **Conditions of Settlement, Effect of Disapproval, Cancellation or Termination.** Unless otherwise ordered by the Court, in the event the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, or if the Judgment in the Litigation is reversed or modified, then:

(a) Within ten (10) days after written notification of such event the moneys described in paragraph 6 shall revert to Defendant Code Hennessy & Simmons, LLC; and

(b) The Non-Union Plaintiffs, Class Members, Union, and Defendants shall be restored to their respective positions in the Litigation as of November 1, 2008, and the parties shall cooperate in seeking appropriate extensions of the discovery and other deadlines in the Litigation so that the parties have a reasonable time to complete their discovery, pretrial and trial preparations had this Agreement not been executed. In such event, the terms and provisions of the Agreement shall have no further force and effect with respect to the Parties and shall not be used in this action or in any other proceeding for any purpose.

13. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of New Jersey.

14. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective predecessors, parents, subsidiaries, affiliates, legal representatives, estates, purchasers, successors, assigns, heirs, administrators, personal representatives and executors.

15. **Arbitration.** The Parties agree that any dispute arising from or relating to this Agreement shall be subject to mandatory and binding arbitration, in Newark, New Jersey, pursuant to the American Arbitration Association's Commercial Arbitration Rules.

16. **Additional Provisions.**

(a) This Agreement is binding upon the Parties immediately upon execution, notwithstanding that the Agreement is fully contingent upon entry of Final Judgment in the Litigation and upon Defendant's Code Hennessy & Simmons' right to terminate the Agreement if 5% or more of the Class Members timely exercise their opt-out rights. The Parties

acknowledge that it is their intent to consummate this Agreement and agree to cooperate to the extent necessary to effectuate and implement all terms and conditions of the Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of the Agreement.

(b) Neither this Agreement nor the settlement, nor any negotiations or proceedings hereunder, nor any act performed or document executed pursuant to or in furtherance of the Agreement or the settlement: (i) is or may be deemed to be or may be used as an admission or concession of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Defendants or the Related Parties; or (ii) is or may be deemed to be or may be used as an admission or concession of, or evidence of, any fault or omission of the Defendants or the Related Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal, other than in such proceedings as may be necessary to consummate or enforce this Agreement, the settlement, or the Final Judgment, except that Defendants and the Related Parties may file and use this Agreement and/or Final Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, breach of contract, accord and satisfaction, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

(c) This Agreement may be amended or modified only by a written instrument signed by counsel to all Parties to the Agreement.

(d) This Agreement and the exhibits attached hereto constitute the entire agreement among the Parties hereto and no representations, warranties, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties,

and covenants contained and memorialized in such documents. Except as otherwise provided herein, each party shall bear its own attorneys' fees and costs.

(e) The Parties agree that the amounts to be paid and the other terms of this Agreement were negotiated in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel. The Parties reserve the right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by setting their hands on the dates noted below.

Dated: , 2009

Code Hennessy & Simmons LLC

By: _____

Title: _____

Dated: , 2009

Hoboken Wood Flooring LLC, HWF Holdings LLC, Garden State Supplies LLC, WFA, LLC, SPI Floors LLC

By: _____

Title: _____

Dated: 2/10 , 2009

Jodi Riley

Jodi Riley, Class Representative

Dated: , 2009

Arlene Czop, Class Representative

Dated: 2/3, 2009

Charles A. Ercole, Class Counsel
KLEHR, HARRISON, HARVEY,
BRANZBURG & ELLERS, LLP
260 South Broad Street, Fourth Floor
Philadelphia, PA 19102

Dated: , 2009

Mary E. Olsen
Vance McCrary
Counsel for International Brotherhood
Of Teamsters, Local 311
The Gardner Firm, PC1119 Government Street,
Post Office Drawer 3103, Mobile, AL 36652
- and -
Stuart J. Miller, Co-Counsel
for International Brotherhood Of Teamsters, Local 311
Lankenau & Miller, LLP,
132 Nassau Street, Suite 423, New York, NY 10038

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Dated: , 2009

Code Hennessy & Simmons LLC

By: _____

Title: _____

Dated: 2-3, 2009

Hoboken Wood Flooring LLC, HWF Holdings LLC, Garden State Supplies LLC, WFA, LLC, SPI Floors LLC

By: _____

Title: Chief Restructuring Officer

Dated: , 2009

_____
Jodi Riley, Class Representative

Dated: , 2009

Arlene Czop, Class Representative

Dated: , 2009

Charles A. Ercole, Class Counsel
KLEHR, HARRISON, HARVEY,
BRANZBURG & ELLERS, LLP
260 South Broad Street, Fourth Floor
Philadelphia, PA 19102

Dated: 2/3, 2009

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Vance McCrary
Counsel for International Brotherhood
Of Teamsters, Local 311
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Code Hennessy & Simmons LLC

By: _____

Title: _____

Dated: , 2009

Hoboken Wood Flooring LLC, HWF Holdings LLC, Garden State Supplies LLC, WFA, LLC, SPI Floors LLC

By: _____

Title: _____

Dated: , 2009

_____
Jodi Riley, Class Representative

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Code Hennessy & Simmons LLC

By: _____

Title: _____

Dated: , 2009

Hoboken Wood Flooring LLC, HWF Holdings LLC, Garden State Supplies LLC, WFA, LLC, SPI Floors LLC

By: _____

Title: _____

Dated: 3/10 , 2009

Jodi Riley

Jodi Riley, Class Representative

Dated: , 2009

Arlene Czop

Arlene Czop, Class Representative

Dated: , 2009

Charles A. Ercole, Class Counsel
KLEHR, HARRISON, HARVEY,
BRANZBURG & ELLERS, LLP
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Dated: , 2009

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