

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH DAKOTA

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In re:

NORTHERN BEEF PACKERS LIMITED  
PARTNERSHIP,

Debtor.

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: Chapter 11

: Case No. 13-10118

: **AMENDED SETTLEMENT AND  
RELEASE AGREEMENT**

Attached hereto is the fully executed Amended Settlement and Release Agreement with attached Exhibits which is being filed pursuant to the Court's Order of December 18, 2014 in Adversary Proceeding Number 13-1013 [Doc 62]. Exhibits A, B and C to the Amended Settlement and Release Agreement and Exhibit 3 to the Motion to Approve [Doc. 55] have not been revised to conform with the revisions to the Amended Settlement and Release Agreement as the parties have been advised by the Court that it will make comments for modification of said documents after submission of the Amended Settlement and Release Agreement document.

Dated: January 21, 2015.

CUTLER LAW FIRM, LLP

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*-and-*

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*Counsel for WARN Claimants*

AMENDED SETTLEMENT AND RELEASE AGREEMENT

between

JORGE ALVARADO, INDIVIDUALLY AND AS THE CLASS  
REPRESENTATIVE ON BEHALF OF THE OTHER CLASS MEMBERS,

and

NORTHERN BEEF PACKERS LIMITED PARTNERSHIP

Dated as of January 15, 2014

**AMENDED SETTLEMENT AND RELEASE AGREEMENT**

This Amended Settlement and Release Agreement, dated as of January 15, 2014 (this "Settlement Agreement" or "Settlement"), is entered into by and among Northern Beef Packers Limited Partnership, debtor and debtor-in-possession (together with any successor, including, without limitation, any Chapter 7 trustee, the "Debtor") in the chapter 11 bankruptcy case captioned *In re Northern Beef Packers Limited Partnership*, Case No. 13-10118, (Bankr. D.S.D.) (the "Bankruptcy Case"), Jorge Alvarado (the "Class Representative"), individually and on behalf of similarly situated class members specifically identified in Section 2 below (together with the Class Representative, but excluding the Opt-Outs (as hereinafter defined), the "Class Members" or "Class"), and the Official Committee of Unsecured Creditors appointed in the Bankruptcy Case (the "Committee"). The Debtor, the Class Members and the Committee are collectively referred to herein as the "Parties," or, as to each, a "Party."

**RECITALS**

WHEREAS, on July 19, 2013 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") with the United States Bankruptcy Court for the District of South Dakota (the "Bankruptcy Court") initiating the Bankruptcy Case;

WHEREAS, on or about July 24, 2013, the Debtor terminated approximately 271 employees;

WHEREAS, on or about September 26, 2013, the Class Representative filed with the Bankruptcy Court a class-action adversary complaint (the "Complaint") commencing an adversary proceeding (the "WARN Action") against the Debtor (collectively, the "Debtor"), on

behalf of himself and purportedly on behalf of the Class Members, alleging that the Debtor violated the WARN Act by ordering plant closings and/or mass layoffs on or about July 24, 2013 and thereafter, without providing sixty (60) days advance notice thereof. The Class Representative further asserted that, as a consequence of this alleged failure, the Class Members have a priority claim pursuant to Section 507(a)(4)-(5) of the Bankruptcy Code for damages for the alleged sixty (60) day violation period. The WARN Action is entitled *Jorge Alvarado, individually and on behalf of all other similarly situated former employees v. Northern Beef Packers Limited Partnership*, Adversary Proceeding No. 13-01013;

WHEREAS, on or about August 13, 2013, the United States Trustee appointed the Committee;

WHEREAS, on October 28, 2013, the Debtor filed a Motion to Dismiss the WARN Action;

WHEREAS, on or about April 3, 2014, the Bankruptcy Court entered an order holding in abeyance a decision on the Debtor's Motion to Dismiss pending either a motion by Debtor to reset the deadline for filing responses to its motion or the Parties' seeking approval of an agreement resolving the complaint [Adversary Docket No. 35];

WHEREAS, the Parties have engaged in substantial informal discovery in this matter;

WHEREAS, there exist significant, complex legal and factual issues regarding the application of the WARN Act and the various cases and regulations interpreting the WARN Act and regarding the viability of the WARN Action, including:

- whether the Debtor provided adequate notice of layoffs to the Class Members under the WARN Act;
- whether the WARN Notice, if any, was defective under the WARN Act;

- whether the Debtor was entitled to give fewer than sixty (60) days-notice because, at the time notice would otherwise have been required, it was seeking new capital that it reasonably believed, if obtained, would have obviated the need for or substantially postponed the alleged plant closings or mass layoffs;
- whether the Debtor's efforts to obtain new capital were commercially reasonable under the circumstances;
- whether the Debtor was a liquidating fiduciary under the WARN Act;
- whether the Debtor has other defenses to the application of the WARN Act;
- whether the Debtor gave "as much notice as is practicable,"
- the computation of the amount of alleged damages, and
- whether attorneys' fees are to be awarded to the Class Representative and the Class Members if they prevail;

WHEREAS, the Class Representative has the burden of proof on some of these issues and the Debtor has the burden on others, including any affirmative defenses, and the trial of this matter would likely be lengthy and complex, adding to cost and potential delay;

WHEREAS, all Parties recognize that the outcome of the litigation with respect to all the issues is uncertain;

WHEREAS, to avoid extensive, costly and uncertain litigation over these issues, the Parties have engaged in significant good faith, arm's-length negotiations regarding a possible consensual resolution of the WARN Action. As a result of these negotiations, the Parties desire to enter into a final settlement and release of all demands, claims, damages, and causes of action, present and future, arising under the WARN Act;

WHEREAS, as of the date of this Settlement, substantially all of the Debtor's operating assets have been sold and the sale closed on March 31, 2014. The conversion of this case to chapter 7 is expected;

WHEREAS, on September 13, 2013, the Debtor, the Committee, and White Oak Global Advisors, LLC entered into that certain Stipulation (Revised) Regarding Secured Post-Petition Financing Pursuant to 11 U.S.C. § 364(c) (the "Financing Stipulation") [Bankruptcy Docket No. 360];

WHEREAS, the Financing Stipulation was approved by the Bankruptcy Court on a preliminary basis by order entered on September 16, 2013 [Bankruptcy Docket No. 383] and on a final basis by order entered on September 26, 2013 [Bankruptcy Docket No. 435];

WHEREAS, pursuant to the Financing Stipulation, certain assets of the Debtor's estate and other rights and interests were delivered to an escrow account (the "Unsecured Creditor Escrow") designated by the Committee, to be held in trust for the benefit of holders of claims against the Debtor's estate according to their priorities;

WHEREAS, final approval of this Settlement pursuant to Fed. R. Bankr. P. 7023 may occur after the conversion of the Debtor's bankruptcy case to a case under chapter 7, and, pursuant to Section 16(l), this Settlement shall be binding on any trustee appointed upon conversion to chapter 7;

WHEREAS, the Parties have agreed to settle claims relating to or arising out of the WARN Act Litigation and Debtor's alleged failure to provide adequate notice under the WARN Act in accordance with the terms of this Settlement;

WHEREAS, the Parties have agreed that the Settlement will not become effective unless the Bankruptcy Court grants final approval of the Settlement;

WHEREAS, on October 31, 2014, the Parties filed a Joint Motion Pursuant to 11 U.S.C. § 105 and Fed. R. Bankr. P. 7023 and 9019 to (I) Approve a Settlement Pursuant to Fed. R. Bankr. P. 9019, (II) Certify a Class of WARN Act Claimants for Settlement Purposes Only, Appoint Class Counsel and Class Representative, and Preliminarily Approve the Settlement Pursuant to Fed. R. Bankr. P. 7023, (III) Approve the Form and Manner of Notice to Class Members of the Class Certification and Settlement, (IV) Schedule a Fairness Hearing to Consider Final Approval of the Settlement, (V) Finally Approve the Settlement Pursuant to Fed. R. Bankr. P. 7023 After the Fairness Hearing, and (VI) Grant Related Relief (the “Settlement Motion”) (Bankr. Doc. 976), by which they sought approval of a Settlement Agreement and Release dated October 15, 2014 (the “Original Settlement Agreement”);

WHEREAS, on December 18, 2014, the Court held a hearing to consider: (I) Conditional certification of the Class, (II) Preliminary approval of the Original Settlement Agreement, (III) Approval of Class Counsel and Representative, (IV) Approval of the form and manner of the notice of Class certification and the proposed settlement, (V) Setting deadlines related thereto, and (VI) Setting a final hearing;

WHEREAS, at the December 18, 2014 hearing, the Court expressed various concerns regarding the Original Settlement Agreement, and advised the Parties of certain amendments that would have to be made before the same would be approved;

WHEREAS, the Parties have entered into this Settlement Agreement, which amends the Original Settlement Agreement in order to address the Court’s concerns.

NOW, THEREFORE, as material consideration and inducements to the execution of this Settlement Agreement, and in consideration of the mutual promises and agreements set forth

herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and intended to be binding, the Parties hereby agree as follows:

1. **Settlement Filings.** Pursuant to the Settlement Motion, the Parties have requested entry of an order from the Bankruptcy Court substantially in the form attached hereto as **Exhibit A** certifying a class of WARN Act claimants for settlement purposes only, preliminarily approving the Settlement, and approving the form and manner of notice to the Class Members of class certification and the Settlement, including, among other things, their right to opt out of the Class, object to the Settlement in person or appear by counsel. The Parties also requested a date for a fairness hearing (the "**Fairness Hearing**"). At the Fairness Hearing, the Bankruptcy Court will consider final approval of the Settlement, including the award of Class Counsel's Fees (defined below), pursuant to an order substantially in the form attached hereto as **Exhibit B**, with such modifications and amendments as agreed to by the Parties (the "**Final Settlement Order**"). Notwithstanding anything to the contrary herein, in the event that the Debtor or the Committee determines that the number of potential Class Members that affirmatively exercise their right to opt-out of the Settlement is greater than twenty-five (25) (or slightly less than 10% of the projected number of Class Members), the Debtor or the Committee may elect to terminate this Settlement Agreement by providing written notice to Class Counsel at least seven (7) days prior to the Fairness Hearing. This Settlement Agreement is subject to, and conditioned upon, issuance of the Final Settlement Order by the Bankruptcy Court approving this Settlement Agreement under Rules 9019 and 7023 of the Federal Rules of Bankruptcy Procedure, after notice and hearing to creditors and parties in interest, in accordance with applicable law and local rules. The order shall be deemed final when fourteen (14) days have elapsed from entry of the Bankruptcy Court's Final Settlement Order, with no notice of appeal



filed or after the Bankruptcy Court order approving the settlement is finally affirmed on appeal, whichever first occurs.

2. **Class Certification.** Upon execution of this Settlement Agreement, the Parties consent that a settlement class shall be certified in connection with the WARN Act Litigation and the motion to approve the Settlement Agreement comprised of all persons who (i) were employed by the Debtor in the United States at the Aberdeen, South Dakota facility (the “Affected Facility”); (ii) suffered an “employment loss,” as that term is defined in 29 U.S.C. § 2101(a)(6) and 20 C.F.R. § 639.3(f), on, or within thirty (30) days of, July 24, 2013, as part of a “plant closing” or “mass layoff,” as those terms are defined in 29 U.S.C. § 2101(a)(2)-(3) and 20 C.F.R. § 639.3(b)-(c), at the Affected Facility, or as the reasonable foreseeable consequence of a “plant closing” or “mass layoff” occurring on or about July 24, 2013, including, without limitation, those employees listed on Schedule 1 hereto; (iii) meet the definition of “affected employee” as set forth in 29 U.S.C. § 2101(a)(5) and 20 C.F.R. § 639.3(e), including, without limitation, those employees listed on Schedule 1 hereto; and (iv) do not file a timely request to opt out of the Class; provided, however, that such Class shall be certified for settlement purposes only pursuant to Rule 7023(b)(3) of the Federal Rules of Civil Procedure as made applicable to these proceedings by Rule 7023 of the Federal Rules of Bankruptcy Procedure.

(a) The Debtor represents that, to the best of its knowledge, information and belief, all of the former employees who satisfy the criteria set forth in Section 2(i)-(iii) above are listed on Schedule 1.

(b) Klehr Harrison Harvey Branzburg LLP shall be appointed class counsel (“Class Counsel”) for the Class created under the Settlement Agreement.

(c) Jorge Alvarado shall be appointed Class Representative for the Class

created under this Settlement Agreement.

3. **Effective Date.** The “Effective Date” of this Settlement Agreement shall be the date upon which the Final Settlement Order has been entered and fourteen (14) days have passed with no notice of appeal filed, or after the order is finally affirmed on appeal, whichever first occurs. In the event that the Effective Date does not occur: (a) this Settlement Agreement and the recitals contained herein shall be without force or effect, and neither this Settlement Agreement, nor any of the statements contained herein, shall be admissible in any proceeding involving the Parties; (b) neither the Settlement Motion nor any of the pleadings filed in support of the Settlement Motion shall be admissible in any proceeding involving the Parties; and (c) the Parties will use their best efforts to negotiate a mutually-acceptable amendment to the Settlement Agreement to reflect the changed circumstances presented by any opt-out elections, but no Party shall be obligated or bound to agree to such an amendment; and (d) none of the provisions hereof shall prejudice or impair any rights, remedies or defenses of any of the Parties.

4. **Payment of the Settlement Amount.** Pursuant to the terms of this Settlement Agreement, the amount of \$180,000.00 (the “Settlement Amount”) shall be paid to Class Counsel out of the Unsecured Creditor Escrow, or otherwise out of the assets of the Bankruptcy estate, for distribution to Class Members as provided below. Following the payment of the Settlement Amount, the Class Claim (as defined below), shall be deemed an allowed general unsecured claim. The Settlement Amount shall be due and payable only after: (i) the entry of an Approval Order; (ii) the entry of a Final Order, as such orders are defined below; and (iii) the passage of thirty (30) days after the expiration of the right of the Class Members to opt-out of the Settlement Agreement. The Settlement Amount shall not be or become due and payable in the event that the Bankruptcy Court does not enter either an Approval Order or a Final Order or in

the event that this Settlement Agreement is terminated by the Debtor or the Committee pursuant to its terms. All amounts paid to a Class Member from the Settlement Amount shall be deemed a recovery to such Class Member under 11 U.S.C. § 507(a)(4). In no event shall any Class Member receive from the Settlement Amount, more than the priority amount allowable under 11 U.S.C. § 507(a)(4). Within 30 days after the close of each calendar quarter, Class Counsel shall file with the Bankruptcy Court a report of distributions made to each Class Member.

5. **The Class Claim.** Subject to the occurrence of the Effective Date, in addition to the Settlement Payment there shall be an allowed general unsecured class claim in the amount of \$1,000,000.00 (the “Class Claim”) in full and final satisfaction of the Released Claims of the Class Members. Any distributions on account of the Class Claim shall be made pursuant to section 726 of the Bankruptcy Code or as otherwise ordered by the Bankruptcy Court. Any amounts required to be withheld for federal, state or local taxes shall be deducted from any distribution on account of the Class Claim and paid promptly to the appropriate taxing authorities. Total unsecured claims in the case are projected to be in excess of \$80,000,000.

6. **Responsibilities of Class Counsel.** The Bankruptcy Court will produce and mail all notices required to be provided to the Class Members (the “Class Notices”). The Bankruptcy Court’s address will be used as the return address for the Class Notices, and the Bankruptcy Court will promptly notify Class Counsel of any Class Notices returned as undeliverable. Class Counsel will respond to all inquiries of the Class arising from or related to this Settlement.

7. **The Allocation and Disbursement of Settlement Amount.**

(a) Class Counsel’s Attorneys’ Fees. Prior to distribution to the respective Class Members, a Common Fund will be created for the Settlement Amount and any distributions(s) received on account of the Class Claim. Class Counsel will, by separate

application, ask the Bankruptcy Court to approve attorney fees of 33 1/3 % of the Common Fund and reimbursement for actual and necessary costs, including the costs of administering the class settlement funds, not to exceed \$20,000.00.

(b) Disbursement of Payments. Class Counsel shall be responsible for distribution of the Settlement Amount to Class Members, including preparation and mailing of the individual settlement checks to Class Members at a time after the Effective Date.

(c) Settlement Checks. Three months after distributions have been made to the Class Members, Class Counsel shall maintain a list of the names of those Class Members whose settlement checks have been: (i) returned as undeliverable; or (ii) remain uncashed or unnegotiated. Class Counsel shall mail the returned settlement check to the Class Member at a corrected address, if available. Class Counsel is responsible for issuing a “stop payment” on any particular settlement check as requested or as necessary if Class Counsel is notified that a Settlement distribution has been fraudulently negotiated. Class Counsel shall initiate a fraud investigation with the issuing bank within five business days of receipt of such notice, provided that any bank costs associated therewith shall be paid out of the portion of the Class Claim attributable to the Class Member requesting the fraud investigation, if available, and if not, from any Residual Funds, if available. Any distributions that are not deposited, endorsed or negotiated within one hundred eighty (180) days of their date of issuance, shall be deemed residual funds (the “Residual Funds”) on the 181<sup>st</sup> day following the Settlement distribution and treated as described below.

(d) Reversion of Residual Funds. Residual Funds will be: (i) first, used to make Class Claim distributions to additional Class Members, if any, that may be identified after initial distributions of the Class Claims have been made and who fall within the Class definition

herein but who did not appear on Schedule 1 (“Additional Class Members”); (ii) second, distributed to Class Members in one or more supplemental distributions unless the Bankruptcy Court determines after notice and hearing that further distributions are not feasible; and (iii) if the Bankruptcy Court determines after notice and hearing any further distributions are not feasible, any funds remaining in the Common Fund shall revert to the Debtor’s estate.

(e) Withholding Taxes and Related Filings.

(i) Class Counsel shall report the Pre-tax Payment Amount (as shown on Schedule 1), net of the Employer’s Tax Portion, to each Class Member receiving a distribution from the Settlement Amount as wages to the United States Internal Revenue Service and to other appropriate taxing authorities (“Taxing Authority” or “Taxing Authorities”) on a Form W-2 issued to the Class Member with his or her taxpayer identification number. The Pre-tax Payment Amount shall be subject to deductions for applicable taxes and withholdings as required by federal, state, and local law. Any employee payroll tax withholdings required by federal, state or local law shall be withheld from the distributions to the Class Members receiving payments under this Settlement Agreement and the Class Members shall be issued a Form W-2 reflecting such payment, with the exception of the \$2,500.00 payment to be made to the Class Representative, which shall be reflected on a Form 1099. These amounts shall include the employee portion of all applicable federal, state and local taxes, including, without limitation, Federal Insurance Contribution Act (“FICA”) taxes, as well as any other taxes and unemployment compensation contributions which are required to be withheld from the Class Members distributions based on the treatment of those distributions as wages. For the purpose of calculating applicable taxes, the Parties agree that the amounts to be

paid to the Class Members, after deducting the Class Representative Service Payment, Class Counsel's Fees, Class Counsel's Expenses, Class Notice Costs, and the Employer's Tax Portion, but before deducting applicable employee taxes, shall constitute wages reportable on IRS Form W-2.

(ii) The Debtor shall report Class Counsel's fees, as provided by Section 7(a) of this Agreement as attorneys' fees to the Taxing Authorities on behalf of Class Counsel on a Form 1099 issued to Class Counsel with the taxpayer identification number of Class Counsel.

(iii) In the event that it is subsequently determined by any Taxing Authority that any Class Member owes any additional taxes with respect to any money distributed under this Agreement, it is agreed that the determination of any tax liability is between the Class Member(s) and the Taxing Authority, and that the none of Class Counsel, the Debtor or the Committee will be responsible for the payment of such taxes, including any interest and penalties.

8. **The Class Notice.** As noted above, the Bankruptcy Court will produce and mail the Class Notice. The Class Notice, which includes the opt-out notice form ("Opt-Out Notice Form"), shall be in substantially the form annexed hereto as **Exhibit C** or such substantially similar form as may be approved by the Bankruptcy Court. With respect to any Class Notice that is returned as undeliverable, Class Counsel shall, as promptly as practicable, provide the Bankruptcy Court the corrected address of the intended Class Member recipient as may be determined by Class Counsel through a search of a national database or as may otherwise be obtained by the Parties.

(a) Contents of the Class Notice. The Class Notice shall contain the following information:

- That each Class Member has the right to opt out of the Class and preserve all of his/her rights against the Debtor, if any, including the Released Claims (all such Class Members timely electing to opt out of the Class, the “Opt-Outs”);
- That the Settlement shall become effective only if it is finally approved by the Bankruptcy Court under Rules 7023 and Rule 9019 of the Federal Rules of Bankruptcy Procedure;
- That, if so approved, the Settlement shall be effective as to all Class Members who did not timely elect to opt out of the Class; provided that if more than twenty-five (25) of the Class Members opt-out and the Debtor or the Committee exercises its option to withdraw from the Settlement Agreement, the Settlement Agreement shall not become effective;
- That such Class Member who does not opt out has the right to object to this Settlement either in person or through counsel and be heard at the Fairness Hearing; and
- That, subject to Section 11, all Released Claims of a Class Member (other than those claims to be paid under the terms of this Settlement) shall be waived, and that no person, including the Class Member, shall be entitled to any further distribution thereon.

(b) Representation and Covenant as to Schedule 1. The Debtor represents that, to the best of its knowledge, information and belief, all of the former employees who satisfy the criteria set forth in the class definition stated herein are listed on Schedule 1. For employee



privacy reasons, only Class Member names are set forth on Schedule 1. However, The Debtor further represents that to the best of its knowledge, information and belief, the information provided for the Class Members accurately reflects the contents of their books and records as to each Class Member, as follows: (i) the last known mailing address at the time of termination (unless the employee has provided a change of address to the Debtor); (ii) a daily rate of pay as of the date of termination of employment; (iii) a value for benefits; (iv) the date such Class Member was hired; and (v) the date such Class Member was terminated.

9. **Objection to Settlement Procedures.** At or before such time as may be fixed by the Bankruptcy Court for final approval of this Settlement at the Fairness Hearing, a Class Member may object to this Settlement by filing a written objection with the Bankruptcy Court. Such objection shall clearly specify the relief sought and the grounds for such relief.

10. **Right of Employee to Opt Out of Class.**

(a) By no later than the date fixed by the Bankruptcy Court for the filing of the Notice of Objection, any Class Member may opt out of the Class by filing with the Bankruptcy Court the completed and executed Opt-Out Notice Form, contained in the Class Notice, attached as Exhibit C hereto. To be effective, the Opt-Out Notice Form must be received no later than the date fixed by the Bankruptcy Court.

(b) If a Class Member does not wish to be bound by this Settlement, such Class Member must opt out of the Class by timely returning a completed and executed Opt-Out Notice Form to the Bankruptcy Court. Otherwise, if and when the Settlement becomes effective, all Class Members shall be bound by the terms of this Settlement.

(c) Any Class Member that elects to opt-out shall not have an allowed claim against the Debtor by reason of this Settlement Agreement and shall retain his or her rights



against the Debtor, if any. The Debtor reserves all rights against any Class Member that opts-out. In such event, the Class Claim shall be reduced by such opting-out Class Members' pro rata share thereof, calculated as provided in the Class Notice. Class Counsel agrees that it will not, directly or indirectly, commence any litigation or assert any claims on behalf of any former employees of the Debtor who opt-out of the Settlement Agreement.

(d) Notwithstanding anything to the contrary in this Settlement, nothing contained herein shall release or impair the rights and claims, if any, of any Opt-Out, nor shall anything contained herein affect the defenses and offsets that the Debtor, its subsidiaries, affiliates, any successors or assigns, or any of their respective present or former officers, directors, employees, agents, attorneys, consultants, equity holders or members of any thereof may have against any such rights or claims.

11. **The Waiver and Release of Any Released Claims by All Class Members if the Settlement Becomes Effective.**

(a) Released Claims of Class Members. Except for the rights arising out of, provided for, or reserved in this Settlement Agreement, upon the Effective Date, the Class Members (except for any Class Members: (i) who have opted out of this Settlement Agreement; and (ii) Class Members who both do not receive the Class Notice and do not receive any distribution from the Common Fund), for and on behalf of themselves, and their respective predecessors, successors, assigns, heirs, personal representatives and estates (collectively, the "Releasing Parties"), do hereby fully and forever release and discharge the Debtor, the Debtor's estate, their current and former shareholders and investors, subsidiary and affiliated entities, any potential "single employer" under the WARN Act, and their respective officers, directors, shareholders, agents, employees, partners, members, accountants, attorneys, representatives and other agents, and all of their respective predecessors, successors and assigns (collectively, the

“Released Parties”), of and from any and all claims, demands, debts, liabilities, obligations, liens, actions and causes of action, costs, expenses, attorneys’ fees and damages of whatever kind or nature, at law, in equity and otherwise, whether known or unknown, anticipated, suspected or disclosed, which the Releasing Parties may now have or hereafter may have against the Released Parties, which relate to or are based on the WARN Act under any federal, state or local law or regulation arising out of the termination of the Class Members’ employment by the Debtor, including, but not limited to: (i) all claims asserted or that could have been asserted in the WARN Act Litigation; (ii) the individual WARN claims; and (iii) any other claims for back or severance pay or benefits based on or arising under any federal, state or local statute, ordinance or regulation. The claims released hereunder are referred to herein as the “Released Claims.” The Released Parties expressly reserve the right to object to, offset or oppose any and all claims, obligations, or causes of action, of any type, except those claims expressly allowed hereunder. Upon the Effective Date, in accordance with this Settlement Agreement, the Class Members agree that any claims that have been scheduled on behalf of, or filed by, the Class Representative or the Class Members in the Chapter 11 Case, on account of any alleged violation of the WARN Act or severance pay or benefits under any federal, state or local law or regulation, including, without limitation, the individual WARN claims are disallowed in their entirety and shall be deemed expunged from the Debtor’s schedules or claims register, as applicable. In addition, each Releasing Party shall be deemed as of the Effective Date to have released the Class Representative from any and all claims whether liquidated or unliquidated, contingent or non-contingent, asserted or unasserted, fixed or not, matured or unmatured, disputed or undisputed, legal or equitable, known or unknown that he or she may have against the Class Representative, any successors or assignees to their legal interests, or any of their present or former agents,

attorneys or consultants arising out of any Released Claim or the terms of this Settlement (other than for gross negligence or willful misconduct).

(b) Claims Not Released. Without otherwise limiting the generality of the foregoing, nothing in this Settlement Agreement shall in any way impair, compromise, release, or otherwise affect: (i) any claims for continuation of health or medical coverage, at the Class Member's expense, or at the expense of a beneficiary or dependent of a Class Member, to the extent allegedly required by the relevant provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985; (ii) any claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual in the earned within 180 days before the earlier of the date of the filing of the petition or the date of the cessation of the Debtor's business, or otherwise entitled to priority under 11 U.S.C. § 507, unrelated to the WARN Act; (iii) any claims for expense reimbursement unrelated to the WARN Act; (iv) rights, if any, unrelated to WARN claims, under the Debtor's 401(k) plans; or (v) any claims which the law clearly states may not be released by settlement.

(c) Dismissal of WARN Act Litigation. Subject to the last sentence of this Section, a stipulation for dismissal with prejudice of the WARN Action shall be executed in a form agreeable to the Parties (the "Dismissal"). Class Counsel shall file the Dismissal with the Bankruptcy Court within fourteen (14) days following the Effective Date. Dismissal of the WARN Action shall not abate or limit the effectiveness of the Final Settlement Order, including the releases set forth herein and the terms and conditions of this Settlement Agreement. Dismissal of the WARN Action shall have no effect on any claims of Class Members for expense reimbursement, unpaid wages, unpaid "paid time off," vacation or commission unrelated to the WARN Act, along with the other reserved claims set forth in Section 11(b) above.

12. **Protection of Class Members' Confidential Information.** To protect the privacy of the Class Members, Class Counsel is bound by an agreement not to disclose the information described in 8(b) above; *provided, however*, that Class Counsel shall file, under seal, a fully completed Schedule 1 that includes such information and may disclose the information relating to a given Class Member to that Class Member or use the information to locate a Class Member as contemplated herein.

13. **No Litigation.** Except as may be necessary to enforce the terms of this Settlement, each of the Debtor, the Class Representative, the Committee, Class Counsel, the Releasing Parties and any other person who accepts payment hereunder agree that she or he shall not commence or proceed with any action, claim, suit, proceeding or litigation on the Released Claims, or take any action inconsistent with the terms of the Settlement.

14. **No Admission of Liability.** This Settlement is intended to settle and dispose of the Released Claims. Nothing herein shall be construed as an admission by any Party of any facts or liability of any kind.

15. **Further Assurances.** The Parties shall cooperate fully and shall execute and deliver any and all supplemental papers, documents, instruments and other assurances and shall do any and all acts that may be reasonably necessary or appropriate to give full force and effect to the terms and intent of this Settlement.

16. **Miscellaneous.**

(a) **Continuing Jurisdiction of Bankruptcy Court.** The Bankruptcy Court shall have full jurisdiction over this Settlement and any dispute or controversy arising from or related to the interpretation or enforcement of this Settlement.

(b) **Governing Law/Jurisdiction.** Except where superseded by applicable

federal law, this Settlement shall be governed by the laws of the State of South Dakota.

(c) Notices. Any notice or other communication required or permitted to be delivered under this Settlement among Class Counsel, the Committee, the Debtor or from any Class Member to the Class Counsel, the Debtor and/or the Bankruptcy Court shall be (i) in writing, (ii) delivered personally, by courier service or by certified or registered mail, first-class postage prepaid and return receipt requested, (iii) deemed to have been received on the date of delivery, and (iv) addressed as follows (or to such other address as the Party entitled to notice shall hereafter designate by a written notice filed with the Bankruptcy Court):

**If to the Debtor, to:**

COZEN O'CONNOR  
33 South Sixth Street  
Suite 4640  
Minneapolis, MN 55402  
Attention: Joel D. Nessel

**If to the Official Committee of Unsecured Creditors, to:**

ROBBINS, SALOMON & PATT, LTD.  
180 N. LaSalle Street, Suite 3300  
Chicago, IL 60601  
Attention: Steven R. Jakubowski

**If to Class Members or Class Counsel, to:**

KLEHR HARRISON HARVEY BRANZBURG LLP  
1835 Market Street, Suite 1400  
Philadelphia, PA 19103  
Attention: Charles A. Ercole

(d) Non-Severability. Each of the provisions of this Settlement is a material and integral part hereof. In the event that one or more of the provisions of this Settlement shall become invalid, illegal or unenforceable in any respect, the entire Settlement shall be deemed null and void unless all the Parties agree otherwise.

(e) Amendments. This Settlement may not be modified, amended or supplemented by the Parties except by a written agreement that the Parties have signed with any required approval of the Bankruptcy Court.

(f) Integration. This Settlement supersedes the Original Settlement Agreement, and, together with the exhibits and schedules, which are incorporated herein by this reference, contains the entire agreement among the Parties with respect to the matters covered by this Settlement, and no promise or understanding or representation made by any Party or agent, director, officer, employee or attorney of any Party that is not expressly contained in this Settlement shall be binding or valid.

(g) Interpretation. This Settlement was the product of negotiations between the Parties and any rule of construction requiring that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Settlement.

(h) Headings. The headings of this Settlement are for convenience only and are not part of the Settlement and do not in any way define, limit, extend, describe or amplify the terms, provisions or scope of this Settlement and shall have no effect on its interpretation. Where appropriate, the use of the singular shall include the plural and the use of the masculine gender shall include the feminine gender as well.

(i) Signatures. Facsimile or other electronic copies of signatures on this Settlement are acceptable, and a facsimile or other electronic copy of a signature on this Settlement shall be deemed to be an original.


(j) Counterparts. This Settlement may be executed in one or more counterparts, each of which together or separately shall constitute an original and which, when taken together, shall be considered one and the same binding agreement.

(k) Cooperation. The Parties agree to cooperate with one another to effectuate an efficient and equitable implementation of this Settlement.

(l) Binding Nature of Settlement. This Settlement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors, transferees, assigns, heirs and estates, including without limitation, any trustee appointed in the Bankruptcy Case.

IN WITNESS WHEREOF, the Parties have executed and delivered this Settlement as of the date first written above.

CUTLER LAW FIRM, LLP

  
\_\_\_\_\_  
Nicholas J. Mohning, Esquire  
100 N Phillips Ave, 9th Floor  
Post Office Box 1400  
Sioux Falls, SD 57101-1400  
Telephone: 605.335.4950  
Facsimile: 605.335.4961

-and-

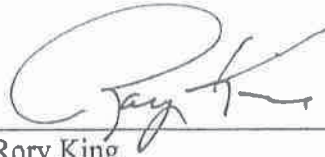
KLEHR HARRISON HARVEY  
BRANZBURG LLP

  
\_\_\_\_\_  
Charles A. Ercole, Esquire  
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cercole@klehr.com; sveghte@klehr.com

*Attorneys for Plaintiffs*

- AND -

BANTZ, GOSCH & CREMER, L.L.C.

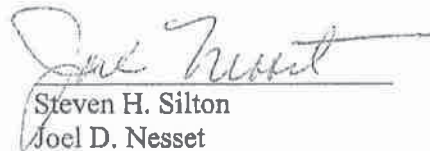


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*-and-*

COZEN O'CONNOR



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- AND -



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*Attorneys for the Official Committee  
of Unsecured Creditors*

SCHEDULE 1

(Class Members)

<b>Name:</b>
Abel Lopez Miranda
Adalberto Ferrer Machado
Adolfo Garcia
Agustin Perez Reyes
Aicytel Ramirez
Alan Bell
Alberto Cabrisas
Alicia Alvarado
Allan Brandner
Allen Kolb
Allen Munger
Alma Lapid
Amandon Wilhelm
Amy Rissmann
Andy Sena
Angel Trujillo
Annebelle Buffinton
Anthony Cancel Figueroa
Anthony Frenier
Armeris Tamayo Pavon
Arthur Avila
Arturo Rodriguez
Aura Garcia Gonzalez
Austin London
Aymen Benaissa
Bennett Wuestewald
Billy Ngirchochit
Blair Younker
Blanca Garcia

<b>Name:</b>
Blanca Hernandez
Brant Welke
Brian Hoff
Carlos Ayuso
Carlos Rodriguez
Carlos Gonzalez Cuervo
Chad Berninghaus
Chad Hagman
Chad Wagenaar
Chelsie Anderson
Christian Arnao
Christian Ortiz
Christopher Delvalle
Clark White
Claudia Campos
Clyde Eisenbiesz
Corey Schuh
Cory Calzadilla
Curtis Pagel
Dannia Poe
Danny Norman
Darrell Barreth
David Palmer
David Poe
David Stewart
Day Tar
Dayma Sobera
Dean Pies
Dennis Pelton
Dominic Dolney
Don Wagner
Donald Foster
Duane Pekarski
Duniesqui Torres Ramirez
Eddie Salgado
Eddy Rufin
Efren Gonzalez
Eh Kaw
Eh Ta Mu
Elizabet Reyes
Enoc Moreno
Ernesto Lemus
Ernesto Ramos Gomez

Name:
Ernesto Vasquez Rodriguez
Ezequiel Gomez
Fabian Angeles
Fabio Diaz
Francisco Caneda Osorio
Freddie Garcia Jr.
Free Ngirchomlei
Gary Lorensen
Gary Renguul
Gay Doh Soe
Gay Ler
George Moser
Gerardo Medina
Gladys Galvas
Grant Schnabel
Greg Greiser
Guadalupe Ibarra
Guillermo Beltr Del Rio Gonzalez
Hassan Yarrow
Hay Blue Htoo
Hector Gonzalez
Hector Torres
Hei Ber
Heriberto Rodriguez
Heiu Pham
Hilda Chairez Ibanez
Holly Holmes
Htoo Sher
Ignacio Zapien Ramirez
Indira Garcia Mendez
Isa Sabalier Maymi
Isabel Giniebra Cordova
James Hoffman
James Howell
James Knapp
James Nolan
Jamie Sturdevant
Javier Vazquez Solis
Jay Rossman
Jeffery Lacroix
Jeremy Randolph
Jerrica Loeschke

<b>Name:</b>
Jerry Bennett
Jerry Wemhoff
Jesse Cantalope
Jessica Goebel
Jesus Meirama Gonzalez
Joe Moslander
John Holmquist
Jonghwan Kim
Jorge Alvarado
Jorge Cancel Figueroa
Jorge Navarro
Jorge Reynoso
Jorge Rufin Arrieta
Jose Escobar Granado
Jose Guevara Sorto
Jose Gutierrez Carreno
Juan Sampayo
Julio Diaz Magrinat
Justin Austin
Karl J. Wagner
Kerry Christman
Kevin Herren
Klu Say
Koe Loe
Kyaw Eh
Kyaw Eh
Kyaw Htun
Kyaw Kaw
Lacrista Ackerman
Lah Luh
Landon Eckmann
Laura London
Laura Suedmeier
Lauren Stearns
Lesli Melius Jensen
Leydis Estrada
Lin Gu
Linda Enger
Lisa Dauwen
Lo Tha Maung
Lorena Mendoza
Lorna Olson
Luis Pena Avila

<b>Name:</b>
Luis Serrano Rodriguez
Mabel Muniz Garcia
Mabel Valdes
Maite Vila
Malinda Johnson
Manuel Rodriguez
Marcos Morales
Maria Carrera
Maria Del Rosario Ibon
Maria Perez Hernandez
Marina Escalante Pereira
Marisela Morales Rodriguez
Mark Wojtaszek
Marta Pereira Martinez
Martha Callejas Velasco
Matthew Nygaard
Mavrick Masahiro
Michael Byrum
Michael Malsom
Michel Hernandez
Michel Perdona Carballo
Miguel Pedro
Modesto Diaz
Mohamud Abdi
Narciss LeFort
Narcisse Bruguier
Neisis Pereira Machado
Nelcis Perez-Pena
Nestor Ruiz
Noel Rios Hernandez
Norma Rivera
Obono Alual
Omengkar Tadao
Oned Nunez Pompa
Orlando Jackson
Pa Da
Pa Si Ker
Pa Sit
Pablo Gutierrez
Pah Lu Paw
Patricia Gonzalez
Pedro Velazco
Percy Khin

<b>Name:</b>
Perry Chogolmad
Plo Lwai
Pu Lay
Rafaela Navarro
Ramiro Martinez-Hernandez
Raquel Rojas
Raul Vizcaino Lores
Rayanda Miyuki
Reiniel Claro Estrada
Rene Ferrer Almarez
Reynaldo Marquez
Rhonda Kvernevig
Ricardo Sabalier
Richard Hulshof
Richard Jensen
Robb Krokkel
Robert Geist
Robert Wright
Roberto Grajeda
Rodolfo Almaguer
Rogelio Aguilar Murillo
Roger Krein
Roland Htoo
Ruben De Hoyos
Sancti Y Reyes Granado
Saw Min Min
Saw Tin Shin
Scott Roy
Scott Thomas
Sha Ktray Htoo
Shahara Meridha
Shaine Anderson
Shannon Anderson
Sigifredo Gonzalez
Soila Martinez
Sor Lopez Ruiz
Steve Klein
Steven Ballinger
Steven Hanson
Steven Peterson



<b>Name:</b>
Suzanne Morrow
Suzette Wirth
Ta Ear Paw
Ta Lo
Tanya Glodrey
Teddy Nobuo
Terri Hagman
Than Win
Thar Lay
Thay Mia Wah
Thomas Collier
Thomas Martinez
Timothy Lucius
Tone Tone
Toshia Blubaugh
Trent Andree
Tyler Roe
Victor Alamo Baez
Wanda Laboy
Way Pium
Wayne Niro
William Moon
William Watros
Wishlee Ringang
Yadisleidi Mulet
Yamara Perez Sosa
Yamile Chavez Garcia
Yelien Casado Garcia
Yinley Rojas Pulido
Yoanis Sevilla Perez
Yordanis Martinez Murier
Yura Chong Elverud

**EXHIBIT A TO SETTLEMENT AGREEMENT**

(Conditional Class Certification Order)

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH DAKOTA

In re:	:	Chapter 11
NORTHERN BEEF PACKERS LIMITED	:	Case No. 13-10118
PARTNERSHIP,	:	
	:	
Debtor.	:	

**ORDER PURSUANT TO 11 U.S.C. § 105 AND FED. R. BANK. P. 7023 AND 9019 (I) PRELIMINARILY APPROVING THE SETTLEMENT AGREEMENT BETWEEN THE DEBTOR AND WARN ACT CLAIMANTS, (II) CERTIFYING A CLASS OF WARN ACT CLAIMANTS FOR SETTLEMENT PURPOSES ONLY, (III) APPOINTING CLASS COUNSEL AND CLASS REPRESENTATIVE, (IV) APPROVING THE FORM AND MANNER OF NOTICE TO CLASS MEMBERS OF THE CLASS CERTIFICATION AND SETTLEMENT, (V) SCHEDULING A FAIRNESS HEARING TO CONSIDER FINAL APPROVAL OF THE SETTLEMENT AGREEMENT, AND (VI) GRANTING RELATED RELIEF**

The Court has considered the joint motion of Northern Beef Packers Limited Partnership (the “Debtor”), Jorge Alvarado (the “Named Plaintiff” or “Class Representative”), on behalf of himself and on behalf of similarly situated class members (together with the Class Representative, but excluding the Opt-Outs (as hereinafter defined), the “Class Members” or “Class”), and the Official Committee of Unsecured Creditors (the “Committee”) for the entry of orders: (a) approving the *Settlement and Release Agreement* dated as of October \_\_, 2014 (the “Settlement Agreement” or the “Settlement”)<sup>1</sup> among the Debtor and the Class Members (collectively, the “Parties”) pursuant to Bankruptcy Rule 9019, (b) certifying the Class for settlement purposes only, appointing the law firm of Klehr Harrison Harvey Branzburg LLP as

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Settlement Agreement.

class counsel ("Class Counsel"), appointing Jorge Alvarado as Class Representative and preliminarily approving the Settlement Agreement pursuant to Civil Rule 23 and Bankruptcy Rule 7023, (c) approving the form and manner of notice to Class Members of the conditional class certification and settlement, (d) scheduling a fairness hearing (the "Fairness Hearing") to consider final approval of the Settlement Agreement pursuant to Civil Rule 23 and Bankruptcy Rule 7023, (e) after the Fairness Hearing, finally approving the Settlement Agreement pursuant to Civil Rule 23 and Bankruptcy Rule 7023, and (f) granting related relief (the "Joint Motion"). A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit A**.

The Court finds that:

1. The Class Representative filed with the Bankruptcy Court a class-action adversary complaint (the "Complaint") commencing an adversary proceeding captioned *Jorge Alvarado, individually and on behalf of all similarly situated former employees v. Northern Beef Packers Limited Partnership*, Adv. Pro. No. 13-01013 (the "WARN Action"), in which he asserted various claims under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101 et seq. (the "Federal WARN Act"), and state wage payment laws (collectively, the "WARN Act" or "WARN").

2. On October \_\_, 2014, the notice of the Joint Motion ("Notice") was served by first class mail on the parties listed on the proof of service of the Notice filed with the Court.

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

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

5. For purposes of the Class settlement, Class Counsel has had extensive experience handling class action WARN litigation and has been appointed Class Counsel in over fifteen (15) employment law class action cases, including many WARN Act class actions and that the Class Representative does not have interests antagonistic to those of the Class.

6. For the purposes of the Class settlement: (i) the Class, consisting of approximately 271 Class Members, is so numerous that joinder of all Class Members is impracticable; (ii) there are questions of law or fact common to the Class; (iii) the claims of the Class Representative are typical of the Class; (iv) the law firm of Klehr Harrison Harvey Branzburg LLP has fairly and adequately protected the interests of the Class; (v) questions of law or fact common to the Class Members predominate over any questions affecting only the individual Class Members; and (vi) the class settlement mechanism is superior to other available methods of resolving the alleged WARN Act claims and the other claims released in the Settlement Agreement. Therefore, the Class should be certified for settlement purposes only, pursuant to Civil Rules 23(a) and (b)(3) and Bankruptcy Rule 7023, consisting of all persons who (i) were employed by the Debtor in the United States at its Aberdeen, South Dakota facility (the "Affected Facility"); (ii) suffered an "employment loss", as that term is defined in 29 U.S.C. § 2101(a)(6) and 20 C.F.R. § 639.3(f), on, or within thirty (30) days of, July 24, 2013, as part of a "plant closing" or "mass layoff," as those terms are defined in 29 U.S.C. § 2101(a)(2)-(3) and 20 C.F.R. § 639.3(b)-(c), at an Affected Facility, or as the reasonably foreseeable consequence of

a “plant closing” or “mass layoff” occurring on or about July 24, 2013, including, without limitation, those employees listed on Schedule 1 to the Settlement Agreement; (iii) meet the definition of “affected employee” as set forth in 29 U.S.C. § 2101(a)(5) and 20 C.F.R. § 639.3(e), including, without limitation, those employees listed on Schedule 1 to the Settlement Agreement; and (iv) do not file a timely request to opt out of the Class.

7. Notice should be given to all of the Class Members, affording them the opportunity to opt-out of the Class or object to the proposed Settlement Agreement.

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

9. The Settlement Agreement should be preliminarily approved.

10. Notice to all individuals identified in Schedule 1 to the Settlement Agreement by first class mail, postage prepaid, at their last known address as indicated in the records of the Debtor (and as updated by Class Counsel’s searches for current addresses or as may otherwise be determined by the Parties) is reasonable and the best notice practicable under the circumstances and such mailing should be made by Class Counsel within fifteen (15) business days following the entry of this Order.

11. Notice to creditors who are not Class Members in the form attached to the Motion as Exhibit 3 (the “General Notice”) by first class mail, postage prepaid, at their last known address as indicated in the records of the Debtor (and as updated by Class Counsel’s searches for current addresses or as may otherwise be determined by the Parties) is reasonable

and the best notice practicable under the circumstances and such mailing should be made by Class Counsel within fifteen (15) business days following the entry of this Order.

12. The contents of the Class Notice (the “Class Notice”) form annexed to the Settlement Agreement as Exhibit C meet the requirements of Fed. R. Civ. P. 23(c)(2)(B). The Class Notice states the nature of the action, and the issues and defenses relevant to the action. The Class Notice also states that the Settlement Agreement, if approved, will be binding on all Class Members. The Class Notice summarizes the terms of the Settlement Agreement, the right of each Class Member to opt-out of the Class or object to the Settlement Agreement, the right of each Class Member to appear by counsel at the Fairness Hearing, and the fact that more information is available from Class Counsel upon request. Further, the Class Notice informs the Class Members that the Settlement Agreement provides for the release of their Released Claims (as that term is defined in the Settlement Agreement) and the payment of Class Counsel’s attorneys’ fees and costs. *See* FED. R. CIV. P. 23(h).

13. The Fairness Hearing should be held no sooner than ninety (90) days after service of the Class Notice, so that Class Members will have sufficient time from the mailing of the Class Notice to secure further information regarding the relief sought by the Joint Motion, to opt out of the Class or object to the proposed Settlement Agreement should they choose to do so, and to engage counsel to appear at the Fairness Hearing.

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

THEREFORE, IT IS HEREBY ORDERED THAT:

A. The Joint Motion is preliminarily GRANTED to the extent set forth herein.

B. The Settlement Agreement is hereby preliminarily approved.

C. The Class comprised of all persons who (i) were employed by the Debtor in the United States, including those employed at the Affected Facility; (ii) suffered an “employment loss”, as that term is defined in 29 U.S.C. § 2101(a)(6) and 20 C.F.R. § 639.3(f), on, or within thirty (30) days of, July 24, 2013, as part of a “plant closing” or “mass layoff,” as those terms are defined in 29 U.S.C. § 2101(a)(2)-(3) and 20 C.F.R. § 639.3(b)-(c), at the Affected Facility, or as the reasonably foreseeable consequence of a “plant closing” or “mass layoff” occurring on or about July 24, 2013, including, without limitation, those employees listed on Schedule 1 to the Settlement Agreement; (iii) meet the definition of “affected employee” as set forth in 29 U.S.C. § 2101(a)(5) and 20 C.F.R. § 639.3(e), including, without limitation, those employees listed on Schedule 1 to the Settlement Agreement; and (iv) do not file a timely request to opt out of the Class, is hereby certified for settlement purposes only, pursuant to Civil Rules 23(a) and (b)(3) and Bankruptcy Rule 7023, with respect to their WARN Act claims against the Debtor and all other claims released pursuant to the Settlement Agreement.

D. Jorge Alvarado is hereby appointed as Class Representative.

E. The law firm of Klehr Harrison Harvey Branzburg LLP is hereby appointed as Class Counsel.



F. The form of the Class Notice and the service of the Class Notice by Class Counsel by first class mail, postage prepaid, to each individual identified in Schedule 1 to the Settlement Agreement at his or her last known address contained in the Debtor's records (as updated by Class Counsel's searches for current addresses or as may otherwise be determined by the Parties) is hereby approved.

G. The Class Notice and the General Notice shall be mailed by first class mail by Class Counsel to the individuals identified in Schedule 1 to the Settlement Agreement within fifteen (15) business days following the entry of this Order.

H. Objections or other responses to final approval of the Settlement Agreement are to be filed with the Clerk of the Court and mailed to the parties listed in the Class Notice, so that they are received by all parties no later than five (5) business days prior to the Fairness Hearing. Objections or other responses must be in writing and must set forth the basis for any such objection or other response to the Settlement Agreement.

I. Should a Class Member choose not to be bound by the Settlement, his or her completed and executed Opt-Out Notice Form (in the form of the last page of the Class Notice) must be mailed to Class Counsel as listed and described in the Class Notice, so that such Opt-Out Notice Form is received by Class Counsel no later than five (5) business days prior to the Fairness Hearing.

J. Prior to the Fairness Hearing, counsel for the Debtor shall file a declaration attesting to the service of notice of this Settlement to the appropriate federal and state

officials pursuant to 28 U.S.C. §1715. No final order approving the Settlement Agreement shall be entered until all applicable statutory notice periods have expired.

K. The Court shall conduct the Fairness Hearing on \_\_\_\_\_, 2014 at \_\_\_:\_\_\_ a.m. The Court may adjourn the Fairness Hearing without further notice of any kind other than an announcement of such adjournment in open court at the Fairness Hearing or any adjournment thereof.

L. This Court retains jurisdiction to construe, interpret, enforce, and implement the Settlement Agreement and this Order.

Dated: October \_\_\_\_, 2014

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THE HONORABLE CHARLES L. NAIL, JR.  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT B TO SETTLEMENT AGREEMENT**

(Final Settlement Order)

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH DAKOTA

In re:	Chapter 11
NORTHERN BEEF PACKERS LIMITED PARTNERSHIP,	Case No. 13-10118
Debtor.	

**FINAL ORDER APPROVING  
WARN CLASS SETTLEMENT AND RELEASE AGREEMENT**

The Court has considered the Joint Motion (defined below) of Northern Beef Packers Limited Partnership, debtor and debtor in possession (the “Debtor”), Jorge Alvarado (the “Named Plaintiff” or “Class Representative”), on behalf of himself and on behalf of similarly situated class members (together with the Class Representative, but excluding any opt-outs, the “Class Members” or “Class”), and the Official Committee of Unsecured Creditors (the “Committee”) for an order approving the proposed *Settlement and Release Agreement* dated as of \_\_\_\_\_, 2014 (the “Settlement Agreement” or “Settlement”)¹ settling WARN Act class claims and certain other claims as defined in the Settlement (the “Joint Motion”). A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit A**.

The Court finds:

A. The Class Representative filed with the Bankruptcy Court a class-action adversary complaint (the “Complaint”) commencing an adversary proceeding captioned *Jorge Alvarado, individually and on behalf of all similarly situated former employees v. Northern Beef*

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

*Packers Limited Partnership*, Adv. Pro. No. 13-01013 (the “WARN Action”), in which he asserted various claims under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101 et seq. (the “Federal WARN Act”), and state wage payment laws (collectively, the “WARN Act” or “WARN”). The Class Representative further asserted that the claims (the “WARN Claims”) were entitled to priority pursuant to sections 507(a)(4)-(5) of the Bankruptcy Code.

B. The Court has entered an Order on \_\_\_\_\_, 2014, conditionally certifying the Class, granting preliminary approval of the Settlement Agreement and approving the form and manner of notice of Class certification and the Settlement Agreement and the deadline for opting out of the Class and filing objections to the Settlement Agreement to be given to all Class Members.

C. Due notice of the Settlement Agreement has been given to all creditors and Class Members, the right to opt-out of the Class or object to the proposed Settlement Agreement and the right to appear in person or by counsel at the Fairness Hearing; all requisite notice has been provided to the appropriate federal and state officials pursuant to 28 U.S.C. §1715 and all applicable statutory notice periods have expired; and no other and further notice is required and such notice is deemed proper and sufficient under the circumstances.

D. All Class Members who did not exercise the right to opt-out of the Class are bound by this Order and the terms of the Settlement Agreement.

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

Bankruptcy Procedure. The Court finds that (i) the proposed cash settlement payment of \$180,000 is at the low end of the range of potentially adverse litigation outcomes for the Debtor's estate, (ii) the costs of litigation would be high because fact issues predominate and the matter would not likely be resolved early through a motion to dismiss, and (iii) projected recoveries to general unsecured creditors (projected in excess of \$80 million) appear remote at this time

F. The terms of the Settlement Agreement are also appropriate and in the best interests of creditors under Bankruptcy Rule 9019.

G. The Settlement Agreement was negotiated at arm's-length and in good faith, is fair equitable and in the best interest of the Debtor's estate.

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

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Settlement Agreement is APPROVED.

2. Upon the Settlement Agreement, the Parties are authorized and directed to implement the terms of the Settlement Agreement and make the payments required thereunder and in accordance with the Settlement Agreement.

3. Upon the "Effective Date" of the Settlement, as defined in the Settlement Agreement, except for the rights arising out of, provided for, or reserved in the Settlement Agreement, the Class Members (except for any Class Members who have opted out of the Settlement Agreement), for and on behalf of themselves, and their respective predecessors,

successors, assigns, heirs, personal representatives and estates (collectively, the “Releasing Parties”), are hereby deemed to have fully and forever released and discharged the Debtor, the Debtor’s estate, its current and former shareholders and investors, subsidiary and affiliated entities, any potential “single employer” under the WARN Act, and their respective officers, directors, shareholders, agents, employees, partners, members, accountants, attorneys, representatives and other agents, and all of their respective predecessors, successors and assigns (collectively, the “Released Parties”), of and from any and all claims, demands, debts, liabilities, obligations, liens, actions and causes of action, costs, expenses, attorneys’ fees and damages of whatever kind or nature, at law, in equity and otherwise, whether known or unknown, anticipated, suspected or disclosed, which the Releasing Parties may now have or hereafter may have against the Released Parties, which relate to or are based on the WARN Act or back or severance pay or benefits under any federal, state or local law or regulation arising out of the termination of the Class Members’ employment by the Debtor, including, but not limited to: (i) all claims asserted or that could have been asserted in the WARN Act Litigation; (ii) the individual WARN claims; and (iii) any other claims for back or severance pay or benefits based on or arising out of any federal, state or local statute, ordinance or regulation; *provided, however*, that the following claims and/or rights shall not be released: (a) any claims for continuation of health or medical coverage, at the Class Member’s expense, or at the expense of a beneficiary or dependent of a Class Member, to the extent allegedly required by the relevant provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985; (b) any claims for expense reimbursement; unpaid wages, unpaid “paid time off,” vacation or commission unrelated to the

WARN Act; (c) any prepetition claims arising out of obligations of the Debtor unrelated to the WARN Act, or back or severance pay or benefits; (d) rights, if any, unrelated to Class Members' WARN claims, under the Debtor's 401(k) plans; and (e) any claims which the law clearly states may not be released by settlement. The claims released above are referred to as the "Released Claims." All rights of the Released Parties to object to, offset or oppose any and all claims, obligations, or causes of action, of any type, except those claims expressly allowed hereunder, are expressly reserved.

4. On the Effective Date, the Settlement Agreement shall be binding on a chapter 7 trustee subsequently appointed.

5. Upon the distribution of the Settlement Fund in accordance with the Settlement Agreement, any claims that have been scheduled on behalf of, or filed by, the Class Representative or the Class Members in the Chapter 11 Case, on account of any alleged violation of the WARN Act or severance pay or benefits under any federal, state or local law or regulation, including, without limitation, the individual WARN claims are disallowed in their entirety and shall be deemed expunged from the Debtor's schedules or claims register, as applicable. In addition, each Releasing Party shall be deemed as of the Effective Date to have released the Class Representative from any and all claims whether liquidated or unliquidated, contingent or non-contingent, asserted or unasserted, fixed or not, matured or unmatured, disputed or undisputed, legal or equitable, known or unknown that he or she may have against the Class Representative, any successors or assignees to their legal interests, or any of their present or



former agents, attorneys or consultants arising out of any Released Claim or the terms of the Settlement.

6. Subject to the last sentence of this Section, a stipulation for dismissal with prejudice of the WARN Action shall be executed in a form agreeable to the Parties (the "Dismissal"). The parties shall execute, and Class Counsel shall file a stipulation for dismissal with prejudice in the WARN Action within fourteen (14) days following the Effective Date.

7. All amounts paid to a Class Member from the Settlement Amount shall be deemed a recovery to such Class Member under 11 U.S.C. § 507(a)(4). In no event shall any Class Member receive from the Settlement Amount more than the priority amount allowable under 11 U.S.C. § 507(a)(4).

8. Within 30 days after the close of each calendar quarter, Class Counsel shall provide the Debtor (or any successor thereto) with a report of distributions made to each Class Member.

9. This Court shall retain jurisdiction, even after the conversion and/or closing of this Chapter 11 Case, with respect to all matters arising from or related to the implementation of the Settlement Agreement and this Order.

So ordered: \_\_\_\_\_, 2014

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THE HONORABLE CHARLES L. NAIL, JR.  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT C TO SETTLEMENT AGREEMENT**

(Class Notice)

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION,  
DATE AND TIME OF FINAL FAIRNESS HEARING, AND  
RIGHT TO OBJECT TO THE PROPOSED SETTLEMENT**

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS.

**TO:** The former employees of Northern Beef Packers Limited Partnership (the “**Debtor**”) who were involuntarily terminated without cause on or about July 24, 2013 and who did not receive at least 60 days’ written notice in advance of their permanent terminations. On July 24, 2013 (the “**Petition Date**”), when the Debtors filed for bankruptcy relief under Chapter 11 of the United States Bankruptcy Code.

**SUBJECT:** Proposed settlement of claims to recover up to 60 days’ wages and benefits pursuant to the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 *et seq.* (the “**WARN Act**”).

DATE: \_\_\_\_\_, 2014

**IN ORDER FOR YOU TO PARTICIPATE IN THE SETTLEMENT AND  
POTENTIALLY RECEIVE MONEY, YOU DO NOT NEED TO DO ANYTHING.**

**Introduction**

A class action entitled *Jorge Alvarado, individually and as Class Representative v. Northern Beef Packers Limited Partnership*, Adv. Pro. No. 13-01013 (the “**Alvarado Lawsuit**”) are currently pending in the United States Bankruptcy Court for the District of South Dakota (the “**Court**”). The parties to the Alvarado Lawsuit have reached an agreement on terms for a proposed settlement, which are outlined in a settlement agreement (the “**Settlement Agreement**”), under which, among other things, the Class Representative, Class Members, and Class Counsel (each as defined below) would receive payments.

The Court has preliminarily approved the settlement and Ordered that this Notice be sent to all who may be affected by it before the Court grants final approval.

You are receiving this Notice because you have been identified as a member of the Class. This Notice informs you of the developments in the Alvarado Lawsuit; explains what a class action is and who qualifies as a Class Member in this case, summarizes the principal terms of the settlement; and explains your rights under the class certification (including your right to opt out of the Class) and the settlement (including your right to file objections to it).

**The Nature of the Lawsuit**

Jorge Alvarado (“**Plaintiff**”), individually and on behalf of other similarly situated former employees of the Debtor, alleged in a Complaint, filed on September 26, 2013, that they were terminated without cause due to mass layoffs and/or permanent plant closings carried out on or about July 24, 2013. Plaintiff claims that, under the WARN Act,

they were entitled to receive written notice sixty (60) days in advance of their respective terminations. Plaintiff contends that they did not receive proper notice and believe that they, therefore, are entitled to an award of sixty (60) days' wages and benefits, reduced by the value of wages and benefits for the number of days of any advance written notice that Northern Beef Packers Limited Partnership (the "**Debtor**") properly provided, and the Debtor is therefore, responsible for the alleged violations of the WARN Act. Unless specifically stated otherwise, the following is a description of the Alvarado Lawsuit.

### **The Debtor's Response**

Before the Debtor filed an answer, the parties stipulated to an extended time to respond to the Complaint and the parties engaged in substantial informal discovery, including the production of documents, which included, but was not limited to, payroll information, and facts and documents concerning the events that preceded the shut-down of Debtor's business operations.

During the negotiations, the Debtor argued that certain exceptions to the WARN Act excepted the Debtor's bankruptcy estate from liability, including, but not limited to, the "faltering company" exception, the "unforeseeable business circumstances" exception, and on grounds the majority of courts to consider whether employees working at sites with less than fifty (50) employees are entitled to WARN Act damages, have held that such employees are not covered by the WARN Act.

### **What is a Class Action and Who Is Involved?**

In a class action lawsuit, one or more individuals called Class Representatives (in this case, the Alvarado Lawsuit) sue on behalf of themselves and other people who have similar claims. The Class Representative and those who have similar claims together are called a "Class" or "Class Members." The company or companies sued are called the Defendant(s). One court resolves the issues for everyone in the Class, except for those people who choose to exclude themselves from the Class. The Class Members' claims are legally and factually similar, and, as such, resolving those claims through a class action can be more efficient than having many individual lawsuits.

### **Who is a Class Member?**

On \_\_\_\_\_, 2014, the Court tentatively certified a Class in this case for settlement purposes only. That means that Plaintiff and the Debtor have agreed to recognize that a Class exists so that they can settle the case, but if the settlement does not become final for any reason, Plaintiffs will have to prove that a Class should be recognized again, and the Debtor may argue that a Class should not be recognized. Additionally, Plaintiff must still demonstrate that the Class meets all of the requirements for a class under federal law.

For these purposes, the Court has decided that the Class Members include the Plaintiff and any other former employee of the Debtor who was terminated on July 24, 2013, or shortly thereafter.

### **No Admission of Liability**

The Trustee on behalf of the Debtors has agreed to the proposed settlement solely for settlement purposes. This Notice shall not be read or interpreted as an admission of liability by the Trustee or the Debtors. To the contrary, the Trustee and Debtors deny that the Debtors violated any laws or engaged in any wrongdoing.

### **Class Counsel and Class Representatives**

Plaintiff and the Class are represented by Charles A. Ercole, Kathryn E. Perkins and Sally E. Veghte of the law firm of Klehr Harrison Harvey Branzburg, LLP, 1835 Market Street, Suite 1400, Philadelphia, PA 19103 (“**Class Counsel**”). Jorge Alvarado is the Class Representative.

### **The Settlement and the Final Fairness Hearing**

Plaintiff, the Debtor, and the Official Committee of Unsecured Creditors (the “**Committee**”) recently agreed to the terms of a settlement that, with the Court’s final approval, would resolve the Alvarado Lawsuit filed against the Debtor in the Court.

The terms of the settlement are set out in full in the Settlement Agreement. You may request the complete text of the Settlement Agreement by contacting Kathryn E. Perkins of Klehr Harrison Harvey Branzburg LLP, through the contact information above. The information below explains the principal terms of the Settlement Agreement. This section is only a summary, though, and the terms as set forth in the Settlement Agreement control if there is any inconsistency.

Under the Settlement Agreement:

- The parties agree to seek certification of classes in the Alvarado Lawsuit for settlement purposes only.
- All of the individual employees who were employed by the Debtor at the Debtor’s facility in Aberdeen, South Dakota, shall be classified as the “**Class.**” The law is clear that an employee who was employed at/or reported to a site where there are 50 or more full time employees is potentially eligible for WARN Act damages. Accordingly, the Class will be entitled to receive a cash payment in the amount of \$180,000.00 (the “**Settlement Amount**”), which shall be distributed as provided below. All amounts paid to a Class Member from the Settlement Amount shall be deemed a recovery to such Class Member under 11 U.S.C. § 507(a)(4). In no event shall any Class Member receive from the Settlement Amount more than the priority amount allowable under 11 U.S.C. § 507(a)(4). In addition, the Class shall have an allowed general unsecured claim in the amount of \$1,000,000.00 (the “**Class Claim**”) (the Settlement Amount and the Allowed Claim shall be referred to, together, as the “**Common Fund**”). Any distributions on account of the Class Claim shall be made pursuant to section 726 of the Bankruptcy Code or as otherwise ordered by the Bankruptcy Court.

- Plaintiff and all Class Members agree to release any and all claims against the Debtor, the Debtor's bankruptcy estate that arose from or relate to the facts and circumstances of these litigations or any other claims against the Debtor, the Debtor's bankruptcy estate other than claims for wages, salary or benefits or claims that cannot be waived by operation of law, and except for their claims for vacation pay which will be paid as allowed priority claims to the extent funds are available in accordance with 11 U.S.C. § 726.
- Class Counsel shall have the sole responsibility for administering the payments for the benefit of all Class Members, or for retaining an administrator to do so. The Debtor shall have no responsibility or obligation with respect to the apportionment and allocation of payments among the Class Members, other than the determination of the applicable pro rata share of the Class Members as compared to other claimants under 11 U.S.C. § 726.
- Class Counsel will file a motion seeking Court approval for attorneys' fees of 33 1/3% of the total Common Fund as well as reimbursement for out-of-pocket costs and the cost of third party administration of the settlement of no more than \$20,000 as payment in full for their work in these cases. Neither the Debtor nor its bankruptcy estate will oppose Class Counsel's request for a fee award.
- The settlement is contingent on the total number of the former employees exercising their right to opt-out of the settlement equaling less than ten percent (10%) of the number of Class Members; if opt-outs equal ten (10%) or more of the number of Class Members, the Debtor or the Committee will have the option to cancel or withdraw from the settlement.
- The settlement will become effective only after: (1) the Court preliminarily approves the Settlement Agreement; (2) the Court finally approves the Settlement Agreement through an Order and Judgment; (3) the Order and Judgment is either affirmed on appeal, the last remaining appeal challenging it is dismissed with prejudice, or, if no appeal is filed, the time for filing an appeal expires; (4) the dismissal with prejudice of the Alvarado Lawsuit; and (5) the failure of any party to exercise a right to terminate based on the opt out threshold set forth above.
- If the Court does not approve the settlement, the Debtor expressly reserves all rights to challenge all claims and allegations in the Complaint upon all legal, procedural, and factual grounds, including but not limited to the ability to assert any defense, privilege, or counterclaim.
- Deductions from the Common Fund: Prior to distributions to the respective Class Members, the amounts listed below in subparagraphs (a) and (b) will be deducted from the Common Fund. Because there may be multiple distributions, some of the deductions will be on a percentage basis of each



distribution (i.e., attorney's fees) while others will be on an actual cost basis (i.e., cost of third party administration).

- (a) Service payment of \$2,500 to the Class Representative;
- (b) 33 1/3 % of the Common Fund for attorney's fees (without regard to any opt-outs) and reimbursement (not to exceed \$20,000) for out-of-pocket expenses and the cost of administering the Settlement. These fees and expenses/costs, if granted, will come out of the Common Fund; **individual Class Members will not have to pay Class Counsel on their own.**

- Allocation of payments among the Class Members. Each Class Member will be entitled to a payment derived from the total recovery allocating a pro rata amount to each Class Member based on the maximum amount of his or her potential claim. The payments to Class Members shall be calculated as follows:

- (a) Each Class Member's "Individual WARN Claim" will be derived by calculating each Class Member's daily rate, then multiplying that daily rate by 60 days.
- (b) The "Aggregate WARN Claim" will be calculated by adding all of the Individual WARN Claims together;
- (c) Each Class Member's "Pro Rata Factor" will be calculated by dividing (1) each Class Member's Individual WARN Claim by (2) the Aggregate WARN Claim;
- (d) The amount each Class Member shall receive under this Settlement Agreement shall then be calculated by multiplying: (1) the total amount to be distributed (less that portion of settlement administration expenses, attorneys' fees, costs and Service Payments allocated to the Litigation as approved by the Court); by (2) each Class Member's Pro Rata Factor.

The Court has preliminarily approved the Settlement Agreement for the purposes of notifying all Class Members, but the Settlement Agreement will not take final effect unless and until the Court decides, at a Final Fairness Hearing, that it is a fair, reasonable, and adequate resolution for each case. The Final Fairness Hearing will take place on \_\_\_\_\_, 2014 at \_:00 .m. in the U.S. Bankruptcy Court, District of South Dakota, U.S. Courthouse, 400 South Phillips Avenue, Sioux Falls, South Dakota. If the Court decides not to approve the Settlement Agreement at the Final Fairness Hearing, the Parties have agreed to continue with the litigation as if the settlement had never been reached, and nothing in the Settlement Agreement will be considered to be an admission of liability or a waiver of rights.

### **How Do I Participate In The Settlement?**

**IN ORDER FOR YOU TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE YOUR DISTRIBUTION, YOU DO NOT NEED TO DO ANYTHING.**

### **Your Right to be Excluded from the Class**

If you wish to be excluded from the Class in the Alvarado Lawsuit—which also means to remove yourself from the Class, and is sometimes called “opting out” of the Class—you will not get any money or benefits from the Alvarado Lawsuit under the settlement. Likewise, if the Court does not approve the settlement and the litigation continues, you will not be entitled to any money or benefits that Class Members receive later. If you opt out, though, you will have the right to bring a claim on your own, through an attorney of your own choosing, against the Debtor. However, the Debtor may have defenses to your claims, including that the date for filing such claims has passed. If you opt out, you will not be legally bound by the Court’s judgments in the Alvarado Lawsuit.

If you want to opt out of the Class, you must sign and mail the attached Exclusion Form by certified mail, return receipt requested, to Klehr Harrison Harvey Branzburg, LLP, 1835 Market Street, Suite 1400, Philadelphia, Pennsylvania 19103, ATTN: Charles A. Ercole. The Exclusion Form must be postmarked by no later than \_\_\_\_\_, 2014. All Exclusion Forms postmarked after that date will not be effective, and any person who sends a late Exclusion Form will nevertheless be a member of the Class in the Alvarado Lawsuit and will be bound in the same way and to the same extent as all other Class Members, provided that he or she otherwise qualifies as a Class Member. If you chose to remain a class member, you will NOT waive your right to recover any proof of claim you filed seeking recovery of Non-WARN Act violations such as vacation pay claims, as those claims are NOT covered by this Settlement.

### **Objections**

If you want to remain a member of the Class, you must next decide whether you approve of the settlement. If you do, and do not wish to object to it, you need not do anything at this time. However, if you believe that the settlement is unfair, unreasonable, or otherwise improper for any reason, including because of the amount of attorneys’ fees, you must make a formal objection to it. To object, you must state, in writing: (1) the name and case number of this case as it appears on the first page of this document; (2) your name, address, and telephone number; (3) your specific objection(s) to the settlement, providing in detail the reason(s) why you believe that the settlement is improper; and (4) whether you intend to appear either in person or through an attorney of your choosing to make the objection at the Final Fairness Hearing.

All objections must be mailed to the Clerk of Court for the U.S. Bankruptcy Court, District of South Dakota, U.S. Courthouse, 225 S. Pierre Street, Room 203, Pierre, South Dakota 57501. Additionally, copies of each objection must be mailed to: (1) Class Counsel, ATTN: Charles A. Ercole, Klehr Harrison Harvey Branzburg, LLP, 1835 Market Street, Philadelphia, Pennsylvania 19103; (2) counsel for the Debtor, ATTN: Joel D. Nasset, Cozen O’Connor, 33 South Sixth Street, Suite 4640, Minneapolis, MN 55402; and counsel for the Official Committee of Unsecured Creditors, ATTN: Steven R. Jakubowski,



Robbins, Salomon & Patt, Ltd., 180 N. LaSalle Street, Suite 3300, Chicago, IL 60601. All objections must be received by both the Clerk and counsel for both parties no later than \_\_\_\_\_, 2014.

As noted above, if you choose to make an objection, you have the right to appear either in person or through an attorney of your choosing at the Final Fairness Hearing to make your objection before the Court. You are not required to make your objection either in person or through an attorney. If you elect to retain an attorney for this purpose, though, your attorney must file an appearance and a statement of your objections with the Court no later than \_\_\_\_\_, 2014. Copies of that appearance and the written objections must be mailed to Class Counsel, counsel for the Debtor and counsel for the Official Committee of Unsecured Creditors at their addresses above.

#### **Right to Appear by Counsel**

In addition to the right to hire an attorney of your choosing to file objections, you also have the right to be represented by an attorney of your choosing in all other stages of this case. If you elect to hire an attorney, you may be responsible to pay any fees and costs that the attorney charges.

#### **The Court Has No Position on the Merits**

Although it has preliminarily approved the settlement, the Court has taken no position on the merits of Plaintiff's claims or the Debtor's defenses.

#### **Additional Information**

If you wish to receive any additional information or if you need assistance in this matter, please contact Charles A. Ercole or Kathryn E. Perkins, Klehr Harrison Harvey Branzburg, LLP, at (215) 569-2700. *Please do not call or contact the Court or Debtor's counsel for information about this case.*

**EXCLUSION FORM**

*Jorge Alvarado, individually and on behalf of all other similarly situated former employees v.  
Northern Beef Packers Limited Partnership*  
United States Bankruptcy Court for the District of South Dakota  
225 S. Pierre Street, Room 203, Pierre, South Dakota 57501  
Adv. Pro. No. 13-01013

I, the undersigned, have read the foregoing Notice of Proposed Settlement of Class Action, Date and Time of Final Fairness Hearing, and Right to Object to the Proposed Settlement.

I **DO NOT** want to participate in the above Class Action and **DO NOT** wish to be bound by the outcome of the Class Action or receive any potential benefits of the Class Action.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Name (print or type)

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Date

Send completed form to:  
Klehr Harrison Harvey Branzburg, LLP  
1835 Market Street, Ste. 1400  
Philadelphia, PA 19103

Attn: Charles A. Ercole

**EXHIBIT 2**

(Certification of Charles A. Ercole)

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH DAKOTA

In re:	:	Chapter 11
NORTHERN BEEF PACKERS LIMITED	:	Case No. 13-10118
PARTNERSHIP,	:	
	:	
Debtor.	:	

CERTIFICATION OF CHARLES A. ERCOLE

I, Charles A. Ercole do hereby certify that:

1. I make the following certification based on my own personal knowledge and, if called to testify, I would and could do so under oath as follows.

2. I am a member of the following bars: Commonwealth of Pennsylvania; State of New Jersey; United States District Court for the Middle District of Pennsylvania; United States District Court for the Eastern District of Pennsylvania; United States District Court for the District of New Jersey; United States Court of Appeals for the Third Circuit; and the United States Supreme Court.

3. I am a partner in the law firm of Klehr Harrison Harvey Branzburg, LLP, chair of the firm's labor and employment group, and counsel for the Class Representative Jorge Alvarado ("**Class Representative**") - on his own behalf and as the representative of a Class of other persons similarly situated. In addition to the named Class Representative, our firm has been directly engaged by additional former employees.

4. This certification is submitted in support of the Joint Motion of the Debtor Northern Beef Packers Limited Partnership, the Class Representative, individually and on behalf

of similarly situated former employees and class members (together with the Class Representative, but excluding the Opt-Outs (as hereinafter defined), the “Class Members” or “Class”), and the Official Committee of Unsecured Creditors (the “Committee”) pursuant to section 105 of the Bankruptcy Code and Rules 9019 and 7023 of the Federal Rules of Bankruptcy Procedure, to (I) Approve a Settlement Agreement; (II) Certify a Class of WARN Act Claimants for Settlement Purposes Only, Appoint Class Counsel and a Class Representative and Preliminarily Approve the Settlement Agreement; (III) Approve the Form and Manner of Notice to Class Members of the Class Certification and Settlement; (IV) Schedule a Fairness Hearing to Consider Final Approval of the Settlement Agreement; (V) Finally Approve the Settlement Agreement After the Fairness Hearing; and (VI) Grant Related Relief (the “Motion”).

5. I have discussed the relief sought herein with counsel for the Debtor and the Committee who have consented to the relief sought in the Settlement Agreement.

**A. The Class Claim**

6. The proposed class members are numerous. Over 271 employees were terminated when Aberdeen, South Dakota facility owned and operated by the Debtor was permanently closed on or about July 24, 2013.

7. The claims of the Class Representative and the members of the proposed Class as that class is defined in the Settlement Notice attached hereto have common questions of law and fact. For example, the Class Representative and members of the proposed Class allege that they are entitled to wages and benefits as a result of the Debtor’s alleged failure to comply with the WARN Act.

8. The Class Representative’s claims are typical of the claims of the Class insofar as they were also terminated as part of the mass layoffs wherein 271 employees were terminated on

or about July 24, 2013. All such claims arise out of the Debtor's alleged failure to provide required advance notice of termination under the WARN Act. The Class Representative and the Class members have suffered common injuries arising out of the Debtor's common course of conduct. In my investigation, I am not aware that any Class Members are presenting unique claims or are subject to unique defenses, with the exception of the fact that the Class worked at the Aberdeen, South Dakota facility with 50 or more employees.

9. The Class Representative will fairly and adequately protect the interest of all Class Members as they are diligently pursuing their claims against the Debtor. The Class Representative cooperated throughout the litigation with the prosecution of this action.

10. The questions of law and fact common to the Class predominate over any questions affecting only individual Class Members. As indicated above, the common questions of law and fact are substantial in nature. In this case there are virtually no individual questions aside from the common questions.

11. The class action method is superior to other available methods for the fair and effective adjudication of this controversy because of the size of the Class and because the damages suffered by the Class Members may be relatively small when compared to the expense and burden of individual litigation superior.

**B. Qualifications of Counsel**

12. Klehr Harrison and I have represented thousands of employees and served as lead or co-lead counsel in numerous employment class action lawsuits, primarily WARN Act cases. *See, e.g., Classic Kitchens, LLC, et al.*, Case No. 01-20393 (Bankr. E.D. Pa. 2001) (lead defense counsel); *In Re Charter Behavioral Health Systems, Inc., et al.*, Case No. 00-00989-01 089 (Bankr. D. Del. 2000); *Justin Abreau v. Oakwood Homes Corporation, et al.*, C. A. 02I 3396

(Bankr. D. Del. 2002); *In Re USF Red Star Worker Notification Litigation*, MDL 1 655 (E. D. Pa. 2005); *In Re McGraw v. Independence Blue Cross*, Docket No. 000171 (Pa. CCP 2007); *Rocco v. Sears, et al.* No. 06-2868 (D. N.J. 2008); *Riley v. Hoboken Wood Flooring*, C.A. No. 2:07-cv-05666, (D.N.J. 2009); *Caccamo and Harnois v. Mortgage Lenders Network*, Adv. No. 07-51415 (Bankr. D. Del. 2009); *Perez v. American Remanufacturers Inc.*, Adv. No. 06-50819 (Bankr. D. Del. 2010); *Fleetwood Travel Trailers*, No. 6:09-ap-01114-MJ (Bankr. C.D. Ca. 2010); *Sane v. Liberty Fibers Corp.*, Adv. No. 06-05049 (Bankr. MD. Tenn. 2011); *In re Qimonda North America, et al.*, Adv. No. 09-50192 (Bankr. D. Del. 2011); *Smith v. Arrow Trucking*, No. 09-cv-810 (Bankr. N. D. Okla. 2011); *Excel Storage Products*, Case No. 10-07862 (RNO) (Bankr. M.D. Pa. 2014); *MF Global Holdings*, Adv. Pro. No. 11-02880 (MG) (pending in Bankr. S.D.N.Y.); *Hostess Employees' WARN Litigation*, Case No. 12-22052 (Bankr. S.D.N.Y.); *Woolery et al. v. Matlin Patterson Global Advisors LLC et al*, Case No. 1:12-cv-00726-RGA (D. Del. 2013); *Highway Technologies, Inc., et al.*, Case No. 13-11326 (KJC) (Bankr. D. Del. 2014); and *Mehan v. CPI Corp.*, Case No. (Bankr. D. Del. 2014).

13. Klehr Harrison's Litigation Department has approximately 30 attorneys, as well as several paralegals to assist in the class action litigation.

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

Dated: October 20, 2014

  
Charles A. Riccio

**EXHIBIT 3**

(General Notice)



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA

In re:

Bankr. No. 13-10118  
Chapter 11

Northern Beef Packers Limited Partnership,  
SSN/ITIN 26-2530200

Debtor,

**NOTICE OF JOINT MOTION FOR  
APPROVAL OF SETTLEMENT  
PURSUANT TO FED. R. BANKR. P. 9019  
AND RELATED RELIEF**

Northern Beef Packers Limited Partnership (the “Debtor”), Jorge Alvarado (the “Named Plaintiff” or “Class Representative”), individually and on behalf of similarly situated former employees and class members (together with the Class Representative, but excluding the Opt-Outs (as hereinafter defined), the “Class Members” or “Class”), and the Official Committee of Unsecured Creditors (the “Committee”), have filed a motion (the “Motion”) seeking approval of a settlement of former employees’ claims under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 *et seq.* (the “WARN Act”). A summary of the material terms of the proposed settlement is attached to this notice. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.

If you do not want the Court to approve the settlement, you or your attorney must file with the Bankruptcy Clerk, on or before November 25, 2014, a signed and dated typewritten response explaining your position. Your response must include the case name and number. Only an attorney may file a response or appear at a hearing on behalf of a corporation, partnership, or other formal legal entity.

If you are an attorney, you must file any response electronically. See the July 14, 2005 general order and additional information regarding electronic filing (CM/ECF) on the Court’s website at [www.sdb.uscourts.gov](http://www.sdb.uscourts.gov). If you are not an attorney, your response may be mailed or delivered to the Bankruptcy Clerk, whose address is 225 S. Pierre St., Room 203, Pierre, SD 57501. The response must be mailed early enough to ensure the Bankruptcy Clerk *receives* it on or before the deadline stated above.

If you or your attorney file a response, you or your attorney must also mail a copy of the response to any parties in interest, as defined by Local Bankruptcy Rule 9001-1(7), who will not receive electronic notice of the response. You or your attorney may obtain the names and addresses of the parties in interest listed in Rule 9001-1(7) by contacting the Bankruptcy Clerk’s office at (605) 945-4460.

A hearing on the motion may be set by separate order if an objection or other response is filed on or before the deadline. If no one files and serves a response on or before the deadline, the Court may enter an order granting the relief requested without a hearing.

Dated: October 30, 2014

CUTLER & DONAHOE, LLP

Nichole J. Mohning, Esquire  
100 N Phillips Ave, 9th Floor  
Post Office Box 1400  
Sioux Falls, SD 57101-1400  
Telephone: 605.335.4950

*-and-*

KLEHR HARRISON HARVEY  
BRANZBURG LLP  
Charles A. Ercole, Esquire  
Sally E. Veghte, Esquire  
1835 Market Street, Suite 1400  
Philadelphia, PA 19103  
Telephone: 215.569.2700  
cercole@klehr.com; sveghte@klehr.com

*Attorneys for Plaintiffs*

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Phone: (605) 225-2232

*-and-*

COZEN O'CONNOR  
Steven H. Silton  
Joel D. Nessel  
33 South Sixth Street, Suite 4640  
Minneapolis, MN 55402  
Phone: (612) 260-9000

**Attorneys for the Debtor**

DOUGHERTY & DOUGHERTY  
Patrick T. Dougherty  
PO Box 2376  
Sioux Falls, SD 57101-2376  
Phone: (605) 335-8586

*-and-*

ROBBINS, SALOMON & PATT, LTD.  
Steven R. Jakubowski  
180 N. LaSalle Street, Suite 3300  
Chicago, IL 60601  
Phone: (312) 456-0191

**Attorneys for the Official Committee  
of Unsecured Creditors**

## SUMMARY OF SETTLEMENT<sup>1</sup>

The Debtor, the Class Representative, and the Committee are seeking approval of a Settlement and Release Agreement dated as of October \_\_, 2014 (the "Settlement Agreement"), providing for the final settlement and resolution of all Class Members' claims under the WARN Act. The essential terms of the Settlement Agreement are as follows:

1. **Certification of the Class:** The Parties shall seek certification, for settlement purposes only, pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure as made applicable to these proceedings by Rule 7023 of the Federal Rules of Bankruptcy Procedure of a the Class, which shall be comprised of all persons (the "Class Members") who: (i) were employed by the Debtor in the United States at the Debtor's Aberdeen, South Dakota facility (the "Affected Facility"); (ii) suffered an "employment loss" as that term is defined in 29 U.S.C. § 2101(a)(6) and 20 C.F.R. § 639.3(f), on, or within thirty (30) days of, July 24, 2013, as part of a "plant closing" or "mass layoff," as those terms are defined in 29 U.S.C. § 2101(a)(2)-(3) and 20 C.F.R. § 639.3(b)-(c), at the Affected Facility, or as the reasonably foreseeable consequence of a "plant closing" or "mass layoff" occurring on or about July 24, 2013; (iii) meet the definition of "affected employee" as set forth in 29 U.S.C. § 2101(a)(5) and 20 C.F.R. § 639.3(c), including, without limitation, those employees listed on Schedule 1 to the Settlement Agreement; and (iv) do not file a timely request to opt out of the Class.
2. **Released Claims:** The Settlement Agreement provides for the release of any and all claims that the Class Members may now have or hereafter may have, which relate to or are based on the WARN Act or back or severance pay or benefits under any federal, state or local law or regulation arising out of the termination of the Class Members' employment by the Debtor (the "Released Claims").
3. **Consideration:** In exchange for the release of the Released Claims, and subject to the terms of the Settlement Agreement, the Class shall be entitled to:
  - a. A cash payment in the amount of \$180,000.00 (the "Settlement Amount"); and
  - b. An allowed general unsecured class claim (the "Allowed Claim") in the amount of \$1,000,000.00

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<sup>1</sup> The summary in not intended to be an exhaustive or complete description of the terms of the Settlement Agreement, and in the event of any inconsistency, the terms of the Settlement Agreement shall control over the summary. A complete copy of the Motion will be provided via email or U.S. Mail upon request to Plaintiffs' counsel.