

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

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In re:	:	Chapter 11
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NORTHERN BEEF PACKERS LIMITED	:	Case No. 13-10118
PARTNERSHIP,	:	
	:	
	:	
Debtor.	:	
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JORGE ALVARADO,	:	
individually and on behalf of all other	:	
similarly situated former employees,	:	
	:	
	:	
Plaintiffs,	:	
	:	
	:	Adv. Pro. No. 13-
v.	:	
	:	JURY DEMANDED
NORTHERN BEEF PACKERS LIMITED	:	
PARTNERSHIP,	:	
	:	
	:	
Defendant.	:	
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**CLASS ACTION ADVERSARY PROCEEDING COMPLAINT FOR  
(1) VIOLATION OF THE WARN ACT 29 U.S.C. § 2101, *et seq.*  
AND (2) STATE WAGE PAYMENT LAWS**

Plaintiff Jorge Alvarado (“Plaintiff”), individually and as a class representative for all similarly situated individuals, by and through his undersigned counsel, brings this Adversary Complaint and makes the following allegations against Northern Beef Packers Limited Partnership (“Northern Beef” or “Defendant”), in accordance with the numbered paragraphs set forth below:

**NATURE OF ACTION**

1. Northern Beef operated its businesses as a single enterprise and the Plaintiff, as well as more than 400 other employees, were employed by Northern Beef.

2. Plaintiff brings this action on behalf of himself and other similarly situated former employees who worked for Northern Beef and were terminated without cause, as part of, or as the result of, plant closings, mass layoffs and terminations ordered by Defendant and who were not provided 60 days advance written notice of their terminations by Defendant, as required by the Worker Adjustment and Retraining Notification Act (“WARN Act”), 29 U.S.C. § 2101 *et seq.*

3. Defendant violated the WARN Act by knowingly failing to give Plaintiff and other persons similarly situated, who are members of the class Plaintiff seeks to represent, at least 60 days prior notice of termination of their employment as required by that statute. As a consequence, Plaintiff and the other similarly situated individuals are entitled to recover from Defendant, under the WARN Act, wages and other employee benefits for 60 working days following the termination of their employment, which wages and benefits have not been paid.

4. Plaintiff and all similarly situated employees seek to recover 60 days wages and benefits pursuant to the WARN Act from Defendant. Plaintiff’s claims, as well as the claims of all similarly situated employees, are entitled to first priority administrative expense status pursuant to 11 U.S.C. § 503(b)(1)(A) or, alternatively, wage priority status pursuant to 11 U.S.C. § 507(a)(4), (5).

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157, 1331, 1334 and 1367 and 29 U.S.C. § 2104(a)(5).

6. Venue is proper in this District pursuant to 29 U.S.C. § 2104(a)(5).

7. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B) and (D).

**THE PARTIES**

8. Plaintiff Jorge Alvarado (“Alvarado”) was an employee of Defendant and worked at the facility in Aberdeen, South Dakota until operations were scaled back and 108 of the 400 employees were laid off on or about April 25, 2013. On or about July 19, 2013, more than 250 of the remaining employees were laid off.

9. Plaintiff seeks to represent each and every individual employed by Defendant within ninety (90) days of July 19, 2013, who worked at the beef processing facility owned and operated by Defendant, who was terminated without sufficient notice under the WARN Act, deprived of accrued vacation pay and severance pay in violation of the relevant state wage payment laws, and did not receive benefits to which they are entitled under ERISA.

10. Defendant Northern Beef is a South Dakota limited partnership that owns and operates the beef processing facility in Aberdeen, South Dakota.

**FACTUAL ALLEGATIONS**

11. Plaintiff Alvarado worked at the newly-constructed 420,000 square foot beef processing facility in Aberdeen, South Dakota, as did more than 400 other employees.

12. Until on or about July 19, 2013, or within 90 days of that date, the Plaintiff and all similarly situated employees were employed by Defendant and worked at or reported to the beef processing facility in Aberdeen, South Dakota.

13. Upon information and belief, Defendant made the decision to terminate the employment of the Plaintiff and the other similarly situated former employees on July 19, 2013, without having provided 60 days notice under the WARN Act.

14. At no time since July 19, 2013, has Plaintiff or the other similarly situated former employees been paid the wages and benefits to which each is entitled.

**WARN CLASS ALLEGATIONS**

15. Plaintiff, on behalf of himself and all other similarly situated individuals, repeats and re-allege the allegations of the preceding paragraphs as though set forth fully herein.

**A. DEFINITION OF THE CLASS**

16. Plaintiff and the other similarly situated former employees constitute a Class within the meaning of Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure.

17. The Class is defined as all of those employees who worked at or reported to the beef processing facility in Aberdeen, South Dakota and were terminated without cause on or about July 19, 2013, and/or within 90 days of that date, or were terminated without cause as the reasonably foreseeable consequence of the mass layoff and/or plant closing ordered by Defendant on or about July 19, 2013, and who are affected employees, within the meaning of 29 U.S.C. § 2101(a)(5) (the “WARN Class”).

**B. NUMEROSITY**

18. The WARN Class is so numerous as to render joinder of all members impracticable as there are over 400 former employees believed to be in the Class. The identities of a majority of the Class members are presently unknown but are ascertainable through appropriate discovery.

**C. EXISTENCE AND PREDOMINANCE OF COMMON ISSUES**

19. Common questions of law and fact are applicable to all WARN Class members.

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

- a. all WARN Class members are former employees of Defendant;
- b. all WARN Class members enjoyed the protection of the WARN Act;
- c. Defendant terminated the employment of all the WARN Class members;

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

e. Defendant failed to pay wages to the WARN Class members and failed to provide other employee benefits for the 60-working-day period following their respective terminations of their employment in violation of the WARN Act and the relevant state wage payment laws.

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

**D. TYPICALITY**

22. Plaintiff's claims are typical of the claims of other WARN Class members. All such claims arise out of Defendant's failure to provide notice under the WARN Act and to timely disclose to employees that they would be laid off as a result of the plant closing and/or mass layoffs, as well as Defendant's failure to provide payment pursuant to the relevant state wage payment laws. Plaintiff and other WARN Class members have suffered a common injury arising out of Defendant's common course of conduct as alleged herein.

**E. ADEQUATE REPRESENTATION**

23. Plaintiff will fairly and adequately protect and represent the interests of the WARN Class members and have no interest antagonistic to or in conflict with those of other WARN Class members.

24. Plaintiff has the time and resources to prosecute this action and has retained qualified counsel who have had extensive experience in matters involving employee rights, the

WARN Act, and federal and bankruptcy court litigation. Plaintiff intends to prosecute this action vigorously for the benefit of the WARN Class members.

**F. SUPERIORITY**

25. A class action is superior to other available methods for a fair and efficient adjudication of this controversy because individual joinder of all WARN Class members is impractical. Furthermore, damages suffered by WARN Class members may be relatively small when compared to the expense and burden of individual litigation, which would make it difficult or impossible for individual WARN Class members to obtain relief. The interests of judicial economy favor adjudicating the claims of the WARN Class on a classwide basis rather than an individual basis.

**G. RISKS OF INCONSISTENT OR VARYING ADJUDICATION**

26. Class treatment is proper in this proceeding in order to avoid inconsistent or varying adjudications with respect to individual WARN Class members, to conserve the judicial resources and the resources of the parties, and to provide the most efficient means of resolving the rights of all the members of the WARN Class.

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

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

**CLAIMS FOR RELIEF**

**COUNT I**

**VIOLATION OF THE WARN ACT, 29 U.S.C. § 2101 ET SEQ.**

**(All Named Plaintiffs v. Northern Beef Packers Limited Partnership)**

29. Plaintiff, on behalf of himself and the WARN Class members, repeat and re-allege the allegations of the preceding paragraphs as if fully stated herein.

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

31. At all relevant times, Defendant was an “employer,” as that term is defined in 29 U.S.C. § 2101 (a)(1) and 20 C.F.R. § 639(a), and continued to operate as a business until it decided to order mass layoffs or plant closings at the beef processing facility.

32. On or about July 19, 2013, Defendant ordered a mass layoff and/or plant closing at the beef processing facility, as those terms are defined by 29 U.S.C. § 2101(a)(2).

33. The mass layoff or facility closing at the beef processing facility resulted in “employment losses,” as that term is defined by 29 U.S.C. §2101(a)(2) for at least 400 of Defendant’s employees as well as nine-eight percent (98%) of Defendant’s workforce at the beef processing facility, excluding “part-time employees,” as that term is defined by 29 U.S.C. § 2101(a)(8).

34. Plaintiff was terminated by Defendant without cause on his part, as part of or as the reasonably foreseeable consequence of the mass layoff or plant closing ordered by Defendant at the beef processing facility.

35. Plaintiff is an “affected employee” of Defendant, within the meaning of 29 U.S.C. § 2101(a)(5).

36. Defendant was required by the WARN Act to give the Plaintiff at least 60 days advance written notice of his termination.

37. Defendant failed to give Plaintiff written notice that complied with the requirements of the WARN Act.

38. Plaintiff is an “aggrieved employee” of the Defendant as that term is defined in 29 U.S.C. § 2104 (a)(7).

39. Defendant failed to pay Plaintiff his respective wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation and other time off for 60 days following his termination, and failed to make the pension and 401(k) contributions and provide employee benefits under COBRA for 60 days from and after the dates of his termination.

**COUNT II**  
**VIOLATION OF THE WARN ACT, 29 U.S.C. § 2101 ET SEQ.**

**(Other Similarly Situated Employees v. Northern Beef Packers Limited Partnership)**

40. Plaintiff, on behalf of himself and other employees who were similarly situated, repeats and re-alleges the allegations of the preceding paragraphs as if fully restated herein.

41. At or about the time that Plaintiff was discharged or shortly thereafter, Defendant also discharged approximately 400 other similar situated employees (the WARN Class members).

42. Pursuant to 29 U.S.C. § 2104(a)(5), Plaintiff asserts the claims raised in this proceeding on behalf of the WARN Class members for them or their benefit.

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

44. At all relevant times, Defendant was an “employer,” as that term is defined in 29 U.S.C. § 2101 (a)(1) and 20 C.F.R. § 639(a), and continued to operate as a business until they decided to order mass layoffs or plant closings at the beef processing facility.

45. On or about July 19, 2013, Defendant ordered mass layoffs and/or that the beef packing facility be closed, as those terms are defined by 29 U.S.C. § 2101(a)(2).

46. The mass layoffs or plant closings at the beef processing facility resulted in “employment losses,” as that term is defined by 29 U.S.C. §2101(a)(2), for at least four hundred (400) of Defendant’s employees or approximately ninety-eight (98%) of Defendant’s workforce at the beef processing facility, excluding “part-time employees,” as that term is defined by 29 U.S.C. § 2101(a)(8).

47. The WARN Class Members were terminated by Defendant without cause on their part, as part of or as the reasonably foreseeable consequence of the mass layoffs or plant closings ordered by Defendant at the beef processing facility.

48. The WARN Class Members are “affected employees” of Defendant, within the meaning of 29 U.S.C. § 2101(a)(5).

49. Defendant was required by the WARN Act to give the WARN Class Members at least 60 days advance written notice of their terminations.

50. Defendant failed to give the WARN Class members written notice that complied with the requirements of the WARN Act.

51. Each of the WARN Class members are “aggrieved employees” of the Defendant as that term is defined in 29 U.S.C. § 2104 (a)(7).

52. Defendant failed to pay each of the WARN Class members their respective wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation and other time off for 60 days following their respective terminations, and failed to make the pension and 401(k) contributions and provide employee benefits under COBRA for 60 days from and after the dates of their respective terminations.

**COUNT III**  
**VIOLATION OF STATE WAGE PAYMENT LAWS<sup>1</sup>**  
**(Plaintiffs and the WARN Class Members v. Northern Beef Packers Limited Partnership)**

53. Plaintiff, on behalf of himself and other employees who were similarly situated, repeats and re-alleges the allegations of the preceding paragraphs as if fully restated herein.

54. At all pertinent times hereto, Defendant was an “employer” pursuant to SDCL 60-11-8.

55. As part of their employment with Defendant, Plaintiff and the putative WARN Class members were each promised certain payments in the form of wages, salary, vacation benefits and other paid leave, bonuses, retention bonuses or deferred compensation pursuant to Defendant’s practice and/or policy.

56. Plaintiffs and the putative WARN Class members fully complied with all terms of their employment, and, yet, the Defendant made the deliberate decision to not honor the payments to be made to them under the terms of their employment and the Defendant’s practice and/or policy.

57. For the same the reasons as set forth under the WARN Act, class action is appropriate under Bankruptcy Rule 7023.

58. Defendant’s actions are in violation of the relevant state wage payment laws as a failure to pay earned wages, and, as this failure was oppressive, fraudulent, or malicious, the payment of a penalty in accordance with such laws is appropriate. *See, e.g.*, SDCL 60-11-7.

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<sup>1</sup> Upon information and belief, Defendant’s failure to provide payment for wages, bonuses, accrued vacation, and other paid leave is a violation of the wage payment laws of South Dakota (SDCL § 60-11 *et. seq.*).

59. As a result of these said violations of state wage payment laws, Plaintiff and the putative WARN Class members are entitled to payment of their respective lost wages as well as applicable fees and penalties.

**WHEREFORE**, Plaintiff and the WARN Class members, demand judgment, against Defendant as follows:

- A. Certification of this action as a Class Action;
- B. Designation of the Plaintiff as the Class Representative;
- C. Appointment of the undersigned attorneys as Class Counsel;
- D. A first priority administrative expense claim against Northern Beef Packers Limited Partnership pursuant to 11 U.S.C. § 503(b)(1)(A) in favor of the Plaintiff and the other similarly situated former employees equal to the sum of: their unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay, pension and 401(k) contributions and other COBRA benefits, for 60 days, that would have been covered and paid under the then-applicable employee benefit plans had that coverage continued for that period, all determined in accordance with the WARN Act, 29 U.S.C. § 2104 (a)(1)(A), including any civil penalties; or, alternatively, determining that the first \$11,725 of the WARN Act claims of the Plaintiff and each of the other similarly situated former employees are entitled to priority status under 11 U.S.C. § 507(a)(4), and the remainder is a general unsecured claim; and
- E. An allowed administrative-expense priority claim under 11 U.S.C. § 503 for the reasonable attorneys' fees and the costs and disbursements that the

Plaintiff incurs in prosecuting this action, as authorized by the WARN Act, 29 U.S.C. § 2104(a)(6), the WARN Act and/or other applicable laws.

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

Dated: September 26, 2013

CUTLER & DONAHOE, LLP

/s/ Onna B. Houck  
Onna B. Houck, 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  
Sally E. Veghte, Esquire  
1835 Market Street, Suite 1400  
Philadelphia, PA 19103  
Telephone: 215.569.2700  
Facsimile: 215.568.6603  
cercole@klehr.com; sveghte@klehr.com

*Attorneys for Plaintiffs*