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Honorable Christopher M. Alston
Chapter 11
Hearing Location: Seattle, Rm. 7206
Hearing Date: November 16, 2018
Hearing Time: 11:00 a.m.
Response Date: November 2, 2018

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7 UNITED STATES BANKRUPTCY COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 In re:

Case No. 16-11767-CMA

10 NORTHWEST TERRITORIAL MINT, LLC,
11 Debtor.

NOTICE OF FINAL HEARING ON JOINT
MOTION FOR APPROVAL OF CLASS
ACTION SETTLEMENT OF WARN ACT
CLAIMS

12
13 TO: NORTHWEST TERRITORIAL MINT, LLC, Debtor;
14 AND TO: UNITED STATES TRUSTEE;
15 AND TO: SPECIAL NOTICE LIST;
AND TO: SETTLEMENT CLASS

16 PLEASE TAKE NOTICE that a hearing has been scheduled on November 16, 2018 at 11:00 a.m.
17 before the Honorable Christopher M. Alston, United States Bankruptcy Judge, in Courtroom 7206, 700
Stewart Street, Seattle, WA, 98101 on the Joint Motion for Approval of the Class Action Settlement of
WARN Act Claims (the "Joint Motion").

18 Brittany Konkel ("Class Claimant") initiated litigation under the WARN Act against the Debtor on
19 January 31, 2018, captioned *Konkel, on behalf of herself and all others similarly situated v. Northwest*
Territorial Mint, LLC, Adv. P. No. 16-11767-CMA. The Complaint alleged that the Class Claimant and
20 proposed class members were separated from their employment, without cause on their part, on or about
December 29, 2017 or thereafter, without receiving any advance written notice of their terminations as
21 required by the WARN Act. Class Claimant sought an allowed administrative priority claim pursuant to 11
U.S.C. § 503(b)(1)(A)(ii) against the Debtor in favor of herself and the proposed class members equal to the
22 sum of: (a) unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay, pension
and 401(k) contributions and other ERISA benefits, for a period of 60 days, that would have been covered and
23 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). Class Claimant also sought an
24 allowed administrative priority claim for attorneys' fees and costs incurred in the prosecution of the WARN
litigation, as authorized by the WARN Act.
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NOTICE OF FINAL HEARING ON JOINT MOTION FOR
APPROVAL OF WARN CLASS SETTLEMENT 1
501820407 v1
501820407 v2

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1 The Trustee answered the complaint on March 2, 2018. The Trustee has denied that Class Claimant
2 is entitled to any of the relief requested in Class Claimant's complaint. The Trustee admitted that Debtor did
3 not provide sixty days' advance written notice of termination to employees terminated on or about December
4 29, 2017, but denied that the Debtor violated the WARN Act. The Trustee contends that his termination of
5 employees without sixty days' advance notice was justified under the circumstances and did not trigger any
6 liability under the WARN Act whatsoever. The Trustee further contends that the Class Claimant's claims are
7 barred in whole or in part by the "faltering company" and/or "unforeseeable business circumstances"
8 exceptions to the WARN Act. The Trustee further contends that even if Class Claimant were to prevail in
9 whole or in part, that Class Claimant is not entitled to an allowed administrative priority claim for attorneys'
10 fees and costs. The Trustee contends that he acted in good faith at all relevant times without indifference to
11 class Claimant's or the proposed class members' protected rights, if any.

12 The parties mediated this matter on July 24, 2018, with Lawrence Ream as mediator. At the
13 mediation, the parties negotiated in good faith. The Trustee and Class Claimant dispute whether the
14 bankruptcy estate is liable for damages under the WARN Act, and whether the Trustee will be able to
15 successfully assert his defenses to liability under the WARN Act. The Trustee strongly contends that the
16 dispute related to the WARN Claim is not appropriate for class certification in the Bankruptcy Case.

17 The parties have agreed, subject to Court approval, to compromise the WARN Claims on terms in
18 accord with the Settlement Agreement (the "Settlement"), attached to the Joint Motion as Exhibit A. Upon
19 approval by the Court, the Settlement will resolve all issues among the Trustee, the Debtor, the Class
20 Claimant and the 99 other Settlement Class Members relating to the WARN Act claims arising from the
21 cessation of the Settlement Class Members' employment. In the event that the Bankruptcy Court does not
22 approve the Settlement, the parties preserve any and all claims and defenses related to the WARN Act claims
23 at issue.

24 The Settlement provides that the Trustee will, within fifteen days of the date of the entry of the order
25 finally approving the Settlement, distribute the cash sum of \$125,000 (the "Settlement Amount") between and
26 among the following: the 100 Settlement Class Members (except for those individuals who "opt out" of the
Settlement), Ms. Konkel on account of her \$3,000 service payment, and Settlement Class Counsel for their
fees and expenses (who are paid 1/3 of the Settlement Amount after deduction of Ms. Konkel's service
payment and counsel's reasonable expenses not to exceed \$6,000). More detailed terms of the Settlement are
described in the Joint Motion and the Settlement itself.

The Court held a preliminary hearing on the Joint Motion on September 7, 2018. At that hearing, the
Court certified, for settlement purposes only, a Settlement Class consisting of 100 former employees of the
Debtor; appointed Ms. Konkel as the Settlement Class Representative; and appointed Ms. Konkel's counsel as
Settlement Class Counsel. The Court also set the hearing on the final approval of the Settlement as described
in this notice. At the hearing scheduled for November 16, 2018, the Court will consider the final approval of
the Settlement.

PLEASE TAKE FURTHER NOTICE that copies of the Joint Motion and related documents may be
(1) reviewed and copied at the Clerk of the United States Bankruptcy Court, 700 Stewart Street, Seattle, WA
98101 or (2) may be obtained by submitting a written request to **Mary E. Olsen, Esq., The Gardner Firm,
P.C., 182 St. Francis Street, Suite 103; Mobile, Alabama 36602**, Email: molsen@thegardnerfirm.com

PLEASE TAKE FURTHER NOTICE THAT IF YOU OPPOSE the Joint Motion, you must file your
objection NO LATER THAN NOVEMBER 2, 2018. Objections must be filed with the Court, 700 Stewart
Street, Seattle, WA, 98101, and a copy delivered to:

NOTICE OF FINAL HEARING ON JOINT MOTION FOR
APPROVAL OF WARN CLASS SETTLEMENT 2
501820407 v1
501820407 v2

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Mary E. Olsen
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And

Michael J. Gearin
David C. Neu
Brian T. Peterson
K&L Gates, LLP
925 Fourth Avenue, Suite 2900
Seattle, Washington 90104

PLEASE TAKE FURTHER NOTICE that in accordance with Local Bankruptcy Rule 9013-1(d)(7), failure to timely file and serve an objection to the Joint Motion may be deemed by the Court an admission that any opposition to the Joint Motion is without merit. **Any party filing an objection must also attend the hearing.** Pursuant to Local Bankruptcy Rule 9013-1(e), failure to appear at the hearing on the Joint Motion may be deemed by the Court to be an admission that any opposition to the Joint Motion is without merit. Further, pursuant to Local Bankruptcy Rule 9013-1(f), if no opposition to the Joint Motion is timely filed and served, the Court may either (a) grant the Joint Motion by default at the hearing, or (2) grant the Joint Motion prior to the hearing on the Trustee’s ex parte presentation of a proposed order accompanied by proof of service and a declaration that no objection to the Joint Motion was timely received.

DATED this 17th day of September, 2018

THE GARDNER FIRM, P.C.
By /s/ Mary E. Olsen
Mary E. Olsen
Attorney for Brittany Konkel, Class Claimant