UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
MF GLOBAL HOLDINGS, LTD.; MF GLOBAL FINANCE USA, INC., *et al*.,	:	Case No. 11-15059 (MG) Case No. 11-15058 (MG)
	:	(Jointly Administered)
Debtors.	:	
TODD THIELMANN, PIERRE-YVAN DESPAROIS, NATALIA SIVOVA, SANDY GLOVER-BOWLES, ARTON SINA, and SCOTT L. KISCH, Individually, and on behalf of All Other Similarly Situated Former Employees,	:	
Plaintiffs,	:	
	:	Adv. Pro. No. 11-02880 (MG)
v.	:	
MF GLOBAL HOLDINGS, LTD, MF GLOBAL HOLDINGS USA, INC., MF GLOBAL FINANCE USA, INC.; *et al.*,	:	
Defendants.	:	

THIRD AMENDED CLASS ACTION ADVERSARY PROCEEDING COMPLAINT FOR VIOLATION OF THE WARN ACT, 29 U.S.C. § 2101, *et seq.*; AND VIOLATION OF THE NEW YORK WARN ACT, LABOR LAW § 860 *et seq.*

Plaintiffs Todd Thielmann, Pierre-Yvan Desparois, Natalia Sivova, Sandy Glover-Bowles, Arton Sina, and Scott L. Kisch (collectively, the "Plaintiffs" or the "Class Plaintiffs") allege on behalf of themselves and a class of similarly situated former employees of Defendants, by way of this Third Amended Adversary Proceeding Complaint against MF Global Holdings, Ltd., MF Global Holdings USA, Inc., and MF Global Finance USA, Inc. (collectively hereinafter referred to as "MF Global Group" or "Defendants"), by and

through their counsel, as follows:

NATURE OF THE ACTION

1. The MF Global Group operated their businesses as a single enterprise and the Class Plaintiffs, as well as more than 2,870 other employees, were employed by the MF Global Group collectively. The Plaintiffs were terminated from their employment as a result of a decision made collectively by the Defendants' leadership on or about November 11, 2011. More than 1,000 employees were laid off on November 11, without any advance notice.

2. The Plaintiffs bring this action on behalf of themselves, and other similarly situated former employees who worked for the MF Global Group and were terminated without cause, as part of, or as the result of, plant closings, mass layoffs and terminations ordered collectively by Defendants and who were not provided 60 days advance written notice of their terminations by Defendants, as required by the Worker Adjustment and Retraining Notification Act ("WARN Act"), 29 U.S.C. § 2101 *et seq*. and 90 days advance written notice as required by the New York Labor Laws § 860 *et seq*. ("NY WARN Act"), together the "WARN Acts."

3. The Plaintiffs and all similarly situated employees seek to recover 60 days wages and benefits pursuant to the WARN Acts from Defendants. Plaintiffs' claims, as well as the claims of all similarly situated employees, are entitled to first priority administrative expense status pursuant to the United States Bankruptcy Code § 503(b)(1)(A), or alternatively wage priority status pursuant to United States Bankruptcy Code § 507(a)(4), (5).

JURISDICTION AND VENUE

4. 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).

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

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

THE PARTIES

Plaintiffs

7. Class Plaintiff Todd Thielmann was an employee of Defendants and worked as a Floor Broker at the Defendants' offices located in Chicago, Illinois, which employed approximately 600 employees until his termination on or about November 11, 2011. Mr. Thielmann believed that he worked for the MF Global Defendants' collectively and not one particular Defendant. Mr. Thielmann received his paychecks from MF Global Holdings USA, Inc. which maintained a business address at 717 Fifth Avenue, New York, NY 10022. MF Global Holdings USA, Inc. was also the entity whose HR Department Mr. Thielmann regularly interacted with and contacted on his and the other employees' behalf relating to the administration of the MF Global Group's Long Term Investment Plan. Mr. Thielmann's health insurance was also administered under a group contract between United Healthcare and MF Global Holdings USA, Inc.

8. Class Plaintiff Pierre-Yvan Desparois worked as a Vice President in Credit Risk Management at the Defendants' office located at 717 Fifth Avenue, New York, New York (the "Headquarters Facility"), which employed approximately 450 employees until his termination on or about November 11, 2011. Mr. Desparois worked to advance the interests of each of the Defendants collectively, and it is not clear which of the Defendants employed Mr. Desparois.

9. Class Plaintiff, Natalia Sivova, worked as a Lead QA Analyst and Manager in Global IT Quality Assurance, at the Defendants' offices located at the Headquarters Facility, which employed approximately 450 employees until her termination on or about November 11 , 2011. Ms. Sivova received her paychecks from MF Global Holdings USA, Inc., which maintained a business address at 717 Fifth Avenue, New York, NY 10022. Her 401(k) Investment plan was through MF Global Holdings. The Human Resources Department was

located at the Headquarters Facility. Her health benefit plan was through MF Global Holdings USA, Inc. and her SOS Security Plan card was through MF Global Holdings, Ltd. Ms. Sivova's termination letter was on the letterhead of MF Global Holdings USA, Inc.

10. Class Plaintiff, Sandy Glover-Bowles, was employed by Defendants as an Accountant and worked at Defendants' office located at 440 South LaSalle Street, Chicago, Illinois (the "LaSalle Facility"), until her termination on or about November 11, 2011. Ms. Bowles' paycheck came from MF Global Holdings USA, Inc.

11. Class Plaintiff Arton Sina was employed as an international settlements specialist and worked out of the office located at 717 Fifth Ave, New York, New York. Mr. Sina's W-2 was issued under MF Global Holdings, USA, Inc., who was also the payor on his paycheck. Mr. Sina's employment contract listed MF Global Holdings USA, Inc. as the employer, and it was signed by Thomas F. Connolly, whose title was Global Head of Human Resources. That position was later taken over by Linda Angello, whose office was located at 55 East 52nd Street in New York. Mr. Sina's Labor Law Notice of Wage Rate, Background and Credit Check forms listed "MF Global" as the employer. His 401K handbook lists the employer as "MF Global Holdings," however, the rollover signup form lists MF Global, Inc. Mr. Sina's health benefit plan was administered by "MF Global, Holdings, USA Inc." Finally, his SOS Security Plan card, given to employees for medical or security advice, was issued by MF Global Holdings, Ltd.

12. Class Plaintiff Scott L. Kisch was employed by Defendants as Vice President Business Continuity and Employee Security. He was in charge of MF Global's security and emergency response operations. He reported directly to Thomas F. Connolly, and worked at 717 Fifth Avenue. At no point during Mr. Kisch's tenure at MF Global did he understand himself to be working for any particular entity within MF Global, rather, he worked with high-

level corporate executives of what he perceived was a single organization who were responsible for directing its many operations. He understood that all domestic MF Global employees were hired through the corporate Human Resources department and then, like himself, were subject to the supervision, directly or indirectly, of those executives. Mr. Kisch received his termination letter from MF Global Holdings USA, Inc.

Defendants

13. Defendant debtor MF Global Holdings, Ltd. is a Delaware company with principal place of business located at 717 Fifth Avenue, New York, New York and conducted business in this district. Defendant MF Global Holdings, Ltd. is the direct parent of wholly owned subsidiary MF Global Holdings USA, Inc., a New York corporation. Upon information and belief, this was the Defendant that administered the Plaintiffs' 401K plan, insofar as several Plaintiffs' 401K handbook lists "MF Global Holdings" as the entity administering the plan. This is also the entity listed on the Plaintiffs' SOS security plan card, which was issued to them for medical and security advice.

14. Defendant debtor MF Global Finance USA, Inc. is a Delaware corporation with its principal place of business located at 717 Fifth Avenue, New York, New York and conducted business in this district. The Plaintiffs are unclear what role this particular entity played in the MF Global Group's operations, but the Plaintiffs believe that their efforts and services aided this Defendant and enhanced its economic interests.

15. Defendant debtor MF Global Holdings USA, Inc. is the direct parent of MF Global Inc., a Delaware corporation, and MF Global Finance USA, Inc., a New York corporation. The Plaintiffs' paystubs, and W-2s reflect MF Global Holdings USA, Inc. as their employer. The termination letters delivered to Pierre-Yvan Desparios, Natalia Sivova, Arton

Sina, and Scott L. Kisch were on MF Global Holdings USA, Inc.'s letterhead. This Defendant was also the entity whose letterhead appeared on correspondence sent to the Plaintiffs relating to human resources matters. Specifically, Thomas F. Connolly, whose title was "Global Head of Human Resources" used letterhead issued under this Defendant's name.

16. Until on or about November 11, 2011, the Plaintiffs and the other similarly situated former employees were employed by Defendants and worked at or reported to one of Defendants' offices.

THE MF GLOBAL GROUP ACTED AS A SINGLE EMPLOYER

17. MF Global Group constitutes a single employer, as that term is defined by the WARN Act and its regulations. 29 USC § 2101(a)(1), 20 C.F.R. § 639.3(a)(2).

18. MF Global Group comprised several related Defendant entities not in an arm's length relationship with one another that together constituted a single integrated enterprise that employed and terminated the Plaintiffs and similarly situated former employees.

19. The Defendants each filed schedules and statements of financial affairs with this Court which confirmed the single entity nature of their business operations. Specifically, the Defendants made the following representations in each of their schedules and statements of financial affairs:

> Prior to October 31, 2011, when MFG filed for bankruptcy, the Debtors operated with other MFG direct and indirect subsidiaries ("non-Debtor MFG entities"), on a global, integrated and interdependent basis. Under this operating format, it was common for financial books and records of one affiliate to be maintained by a centralized regional accounting function, which was maintained by a different affiliate. Additionally, it was common that back office and financial reporting systems, owned or utilized by one affiliate were maintained by technology support personnel and hosted by technology infrastructure from another different affiliate and also then used by various other affiliates.

See e.g. Case No. 11-15059, Doc. No. 701 at p. 2 (Bankr. S.D.N.Y. May 18, 2012).

20. Upon information and belief:

a) Defendants shared common ownership, as reflected by the Exhibit attached to Doc. No. 9 to Case No. 11-15059 (MG);

b) Defendants' Board of Directors made unified decisions for all units in MF Global Group;

c) Defendants maintained unified operations and employees were routinely identified simultaneously as employees of various MF Global Group units. As set forth in greater detail above in paragraphs 12 through 18 of this Complaint, the MF Global Group treated the Plaintiffs as if they worked for the integrated group and not an individual entity. All employees were governed through a centralized global human resources department, and all employees served the greater good of the entire MF Global Group. Additionally, each Defendant's statement of financial affairs confirmed the fact that the employees were "employed" collectively by the MF Global Group. Specifically, the Defendants included on their disclaimers the following representation:

> After October 31, 2011, certain costs were borne by MF Global Holdings USA, Inc. which benefited all Debtors. Additionally, some Debtors made constructive disbursements on behalf of another Debtor. These costs and disbursements relate primarily to payroll and employee benefits, human resource administration, daily cash management, bankruptcy reporting and filings, bookkeeping, facilities, and technology support ...

See e.g. Case No. 11-15059, Doc. No. 701 at p. 8 (Bankr. S.D.N.Y. May 18, 2012). Further, the interrelationship of the Defendants' unified management is reflected in each of the Defendant's responses to question 3(c) and 23 on the statement of financial affairs related to payments to insiders:

> In the ordinary course of MFG's businesses, officers of one Debtor may have been employed and paid by another Debtor or non-Debtor MFG entity. For ease of disclosure, payments listed by one Debtor reflect all payments to that individual by all Debtor entities.

Case No. 11-15059, Doc. No. 701 at p. 11 (Bankr. S.D.N.Y. May 18, 2012);

d) MF Global Group's operations/financials were consolidated for purposes of MF Global Ltd.'s audited annual financial statements;

e) High level executives, including the Chief Executive Officer and Chief Operating Officer, were considered employees of MF Global Group, as set forth above, the high level executives were employed by one company and then paid by another. *See e.g.* Case No. 11-15059, Doc. No. 701 at p. 11 (Bankr. S.D.N.Y. May 18, 2012);

f) MF Global Group exercised unified control over the employment practices governing the Plaintiffs and Class Members, including the decision to order the mass layoffs;

g) MF Global Group maintained a single, unified human resources department, responsible for recruiting, hiring, and administering employee benefits plans of MF Global Group. In fact, the worldwide head of HR, Thomas F. Connelly, worked with the Trustee to identify employees and communicated the November 11, 2011 layoffs to employees at the New York offices;

h) Employment policies and benefits (e.g, business expense reimbursement guidelines, paid vacation entitlement, etc.) were set forth in an employee handbook that was identical for all of MF Global Group.

21. The MF Global Group maintained and operated additional facilities - as that term is defined by the WARN Act - throughout the United States, including, but not limited to, Chicago, Illinois and New York, New York (collectively the "Offices").

22. Until on or about November 11, 2011, the Plaintiffs and all similarly situated employees were employed by Defendants and worked at or reported to one of Defendants' Offices.

23. Upon information and belief, the Defendants made the decision to terminate the employment of the Plaintiffs and the other similarly situated former employees collectively as a group, and not on an individual Defendant by Defendant basis.

THE DEFENDANTS WERE NOT LIQUIDATING ON THE DATE OF THE TERMINATIONS

24. The Defendants were not liquidating as of November 11, 2011.

25. Mr. Bradley L. Abelow, MF Global Holding Ltd's President and Chief Operating Officer and MF Global Finance USA, Inc.'s Executive Vice President and Chief Operating Officer, as of October 31, 2011, made the following representations to the Court regarding the purpose and intention of the initial Chapter 11 filings:

> 6. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession in these chapter 11 cases. To enable the Debtors to operate efficiently following the chapter 11 filings, the Debtors will request various types of relief....
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> ....
>
> 37. I believe that the relief sought in each of the First Day Motions (a) is vital to enable the Debtors to make the transition to, and operate in, chapter 11 with a minimum interruption or disruption to their businesses or loss of productivity or value and (b) constitutes a critical element in achieving the Debtors' successful reorganization.
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> ….
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> 43. The use of Cash Collateral is necessary for the Debtors to maintain sufficient liquidity so that the Debtors may continue to operate their businesses in the ordinary course of business during these chapter 11 cases. The Debtors' access to Cash Collateral is necessary in order to ensure that the Debtors have sufficient working capital and liquidity to operate their businesses and thus preserve and maintain the going concern value of the Debtors' estates, which, in turn, is integral to maximizing the recoveries for the Debtors' stakeholders
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> ….
>
> 44. I believe that immediate and ongoing use of Cash Collateral is required to fund the day-to-day activities of the Debtors, including to make payments to employees and vendors in the ordinary course of business whose services and goods are integral to the Debtors' operations.

> ….
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> 50. The Debtors are seeking a waiver of the requirement of the U.S. Trustee Guidelines that the prepetition Bank Accounts be closed....I believe that closing the existing Bank Accounts and opening new accounts inevitably would disrupt the Debtors' businesses and result in delays that would disrupt the Debtors' businesses and result in delays that would impede the Debtors' ability to transition smoothly into chapter 11, and would likewise jeopardize the Debtors' efforts to successfully reorganize in a timely and efficient manner.
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> ….
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> 67. The Debtors' ultimate goal is to reorganize their financial affairs under the terms of a confirmed chapter 11 plan. In the near term, however, to minimize any loss of value of their business during restructuring, the Debtors' immediate objective is to maintain a business-as-usual atmosphere during the pendency of the chapter 11 cases, with as little interruption or disruption to the Debtors' operations as possible. I believe that if the Court grants the relief requested in each of the First-day Motions, the prospect for achieving these objectives and completing a successful, rapid reorganization of the Debtors' business will be substantially enhanced.

Abelow Affidavit, Doc. No.9 (emphases added).

26. Defendants had not altered the representations contained in the Abelow Affidavit as of November 11, 2011 when they terminated the Plaintiffs and similarly situated employees.

WARN CLASS ALLEGATIONS

27. The Class Plaintiffs bring the First Claim for Relief for violation of 29 U.S.C. §2101, et seq., on behalf of themselves and on behalf of all other similarly situated former employees, pursuant to 29 U.S.C. § 2104(a)(5) and Federal Rules of Civil Procedure, Rule 23(a), who worked at or reported to one of Defendants' Offices and were terminated without cause on or about November 11, 2011, and within 30 days of that date, or were terminated without cause as the reasonably foreseeable consequence of the mass layoffs and/or plant closings ordered by Defendants on or about November 11, 2011, and who are affected employees, within the meaning of 29 U.S.C. § 2101(a)(5) (the "WARN Class").

28. The persons in the WARN Class identified above ("WARN Class Members") are so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, the facts on which the calculation of that number can be based are presently within the sole control of Defendants.

29. On information and belief, the identity of the members of the class and the recent residential address of each of the WARN Class Members is contained in the books and records of Defendants.

30. On information and belief, the rate of pay and benefits that were being paid by Defendants to each WARN Class Member at the time of his/her termination is contained in the books and records of Defendants.

31. Common questions of law and fact exist as to members of the WARN Class, including, but not limited to, the following:

(a) whether the members of the WARN Class were employees of the Defendants who worked at or reported to Defendants' Offices;

(b) whether Defendants unlawfully terminated the employment of the members of the WARN Class without cause on their part and without giving them 60 days advance written notice in violation of the WARN Act; and

(c) whether Defendants unlawfully failed to pay the WARN Class Members 60 days wages and benefits as required by the WARN Act.

32. The Class Plaintiffs' claims are typical of those of the WARN Class. The Class Plaintiffs, like other WARN Class members, worked at or reported to one of Defendants' Offices and were terminated without cause on or about November 11, 2011 due to the mass layoffs and/or plant closings ordered by Defendants.

33. The Class Plaintiffs will fairly and adequately protect the interests of the WARN Class. The Class Plaintiffs have retained counsel competent and experienced in complex class actions, including the WARN Act and employment litigation.

34. On or about November 11, 2011, Defendants terminated the Plaintiffs' employment as part of a mass layoff or a plant closing as defined by 29 U.S.C. § 2101(a)(2),(3), for which they were entitled to receive 60 days advance written notice under the WARN Act.

35. Class certification of these claims is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the WARN Class predominate over any questions affecting only individual members of the WARN Class, and because a class action superior to other available methods for the fair and efficient adjudication of this litigation - particularly in the context of WARN Act litigation, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant, and damages suffered by individual WARN Class members are small compared to the expense and burden of individual prosecution of this litigation.

36. Concentrating all the potential litigation concerning the WARN Act rights of the members of the Class in this Court will obviate the need for unduly duplicative litigation that might result in inconsistent judgments, will conserve the judicial resources and the resources of the parties and is the most efficient means of resolving the WARN Act rights of all the members of the Class.

37. Plaintiffs intend to send notice to all members of the WARN Class to the extent required by Rule 23.

NEW YORK WARN ACT CLASS ALLEGATIONS

38. Class Plaintiffs Pierre-Yvan Desparois, Natalia Sivova, Arton Sina, and Scott L. Kisch (the "NY Class Plaintiffs") bring this Second Claim for Relief for violation of NY WARN Act Labor Law § 860 et seq. on behalf of themselves and a class of similarly situated persons pursuant to NY WARN Act Labor Law § 860 et seq. and Federal Rules of Civil Procedure, Rule 23(a) and (b), who worked at or reported to Defendants' New York offices and were terminated without notice on or about November 11, 2011 (the "NY WARN Class").

39. The persons in the NY WARN Class identified above ("NY WARN Class Members") are so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, the facts on which the calculation of that number can be based are presently within the sole control of Defendants.

40. On information and belief, the identity of the members of the class and the recent residential address of each of the NY WARN Class Members is contained in the books and records of Defendants.

41. On information and belief, the rate of pay and benefits that were being paid by Defendants to each NY WARN Class Member at the time of his/her termination is contained in the books and records of the Defendants.

42. Common questions of law and fact exist as to members of the NY WARN Class, including, but not limited to, the following:

(a) whether the members of the NY WARN Class were employees of the Defendants who worked at a covered office of Defendants;

(b) whether Defendants, as a single employer, unlawfully terminated the employment of the members of the NY WARN Class without cause on their part and without giving them 90 days advance written notice in violation of the NY WARN Act; and

(c) whether Defendants unlawfully failed to pay the NY WARN Class members 60 days wages and benefits as required by the NY WARN Act.

43. The NY Class Plaintiffs' claims are typical of those of the NY WARN Class. The NY Class Plaintiffs, like other NY WARN Class members, worked at or reported to Defendants' New York offices and were terminated on or about November 11, 2011, due to the termination of the Offices ordered by Defendants.

44. The NY Class Plaintiffs will fairly and adequately protect the interests of the NY WARN Class. The Class Plaintiffs have retained counsel competent and experienced in complex class actions on behalf of employees, including the NY WARN Act, the Federal WARN Act, other similar state laws, and employment litigation.

45. Class certification of these Claims is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the NY WARN Class predominate over any questions affecting only individual members of the NY WARN Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation - particularly in the context of NY WARN Class Act litigation, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant, and damages suffered by individual NY WARN Class members are small compared to the expense and burden of individual prosecution of this litigation.

46. Concentrating all the potential litigation concerning the NY WARN Act rights of the members of the Class in this Court will obviate the need for unduly duplicative litigation that

might result in inconsistent judgments, will conserve the judicial resources and the resources of the parties and is the most efficient means of resolving the NY WARN Act rights of all the members of the Class.

47. The NY Class Plaintiffs intend to send notice to all members of the NY WARN Class to the extent required by Rule 23.

CLAIMS FOR RELIEF

Violation of the WARN Act, 29 U.S.C. § 2101, *et seq.*

48. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

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

50. At all relevant times, Defendants were 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 Offices.

51. As alleged above (primarily in paragraph 19(a-h)), at all relevant times herein, MF Global Group constituted a "single employer" of the Plaintiffs and the Class Members under the WARN Act. Indeed, as set forth above, there is a high interdependency of operations; there is commonality between management, directors and officers; there is a consolidation of financial, and human resources operations; and, at all relevant times the MF Global Group acted as essentially one entity.

52. On or about November 11, 2011, the Defendants ordered mass layoffs and/or plant closings at the Offices, as those terms are defined by 29 U.S.C. § 2101(a)(2).

53. The mass layoffs or plant closings at the Offices resulted in "employment losses," as that term is defined by 29 U.S.C. § 2101(a)(2) for at least fifty of Defendants' employees as well as thirty-three percent (33%) of Defendants' workforce at the Offices, excluding "part-time employees," as that term is defined by 29 U.S.C. § 2101(a)(8).

54. The Plaintiffs and the Class Members were terminated by Defendants without cause on their part, as part of or as the reasonably foreseeable consequence of the mass layoffs or plant closings ordered by Defendants at the Offices.

55. The Plaintiffs and the Class Members are "affected employees" of Defendants, within the meaning of 29 U.S.C. § 2101(a)(5).

56. Defendants were required by the WARN Act to give the Plaintiffs and the Class Members at least 60 days advance written notice of their terminations.

57. Defendants failed to give the Plaintiffs and the Class members written notice that complied with the requirements of the WARN Act.

58. The Plaintiffs, and each of the Class Members, are "aggrieved employees" of the Defendants as that term is defined in 29 U.S.C. § 2104 (a)(7).

59. Defendants failed to pay the Plaintiffs and each of the Class Members their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation 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.

60. Since the Plaintiffs and each of the Class Members seek back-pay attributable to a period of time after the filing of the Debtors' bankruptcy petitions and which arose as the result of the Debtors' violation of federal laws, Plaintiffs' and the Class Members' claims against

Defendants are entitled to first priority administrative expense status pursuant to 11 U.S.C. § 503 (b)(1)(A).

61. The relief sought in this proceeding is equitable in nature.

Violation of the New York WARN Act, Labor Law § 860, *et seq.*

62. Plaintiffs reallege and incorporate by reference all allegations in all proceeding paragraphs.

63. NY Class Plaintiffs and similarly situated employees who worked at or reported to Defendants' Offices in New York and other "covered establishments," are former "employees," of Defendants as defined in the NY WARN Act.

64. Defendants terminated the employment of the NY Class Plaintiffs and other similarly situated employees, pursuant to a "plant closing," "mass layoff," or "relocation" as defined in the NY WARN Act on or about November 11, 2011 or thereafter.

65. At all relevant times, Defendants were an "employer" as defined in the NY WARN Act.

66. Defendants violated the NY WARN Act by ordering a "Plant Closing," "mass layoff," or "relocation" in New York without giving written notice at least 90 days before the order took effect to (1) the employees affected by the order and (2) the New York State Department of Labor, the local workforce investment board, and the chief elected official of each city and county government within which the mass layoff, relocation or termination occurred.

67. As a result of Defendants' violation of the NY WARN Act, the NY Class Plaintiffs and the other similarly situated New York employees are entitled to damages equal to 60 days wages and benefits.

68. As a result of Defendants' violation of the NY WARN Act, Defendants are liable for a civil penalty of not more than five hundred dollars ($500) for each day of the violation.

69. Plaintiffs have incurred and the other similarly situated employees will incur attorneys' fees in prosecuting this claim and are entitled to an award of attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, individually and on behalf of all other similarly situated persons, prays for the following relief as against Defendants, jointly and severally:

A. Certification of this action as a Class Action;

B. Designation of the Plaintiffs as the Class Representatives;

C. Appointment of the undersigned attorneys as Class Counsel;

D. A first priority administrative expense claim against the Debtors pursuant to 11 U.S.C. § 503(b)(1)(A) in favor of the Plaintiffs 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 (90 days for the NY WARN Act Class), 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 Plaintiffs 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 Plaintiffs incur 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: June 30, 2015

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