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14 **UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 WESTERN DIVISION**

17 IN RE: CATALINA RESTAURANT
18 GROUP WARN ACT LITIGATION

19 Case No. 2:15-CV-2626-DDP-JPRx

20 CONSOLIDATED CLASS ACTION
21 COMPLAINT FOR DAMAGES FOR
22 VIOLATION OF THE WORKER
23 ADJUSTMENT AND RETRAINING
24 NOTIFICATION ACT (29 U.S.C. § 2101
25 et. seq.; Cal. Labor Code § 1400 et seq.)

26 **DEMAND FOR JURY TRIAL**

27 **CLASS ACTION**

28
CONSOLIDATED CLASS ACTION COMPLAINT
Case No. 2:15-CV-2626-DDP-JPRx

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CONSOLIDATED CLASS ACTION COMPLAINT
Case No. 2:15-CV-2626-DDP-JPRx

1 Plaintiffs Phoebe Patterson, Kanani Fast, Rebekkah Salazar, Ashley Watts, Aisha
2 Rogers, Aaron Kakavand, Tracy Salazar, Victoria Andrade, Gerardo Chavez, Joelle
3 Kennedy, Christi Harrell, Gene Watts, John Manley, Roseann Barnett, Gary Bowles,
4 Maria Ramirez, Violeta Ramirez, Andrew Hodge, and Jose Sandoval individually and on
5 behalf of a class of all others similarly situated, for their First Amended Complaint
6 against Defendants Food Management Partners, Inc., Alamo CRG, LLC, and Catalina
7 Restaurant Group, Inc. state as follows:

8 **JURISDICTION AND VENUE**

9 1. This Court’s jurisdiction is based on 28 U.S.C. § 1331, 29 U.S.C. §§ 2102,
10 2104(a)(5), and California Labor Code § 1404 (the United States and California Worker
11 Adjustment and Retraining Notification Acts are referred to herein collectively as the
12 “WARN Act” unless otherwise stated) (29 U.S.C. § 2101 *et. seq.*; California Labor Code
13 § 1400 *et. seq.*). This Court has supplemental jurisdiction over Plaintiffs’ state law
14 claims under 28 U.S.C. § 1367.

15 2. This Court also has subject-matter jurisdiction under the Class Action
16 Fairness Act, 29 U.S.C. § 1332(d). Plaintiffs have filed this case as a class action, at
17 least one Plaintiff is a citizen of a different state than at least one Defendant, and the
18 amount in controversy exceeds \$5,000,000.

19 3. Venue in this district is proper under 28 U.S.C. § 1391(b) and (c), and
20 section 5(a)(5) of the WARN Act (29 U.S.C. § 2104(a)(5)) because Defendants do
21 business in this district, employed Plaintiffs and many other individuals in this district,
22 and the acts underlying the WARN Act claims occurred in this district.

23 **PARTIES**

24 4. Plaintiffs Phoebe Patterson, Kanani Fast, Rebekkah Salazar, Ashley Watts,
25 Aisha Rogers, Aaron Kakavand, Tracy Salazar, Victoria Andrade, Gerardo Chavez,
26 Joelle Kennedy, Christi Harrell, Gene Watts, John Manley, Roseann Barnett, Gary
27 Bowles, Maria Ramirez, Violeta Ramirez, Andrew Hodge, and Jose Sandoval are
28 individuals who were employed by Defendants and, in addition to other substantial

1 employee benefits, earned regular compensation and were damaged by Defendants' acts
2 in violation of the WARN Act.

3 5. Now and at all relevant times, Plaintiffs Aaron Kakavand, Kanani Fast,
4 Rebekkah Salazar, Victoria Andrade, Gerardo Chavez, Christi Harrell, Roseann Barnett,
5 Gary Bowles, Maria Ramirez, Violeta Ramirez, Andrew Hodge, and Aisha Rogers
6 resided in Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa
7 Barbara, or Ventura counties, all of which are within the Central District of California.

8 6. Plaintiff Joelle Kennedy currently is a citizen and resident of Cherry Log,
9 Georgia, though she resided in Ventura County, California when she was employed by
10 Defendants.

11 7. Now and at all relevant times, Plaintiffs Ashley Watts, Tracy Salazar, Gene
12 Watts, John Manley, and Jose Sandoval were California citizens residing in counties
13 outside the Central District of California.

14 8. Now and at all relevant times, Plaintiff Phoebe Patterson was a citizen and
15 resident of Phoenix, Arizona.

16 9. Defendant Food Management Partners, Inc. ("FMP") is a Texas Corporation
17 with its principal place of business in Hollywood Park, Texas.

18 10. Defendant Alamo CRG, LLC ("Alamo") is a Texas Corporation with its
19 principal place of business in Hollywood Park, Texas. Alamo is a subsidiary of FMP.

20 11. Defendant Catalina Restaurant Group Inc. ("Catalina") is a Delaware
21 Corporation that is registered to do business in California and has its principal place of
22 business in California. Catalina operates the Coco's Bakery and Carrows chains of
23 restaurants.

24 12. The Defendants are a single employer in that they share common ownership,
25 corporate directors, and officers, FMP has de facto control over Alamo, and both FMP
26 and Alamo have de facto control over Catalina. Defendants have fully integrated and
27 interdependent business operations and share personnel policies that emanate from a
28

1 common source. At all relevant times, Defendants maintained facilities that qualified for
2 protection under the federal and state WARN Acts (collectively, the “Facilities”).

3 **FACTS**

4 13. FMP is a privately-held company that is an owner or franchisee of
5 approximately 112 restaurants across the country, excluding the approximately 85
6 remaining Coco’s and Carrows restaurants.

7 14. On March 12, 2015, FMP’s corporate officers filed a Certificate of
8 Formation with the Texas Secretary of State, forming Defendant Alamo CRG, LLC.
9 Alamo is an FMP subsidiary and both corporations have the same address, registered
10 agent, and corporate managers.

11 15. On March 31, 2015, Alamo acquired Catalina from Catalina’s previous
12 owner, Zensho America Corporation. Alamo then hired FMP to act as its managing
13 agent.

14 16. Until it was acquired by FMP/Alamo, Catalina operated nearly 150 Coco’s
15 Bakery and Carrows Restaurants, primarily in California, Nevada, and Arizona.

16 17. On April 1, 2015 – the day after FMP/Alamo acquired Catalina –
17 Defendants terminated nearly all of the 100 employees who worked at Catalina’s
18 corporate headquarters. Many of the few remaining employees were terminated within
19 30 days of April 1, 2015. Plaintiffs Gene Watts and John Manley were employed by
20 Defendants at Catalina’s corporate headquarters and were terminated without notice on
21 or within 30 days of April 1, 2015.

22 18. Defendants also closed approximately 75 of Catalina’s Coco’s Bakery and
23 Carrows Restaurants on April 1, 2015. Many restaurant employees and managers were
24 told not to report to work on April 1, or showed up to work only to find a sign on the
25 door announcing that the restaurant was closed for inventory. They were told to come to
26 the restaurant for a mandatory meeting on Friday, April 3, 2015.

27 19. On April 3, 2015, Defendants terminated nearly all of the employees at the
28 shuttered restaurants. More employees were terminated within 30 days of April 3, 2015.

1 20. Defendants continue to conduct mass layoffs and/or plant closings.

2 21. Plaintiffs Phoebe Patterson, Kanani Fast, Rebekkah Salazar, Ashley Watts,
3 Aisha Rogers, Aaron Kakavand, Tracy Salazar, Victoria Andrade, Gerardo Chavez,
4 Joelle Kennedy, Christi Harrell, Roseann Barnett, Gary Bowles, Maria Ramirez, Violeta
5 Ramirez, Andrew Hodge, and Jose Sandoval are among the restaurant employees that
6 Defendant abruptly terminated.

7 22. The terminated employees were not given advance notice that they would
8 be terminated.

9 23. At the time of their termination, many employees received a letter that
10 invited employees to submit any questions to an email address associated with defendant
11 FMP.

12 24. Terminated employees were offered no severance pay, and those whose
13 compensation included medical insurance benefits were told that their coverage would
14 be cut off after one week. Those with company cars were told to leave their keys and
15 find another way to get home.

16 25. Altogether, on or about April 3, 2015, Defendants terminated
17 approximately 3,000 employees at the affected Facilities without providing the notices
18 required by the WARN Act.

19 **CLASS ACTION ALLEGATIONS**

20 26. Plaintiffs brings this action as a class action under Federal Rule of Civil
21 Procedure 23(a), (b)(1) and (3) and the WARN Act (29 U.S.C. § 2104(a)(5); Cal. Labor
22 Code § 1404).

23 27. Plaintiffs bring this action on behalf of themselves and all other similarly
24 situated employees. Plaintiffs seeks to represent a Class initially defined as:

25 All of Defendants' employees who, since April 1, 2015, were terminated
26 without cause from employment at one of Defendants' Facilities as part of a
27 mass layoff or plant closing without being provided 60 days written notice.
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1 28. All Plaintiffs except Phoebe Patterson (collectively, “California Plaintiffs”)
2 seek to represent a California subclass initially defined as:

3 All of Defendants’ employees in California who, since April 1, 2015, were
4 terminated without cause from employment at one of Defendants’ Facilities
5 as part of a mass layoff, relocation, or termination without being provided 60
6 days written notice.

7 29. Plaintiffs’ claims satisfy the numerosity, typicality, adequacy, commonality,
8 predominance, and superiority requirements of a class action.

9 30. The members of the class and the subclass each exceed 100 in number, and
10 joinder is therefore impracticable. The precise number of class members and their
11 addresses are readily determinable from the books and records of Defendants.

12 31. Plaintiffs are affected employees who were terminated by Defendants from
13 employment at one of Defendants’ Facilities in the 30-day period beginning April 1,
14 2015 without the notice required by the WARN Act. They are, therefore, members of
15 the class. In addition, the California Plaintiffs each resided in California at the time they
16 were terminated, so they also are members of the subclass. Each Plaintiff is committed
17 to pursuing this action and has retained counsel with extensive experience prosecuting
18 complex wage, employment, and class action litigation. Accordingly, Plaintiffs each are
19 adequate representatives of the class and have the same interests as all of its members.
20 Further, Plaintiffs’ claims are typical of the claims of all members of the class, and
21 Plaintiff will fairly and adequately protect the interests of the absent members of the
22 class.

23 32. There are common questions of fact and law as to the class that
24 predominate over any questions affecting only individual class members. The questions
25 of law and fact common to the class arising from Defendants’ actions include, without
26 limitation, the following:

27 a. whether the provisions of the WARN Act apply;

- 1 b. whether Defendants’ employee terminations on or about April 3,
- 2 2015, or within 30 days of that date, constitute “plant closings,”
- 3 “terminations,” and/or “mass layoffs” under the WARN Act;
- 4 c. whether Defendants failed to provide the notices required by the
- 5 WARN Act (29 U.S.C. § 2102(b); Cal. Labor Code § 1401);
- 6 d. whether Defendants can avail themselves of any of the provisions the
- 7 WARN Act that permit shorter notice periods;
- 8 e. the appropriate formulae to measure damages under the WARN Act
- 9 (29 U.S.C. § 2104(a); Cal. Labor Code § 1402); and
- 10 f. the appropriate definitions and formulae to measure payments to
- 11 potentially offset damages under the WARN Act (29 U.S.C.
- 12 § 2104(a)(2); Cal. Labor Code § 1402).

13 33. The questions set forth above predominate over any questions affecting
14 only individual persons and certification is appropriate under Federal Rule of Civil
15 Procedure 23(b)(3). A class action is superior to other available methods for the fair and
16 efficient adjudication of the WARN Act claims, particularly with respect to
17 considerations of consistency, economy, efficiency, fairness, and equity.

18 34. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(1) because
19 the prosecution of separate actions by individual class members could create a risk of
20 inconsistent and varying adjudications, establish incompatible standards of conduct for
21 Defendants, and/or substantially impair or impede the ability of class members to protect
22 their interests.

23 35. Further, class action treatment of this action is authorized and appropriate
24 under the WARN Act (29 U.S.C. § 2104(a)(5); Cal. Labor Code § 1404), which clearly
25 provides that a plaintiff seeking to enforce liabilities under the WARN Act may sue
26 either on behalf of his or her self, for other persons similarly situated, or both.

1 **CLAIM I**

2 **Violations of the United States Worker Adjustment and Retraining Notification Act**

3 36. Plaintiff reasserts and re-alleges the allegations set forth above.

4 37. At all times material herein, Plaintiffs, and similarly situated persons, have
5 been entitled to the rights, protections and benefits provided under the federal WARN
6 Act, 29 U.S.C. § 2101 *et. seq.*

7 38. The federal WARN Act regulates the amount of notice an employer must
8 provide to employees who will be terminated due to the employer’s closing of a plant or
9 mass layoffs, as well as the back pay and other associated benefits an affected employee
10 is due based on a violation of the required notice period.

11 39. Defendants were, and are, subject to the notice and back pay requirements
12 of the federal WARN Act because they are individually and collectively a business
13 enterprise that employs 100 or more employees, excluding part-time employees, as
14 defined in the Act. 29 U.S.C. § 2101(a)(1)(A).

15 40. Plaintiffs and class members are “affected employee(s)” subject to an
16 “employment loss,” as those terms are defined in the WARN Act, 29 U.S.C.
17 § 2101(a)(5) and (6).

18 41. Plaintiffs and class members were subjected to one or more “plant closings”
19 and/or “mass layoffs” as those terms are defined in the federal WARN Act, 29 U.S.C.
20 § 2101(a)(2) and (3).

21 42. Defendants willfully violated the federal WARN Act by failing to provide
22 the notice required under 29 U.S.C. § 2102(b).

23 43. Section 2103 of the federal WARN Act exempts certain employers from the
24 notice requirements of the Act. 29 U.S.C. § 2103(1)-(2). None of the federal WARN
25 Act exemptions apply to Defendants. Accordingly, Plaintiffs and class members must
26 receive the notice and back pay required by the federal WARN Act (29 U.S.C. §§ 2102
27 and 2104).

1 44. Plaintiffs and all similarly situated employees have been damaged by
2 Defendants' conduct constituting violations of the federal WARN Act and are entitled to
3 damages for their back pay and associated benefits for each day of the violation because
4 Defendants have not acted in good faith nor with reasonable grounds to believe its acts
5 and omissions were not a violation of the federal WARN Act.

6 45. Defendants are also liable to Plaintiffs for their reasonable attorneys' fees
7 under 29 U.S.C. § 2104.

8 **CLAIM II**

9 **Violations of the California Worker Adjustment and Retraining Notification Act**

10 46. Plaintiff reasserts and re-alleges the allegations set forth above.

11 47. At all times material herein, Plaintiffs, and similarly situated persons
12 including the subclass members, have been entitled to the rights, protections and benefits
13 provided under the California WARN Act, California Labor Code § 1400, *et. seq.*

14 48. The California WARN Act regulates the amount of notice an employer
15 must provide to employees who will be terminated due to the employer's layoffs, as well
16 as the back pay and other associated benefits an affected employee is due based on a
17 violation of the required notice period.

18 49. Defendants were, and are, subject to the notice and back pay requirements
19 of the California WARN Act because the Facilities are a covered establishment that
20 employs 75 or more employees, excluding part-time employees, as defined in the Act.
21 Cal. Labor Code § 1400.

22 50. California Plaintiffs and the subclass members are "employees" at a
23 "covered establishment" subject to a "mass layoff" and/or "termination" as those terms
24 are defined in the California WARN Act, California Labor Code § 1400(h), (a), (d) and
25 (f), respectively.

26 51. Defendants willfully violated the California WARN Act by failing to
27 provide the notice required by the California WARN Act, Cal. Labor Code § 1401.
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DEMAND FOR JURY TRIAL

Plaintiff hereby requests trial by jury of all issues triable by jury.

DATED: August 21, 2015

Respectfully submitted,
GIRARD GIBBS LLP

By: /s/ Eric H. Gibbs

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