

CONFIRMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

NOV 15 2018

Sherri R. Carter, Executive Officer/Clerk
By: Rita Nazaryan, Deputy

1 Steven M. Tindall (SBN 187862)
Amanda M. Karl (SBN 301088)
2 Aaron Blumenthal (SBN 310605)
3 **GIBBS LAW GROUP LLP**
505 14th Street, Suite 1110
Oakland, CA 94612
4 Telephone: (510) 350-9700
Facsimile: (510) 350-9701 smt@classlawgroup.com
5 amk@classlawgroup.com
ab@classlawgroup.com

6 *Counsel for Plaintiff and Proposed Class*

7
8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**
11 **CENTRAL CIVIL WEST – COMPLEX**

12 Tanisha Merriweather, individually and on
13 behalf of herself and all others similarly
situated,

14 Plaintiff,

15 v.

16
17 Neilson Financial Services LLC, a Limited
Liability Corporation; NFS Insurance Agency
18 LLC, a Limited Liability Corporation; and
DOES 1 through 10,

19 Defendants.
20
21

Case No. 18STCV00421 *SSC 6*

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES:**

1. Violation of Cal. WARN Act, Cal. Labor Code § 1400 *et seq.*
2. Private Attorneys General Act, Cal. Labor Code §§ 2699 and 2699.3.

DEMAND FOR JURY TRIAL

BY FAX

22
23
24
25
26
27
28

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. SUMMARY OF CASE

1. After several years operating an insurance sales office in Los Angeles, California, Defendant Neilson Financial Services LLC (“Neilson”) decided to close up shop. It did not notify its employees of this decision, until August 20, 2018, when Neilson laid off over 100 employees.

2. Under such circumstances, the California WARN Act requires an employer to give at least 60 days advanced notice of layoffs. This notice is intended to give employees 60 days to prepare for the loss of their job, such as by finding another job.

3. If an employer does not provide the required notice, the California WARN Act requires the employer to pay each affected employee up to 60 days’ worth of wages and job benefits.

4. Because Neilson’s Los Angeles office closure violated the California WARN Act, Plaintiff Tanisha Merriweather brings this action, on behalf of herself and other similarly situated employees, to recover the wages and benefits Neilson owes them.

II. JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to California Code of Civil Procedure (CCP) § 410.10. Damages exceed the jurisdictional minimum of this Court.

6. Venue is proper in Los Angeles County, pursuant to CCP § 395 and § 395.5, because Defendants’ principal place of business is located in this county; Defendants’ liability arose in this county; Defendants reside in this county; and Defendants are registered with the State of California to conduct business in this county.

III. PARTIES

7. Plaintiff Tanisha Merriweather is a resident of Los Angeles County, California, and was employed by Neilson until August 20, 2018, when she—along with over a hundred other employees—was laid off with no advanced notice.

8. Defendant Neilson Financial Services LLC is a California limited liability corporation, with its principal place of business at 6080 Center Dr. #300, Los Angeles, CA 90045.

9. Defendant NFS Insurance Agency LLC is a California limited liability corporation, with its principal place of business at 6080 Center Dr. #300, Los Angeles, CA 90045. Its California insurance license number is 0K70211.

1 Department. *See* Cal. Labor Code § 1401(a).

2 16. Employers are excused from providing notice of a mass layoff only if there is a
3 “physical calamity” (such as an earthquake) or “act of war.” § 1401(b).

4 17. If an employer fails to give notice of a mass layoff, relocation, or cessation of business,
5 its employees are entitled to recover: up to 60 days of wages (at their regular rate of pay), and the value
6 of any employment benefits that the employee would have received during that time (such as payment
7 of medical expenses under a health insurance plan, or matching contributions to a 401(k) retirement
8 plan). *See* § 1402.

9 **D. Neilson Failed to Give the Required Notice**

10 18. Neilson did not provide advance notice to employees at its Los Angeles office that they
11 would be terminated on August 20, 2018. Notice was provided only on the day of the layoffs.

12 19. The Employment Development Department also did not receive a WARN notice from
13 Neilson, according to the Department’s records.²

14 20. On information and belief, since August 20, 2018, Neilson has not compensated its
15 terminated employees for its failure to provide notice of the terminations.

16 **V. PLAINTIFF’S EXPERIENCE**

17 21. Tanisha Merriweather was employed by Neilson as a life insurance salesperson at its
18 Los Angeles office since February 2017. On a monthly basis, she earned about \$3,350 in base pay, and
19 an average commission of \$1,000 to \$1,500.

20 22. On August 20, 2018, her manager called her into a company-wide meeting of the Los
21 Angeles office. She, along with most of her co-workers, were terminated—effective immediately. She
22 received no prior notice that there would be layoffs.

23 **VI. CLASS ALLEGATIONS**

24 23. Plaintiff bring this class action, pursuant to CCP § 382 and Cal. Labor Code § 1404,
25 individually and on behalf of all members of the following Class:

26
27 ² *See* <https://tinyurl.com/edd-july1-sept25> (no WARN notice received from Neilson for the period July
28 1, 2018, to September 25, 2018); <https://tinyurl.com/edd-2017-2018> (no WARN notice received from
Neilson for the period July 1, 2017 to June 30, 2018).

1 All Neilson employees who were terminated from employment at Neilson’s Los Angeles,
2 California site on or around August 20, 2018, without being provided 60 days’ written notice of
a mass layoff, relocation, or termination of business.

3 24. Plaintiff reserves the right to modify or amend the definition of the proposed Class
4 before the Court determines whether certification is appropriate.

5 25. There are over 100 Class members, making it impracticable for all to appear before the
6 Court.

7 26. Membership in the Class can be determined from Neilson’s own records.

8 27. There are questions of law and fact common to the Class, which predominate over any
9 questions affecting only individual Class members. These common questions of law and fact include,
10 without limitation:

- 11 a. Whether the provisions of the California WARN Act apply;
- 12 b. Whether Neilson engaged in a “mass layoff,” “relocation,” or “termination” of business,
13 under the California WARN Act;
- 14 c. Whether Neilson failed to provide the required notice under the California WARN Act;
- 15 d. The measure of damages and/or penalties owed under the California WARN Act;

16 28. Plaintiff’s claims are typical of those of other Class members because Plaintiff, like
17 other Class members, was laid off on or around August 20, 2018.

18 29. Plaintiff will fairly and adequately represent and protect the interests of the members of
19 the Class. Plaintiff has retained counsel that is competent and experienced in litigating employment and
20 WARN-related class actions. Neither Plaintiff nor Plaintiff’s counsel have any interests that conflict
21 with the interests of the proposed Class.

22 30. A class action is superior to other available methods for the fair and efficient
23 adjudication of this controversy because joinder of all the members of the Class is impracticable; the
24 defendants acted or refused to act on grounds generally applicable to the Class; and the adjudication of
25 this controversy through a class action will avoid the possibility of inconsistent and potentially
26 conflicting adjudication of the asserted claims. Furthermore, there are no special difficulties in the
27 management of this litigation as a class action.

28 31. Damages for any individual Class member are likely insufficient to justify the cost of

1 individual litigation, so that in the absence of class treatment, Defendants' violations of law inflicting
2 substantial damages in the aggregate would go unremedied.

3 **VII. PAGA ALLEGATIONS**

4 32. Plaintiff also brings suit under California's Private Attorneys General Act (PAGA) as
5 the representative of former Neilson employees who are or were affected by Neilson's violations of
6 California's Labor Code.

7 33. Plaintiff seeks to represent approximately 125 former Neilson employees who were
8 terminated from employment at Neilson's Los Angeles, California site on or around August 20, 2018,
9 without being provided 60 days' written notice of a mass layoff, relocation, or termination of business.

10 **COUNT I: CALIFORNIA WARN ACT**

11 **(Plaintiff, in her individual capacity, and on behalf of the class)**

12 34. Plaintiff incorporates the above allegations as if fully set forth herein.

13 35. Defendants are "employers" that operate a "covered establishment" under the California
14 WARN Act, Cal. Labor Code § 1400 *et seq.*, because they run a business enterprise that employs 75 or
15 more employees.

16 36. Defendants engaged in a "mass layoff" because they terminated 50 or more employees
17 within a 30-day period.

18 37. Defendants engaged in a "relocation" by moving substantially all of their California
19 sales operations to the United Kingdom.

20 38. Defendants engaged in a "termination" because they ceased or substantially ceased
21 commercial operations in their Los Angeles location.

22 39. None of the exemptions to the notice requirements of the California WARN Act applies.

23 40. Defendants willfully violated the California WARN Act by failing to provide the
24 required notice.

25 41. Plaintiff and all similarly situated former employees have been damaged by Defendants'
26 conduct constituting violations of the California WARN Act and are entitled to damages for their back
27 pay and associated benefits for each day of the violation.

28 42. Defendants have not acted in good faith nor with reasonable grounds to believe its acts

1 or omissions were not a violation of the California WARN Act.

2 **COUNT II: CALIFORNIA WARN ACT**

3 **(Plaintiff, as an aggrieved employee, and in her representative capacity)**

4 43. Plaintiff incorporates the above allegations as if fully set forth herein.

5 44. Plaintiff, as an aggrieved employee, brings a claim under California Labor Code
6 §§ 2698-2699.5 in a representative capacity on behalf of former employees of Neilson who were
7 terminated on or around August 20, 2018, who did not receive notice at least 60 days prior to their
8 termination.

9 45. The California Labor Code Private Attorneys General Act of 2004 (“PAGA”) grants
10 California employees the right to bring a civil action for the violation of any provision on the Labor
11 Code on behalf of themselves and other former employees in order to recover civil penalties. PAGA is
12 intended to assist in the achievement of maximum compliance with state labor laws by empowering
13 aggrieved employees to act as private attorneys general in order to recover civil penalties for Labor
14 Code violations that would otherwise be prosecuted by the state. *See Arias v. Super. Ct.* (2009) 46
15 Cal.4th 969, 980.

16 46. PAGA permits an aggrieved employee to collect the civil penalty authorized by law and
17 normally collectible by the California Labor and Workforce Development Agency. Under Labor Code
18 § 1403, an employer who fails to give notice under the California WARN Act is subject to civil
19 penalties of up to \$500 for each day of the employer’s violation, unless the employer pays all
20 applicable employees the amounts for which it is liable under Labor Code § 1402 within three weeks
21 from the employer’s mass layoff, relocation, or termination. Plaintiff seeks these penalties, as Neilson
22 has not yet paid its terminated employees under § 1402.

23 47. California Labor Code § 2699(g) further provides that any employee who prevails in an
24 action for civil penalties is entitled to an award of reasonable attorneys’ fees and costs. Plaintiff seeks
25 to recover her attorneys’ fees and costs under this fee and cost provision.

26 48. On October 12, 2018, pursuant to California Labor Code § 2699.3, Plaintiff submitted
27 online notice to the Labor and Workforce Development Agency of the specific provisions of the Labor
28 Code that have been violated, including the facts and theories to support the violations. Plaintiff sent

1 this notice to Defendants by certified mail. The thirty-three-day time limit for the agency to respond, or
2 for Defendants to cure, has expired under Labor Code § 2699.3(c), such that Plaintiff has exhausted her
3 administrative remedies.

4 **VIII. PRAYER FOR RELIEF**


5 WHEREFORE, Plaintiff, individually and on behalf of all Class members, requests judgment be
6 entered against Defendants and that the Court grant the following:

- 7 a. An order determining that this action may be maintained as a class action;
- 8 b. Designation of Plaintiff as a class representative and Plaintiff's attorneys as class
9 counsel;
- 10 c. Judgment against Defendants for Plaintiff's and Class members' asserted causes of
11 action;
- 12 d. Appropriate declaratory relief against Defendants;
- 13 e. An award of all applicable damages;
- 14 f. An award of civil penalties under Cal. Labor Code §§ 1403 and 2699;
- 15 g. Prejudgment interest;
- 16 h. An award of reasonable attorney's fees and other litigation costs; and
- 17 i. Any other relief to which Plaintiff and the Class may be entitled.

18 **IX. DEMAND FOR JURY TRIAL**

19 Plaintiffs demand a trial by jury for all issues so triable.

20
21 Dated: November 15, 2018

22 By: 
23 **GIBBS LAW GROUP LLP**
24 Steven M. Tindall (SBN 187862)
25 Amanda M. Karl (SBN 301088)
26 Aaron Blumenthal (SBN 310605)
27 505 14th Street, Ste. 1110
28 Oakland, CA 94612
Telephone: (510) 350-9700
Facsimile: (510) 350-9701
smt@classlawgroup.com
amk@classlawgroup.com
ab@classlawgroup.com