

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Deyanira Alvarez, Karen Leyva, and Jose
Cabrera Ortega, on behalf of themselves and
all others similarly situated,)

Plaintiffs,)

v.)

Rolf's Patisserie Inc., Lloyd Culbertson and
Ford Culbertson,)

Defendants.)

No. 12-cv-0159

Jury Demanded

COMPLAINT

I. Introduction

1. Plaintiffs Deyanira Alvarez, Karen Leyva and Jose Cabrera Ortega (“Named Plaintiffs”), individually and on behalf of all others similarly situated (“the class”), bring this action against Rolf’s Patisserie, Inc. (“Rolf’s”) for violating the provisions of the Worker Adjustment and Retraining Notification Act (“WARN Act”), 29 U.S.C. § 2101 *et seq.*, and its implementing regulations on at least two occasions – first in December 2010 and then again in December 2011. On both occasions, Rolf’s failed to provide the Named Plaintiffs and the class the statutory notice required under the WARN Act for the closure of business operations at Rolf’s. Plaintiffs also bring this action individually and on behalf of the class against Rolf’s, Lloyd Culbertson, and Ford Culbertson for violating the Illinois Wage Payment and Collection Act (“Wage Act”), 820 ILCS 115/1 *et seq.*, by failing to pay its workers the last regular paycheck due to them for work performed up to December 10, 2011, the most recent closing, and benefits due upon termination.

II. Jurisdiction and Venue

2. This Court has jurisdiction over this action under 29 U.S.C. §§ 2104(a)(5) and 28 U.S.C. § 1331.
3. Venue is proper pursuant to 28 U.S.C. §1391(b)(2) and 29 U.S.C. §2104(a)(5) as the events giving rise to the claims occurred within this judicial district.

III. Parties

4. Deyanira Alvarez is an Illinois resident and former employee of the defendants.
5. Jose Cabrera Ortega is an Illinois resident and former employee of the defendants.
6. Karen Leyva is an Illinois resident and former employee of the defendants.
7. Deyanira Alvarez was an employee of the defendants when Rolf's closed its plant on December 23, 2010 and December 10, 2011. She brings this action on behalf of herself and all others similarly situated as provided by 29 U.S.C. § 2104(a)(5) and the Federal Rules of Civil Procedure.
8. Jose Cabrera Ortega was an employee of the defendants when Rolf's closed its plant on December 23, 2010 and December 10, 2011. He brings this action on behalf of himself and all others similarly situated as provided by 29 U.S.C. § 2104(a)(5) and the Federal Rules of Civil Procedure.
9. Karen Leyva was an employee of the defendants when Rolf's closed its plant on December 23, 2010 and December 10, 2011. She brings this action on behalf of herself and all others similarly situated as provided by 29 U.S.C. § 29 U.S.C. § 2104(a)(5) and the Federal Rules of Civil Procedure.

10. Defendant Rolf's Patisserie, Inc. is an Illinois corporation registered to do business in Illinois. It operated Rolf's Patisserie in Lincolnwood, IL and Pleasant Prairie, WI, and is an "employer" within the meaning of § 2101(a)(1) of the WARN Act.

11. Defendant Lloyd Culbertson, is an Illinois resident and is the President of Rolf's.

12. Defendant Ford Culbertson, is an Illinois resident and is the Secretary of Rolf's.

IV. Facts

13. Rolf's operates or has operated as a patisserie located at 4343 W. Touhy Ave., Lincolnwood, Illinois, 60712.

14. The Named Plaintiffs were employees of Rolf's when it ceased business operations on two separate occasions - first on December 23, 2010 and after it reopened, again on December 10, 2011.

15. Members of the class include both the managerial and non-managerial employees of the defendants.

16. Rolf's employed more than 100 persons at the location in Lincolnwood within thirty days of the closing on December 23, 2010 and within 30 days of the closing on December 10, 2011.

First WARN Act Violation: December 23, 2010

17. On December 23, 2010 Rolf's closed its Lincolnwood facility and terminated the employment of nearly all of its workers.

18. Rolf's continued to employ approximately eight employees after it closed its plant on December 23, 2010, to manage the necessary work that still needed to be performed.

19. Then in January 2011 Rolf's started hiring more workers.

20. Rolf's called back some of its former employees, and other former workers came back on their own.

21. Rolf's also hired new workers.
22. No WARN Act notice was ever given to Rolf's employees for the December 23, 2010 closing.

Second WARN Act Violation and Wage Act Violation: December 10, 2011

23. On December 10, 2011 Rolf's closed its Lincolnwood plant apparently on a permanent basis.
24. As of that date, Rolf's employed more than 100 workers.
25. Rolf's on its website advised workers that it was closed effective immediately as of December 10, 2011. .
26. Rolf's advised employees that they could pick up their last paycheck on December 15, 2011.
27. No WARN Act notice was given prior to this December 10, 2011 closing.
28. The Named Plaintiffs and other members of the class picked up the final paychecks and attempted to deposit or cash them.
29. These checks did not include the monetary equivalent of earned and unused vacation due to the Named Plaintiffs and other members of the class.
30. The paychecks drawn on Rolf's account at First American Bank were not honored – the checks bounced.
31. In some cases, currency exchanges which cashed the bounced paychecks have threatened to bring legal actions against the former employees of Rolf's.
32. On January 4, 2011 Plaintiff Levya sent a letter via email to Lloyd Culbertson (owner of Rolf's Patisserie) demanding that the paychecks be made good.
33. On January 5, 2012 – roughly twenty-five days after Rolf's closed on December 10, 2011, Plaintiff Levya and other workers finally received a letter dated January 4, 2012 purporting to be a WARN Act notice. The purported WARN Act notice of January 4, 2011 advised the

Named Plaintiffs and other members of the class of a closing that had taken place nearly a month before.

34. The letter attached as Exhibit B does not fulfill the WARN Act requirements, and the failure to send any WARN Act notice until January 4, 2012 was not in good faith.
35. On information and belief, the Named Plaintiffs allege that First American Bank, who owned all the assets of Rolf's and had control of Rolf's bank account, made the decision to halt payment on the paychecks.
36. Upon information and belief, the Named Plaintiffs allege that Rolf's and the individual defendants knew or should have known that they should have given notice to the workers at least 60 days prior to December 10, 2011 because of the financial condition of Rolf's and knew or should have known that they should have set aside sufficient funds to pay the wages and benefits of the workers.

V. Class Action Facts and Allegations

37. Each Named Plaintiff and every member of the class was an employee of Rolf's Patisserie, Inc. working at the Lincolnwood plant within thirty days of its temporary closing on December 23, 2010 and within thirty days of its permanent closing on December 10, 2011. Each member of the class is seeking the statutory penalties for violation of the WARN Act and is seeking wages and benefits due from Rolf's and the individual defendants under the Illinois Wage Act
38. The class is appropriate for certification under Rule 23(b)(3) of the Federal Rules of Civil Procedure.
39. The class is sufficiently numerous (over 100 former employees), and there are issues of fact and law common to the class. The claims of the Named Plaintiffs are typical of the claims of

the members of the class. The Named Plaintiffs have retained counsel experienced in WARN Act class litigation and will adequately represent the interest of the class.

40. The Named Plaintiffs propose to certify two subclasses for the two respective WARN Act claims. The first subclass consists of all employees at the Lincolnwood plant whose jobs were terminated within thirty days of December 23, 2010. The second subclass consists of all employees at the Lincolnwood plant whose jobs were terminated within thirty days of December 10, 2011. The second subclass includes employees who are seeking both the statutory penalty for violation of the WARN Act on this occasion and the unpaid wages and other benefits due to them under the Illinois Wage Act.

COUNT I
Against Rolf's Patisserie

VIOLATION OF THE WARN ACT
29 U.S.C. §2104

41. Plaintiffs incorporate paragraphs 1 through 40 above.
42. By the acts set forth above, Rolf's violated the rights of the Named Plaintiffs and members of the class to the 60 days notice of the closure of Rolf's plant on December 23, 2010, in violation of the WARN Act, 29 U.S.C. § 2104, and the implementing regulations.
43. By the acts set forth above, Rolf's additionally violated the right of the Named Plaintiffs and members of the class to the 60 days notice of the second closure of Rolf's plant on December 10, 2011, in violation of the WARN Act, 29 U.S.C. § 2104, and the implementing regulations.

WHEREFORE, the Named Plaintiffs, on behalf of themselves and all others similarly situated, prays for judgment for themselves and the class against the defendants on her Complaint and for the Court to enter an Order to

- A. Certify the proposed class (and the two subclasses) pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure;
- B. Declare that Rolf's failed to give the required 60 days notice of the closure of Rolf's plant on December 23, 2010, in violation of the WARN Act, 29 U.S.C. § 2104, and the implementing regulations;
- C. Declare that Rolf's again failed to give the required 60 days notice of the closure of Rolf's plant on December 10, 2011, in violation of the WARN Act, 29 U.S.C. § 2104, and the implementing regulations;
- D. Award the Named Plaintiffs and each class member affected by the aforesaid WARN Act violations with their full statutory damages of sixty days' pay with prejudgment interest for each WARN Act violation affecting them;
- E. Award each class member the value of their employee benefits, including but not limited to their medical expenses, vacations, and contributions to pension funds with prejudgment interest for the 60 days following loss of employment;
- F. Award the Named Plaintiffs their attorney's fees and costs; and
- G. Any other relief warranted by the law and the facts.

COUNT II
Against All Defendants

VIOLATION OF THE ILLINOIS WAGE PAYMENT AND COLLECTION ACT
815 ILCS 115/14

44. Plaintiffs incorporate paragraphs 1 through 40 above.

45. Defendants Lloyd and Ford Culbertson acted directly in the interest of Rolf's in failing to pay all wages and benefits due to Plaintiffs.

46. By the acts set forth above, all Defendants violated the Wage Act, 820 ILCS 115/3, 4, & 5, by failing to pay all wages and benefits due Plaintiffs upon termination of employment.

WHEREFORE, the Named Plaintiffs, on behalf of themselves and all others similarly situated, pray for judgment for themselves and the class against the defendants on their Complaint and for the Court to enter an Order to:

- A. Certify the proposed class (and the two subclasses) pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure;
- B. Declare that Defendants failed to pay Plaintiffs the wages and benefits they were due when their employment was terminated;
- C. Award the Named Plaintiffs and each class member affected by the aforesaid Wage Act violations the wages and benefits they are owed;
- D. Award the Named Plaintiffs and each class member affected by the aforesaid Wage Act violations damages of 2% of the amount of any underpayments for each month following the date of payment during which such underpayments remain unpaid;
- E. Award the Named Plaintiffs their attorney's fees and costs; and
- F. Any other relief warranted by the law and the facts.

Plaintiffs demand a jury trial on all counts.

Date: January 10, 2012

By: /s/ Thomas H. Geoghegan
One of the Attorneys for Plaintiffs

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