

PLAINTIFFS' FIRST AMENDED COMPLAINT

Plaintiff Amy Stumpf (referred to as “Stumpf”) brings this action under 29 U.S.C. § 2104(a)(5) individually and on behalf of all similarly situated employees of Defendant Stage Stores, Inc. and Defendant Specialty Retailers, Inc. (collectively referred to as “Stage Stores”) who were terminated without cause or suffered other employment loss as part of or as the result of a plant closing or mass layoff ordered by the company on or about March 27, 2020, and within thirty days of that date and who were not provided with advance written notice of the plant closing or mass layoff as required by the Worker Adjustment Retraining and Notification Act, 29 U.S.C. §§ 2101-2109 (“WARN Act”); Plaintiff Christine Baxter, Plaintiff Rachel McCormack, Plaintiff Margaret Paulk, Plaintiff Kristin McCandless, Plaintiff Hannah Sorensen, Plaintiff Elizabeth Martinez, Plaintiff Cynthia Shepherd, Plaintiff Brooke Lindeman, Plaintiff Ann Subrt, Plaintiff Angelica Galvez, Plaintiff Alicia Cooper, Plaintiff Alana McNeal and Plaintiff Denise Aguilar bring this action under 29 U.S.C. § 2104(a)(5) individually.

I. Nature of Suit

1. Stumpf’s claims—and the claims of Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar—arise under the WARN Act.

2. The WARN Act “provides protection to workers, their families and communities by requiring employers to provide notification 60 calendar days in advance of plant closings and mass layoffs[;] [a]dvance notice provides workers and their families some transition time to adjust to the prospective loss of employment, to seek and obtain alternative jobs and, if necessary, to enter skill training or retraining that will allow these workers to successfully compete in the job market.” 20 C.F.R. § 639.1(a).

3. Stage Stores violated the WARN Act by ordering a plant closing or mass layoff before “the end of a 60-day period after ... serv[ing] written notice of such” plant closing or mass layoff to each affected employee, including Stumpf and other similarly situated employees. 29 U.S.C. § 2101(a); *see also, id.* at § 2101(a)(5) (defining “affected employee”).

4. Stumpf (sometimes referred to as the “Class Representative”) brings this action under 29 U.S.C. § 2104(a)(5) and Fed. R. Civ. P. 23 individually and on behalf of all similarly situated employees (defined below) to recover back pay, employee benefits and attorney’s fees under the WARN Act.

5. Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar bring this action under 29 U.S.C. § 2104(a)(5) individually to recover back pay, employee benefits and attorney’s fees under the WARN Act.

II. Jurisdiction & Venue

6. This action arises under a federal statute, the WARN Act. 28 U.S.C. § 1331 (federal-question jurisdiction); *see also*, 28 U.S.C. § 1334; 29 U.S.C. § 2104(a)(5).

7. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A)-(B), (O).

8. Venue is proper in this district and division because the WARN Act violations described in this complaint are related to a case under chapter 11 of the United States Bankruptcy Code that is pending in this district and division. 28 U.S.C. § 1409(a).

III. Parties

9. Stumpf is an individual who resides in Harris County, Texas and who was employed by Stage Stores during the last two years.

10. Baxter is an individual who resides in Harris County, Texas and who was employed by Stage Stores during the last two years.

11. McCormack is an individual who resides in Harris County, Texas and who was employed by Stage Stores during the last two years.

12. Paulk is an individual who resides in Harris County, Texas and who was employed by Stage Stores during the last two years.

13. McCandless is an individual who resides in Harris County, Texas and who was employed by Stage Stores during the last two years.

14. Sorensen is an individual who resides in Harris County, Texas and who was employed by Stage Stores during the last two years.

15. Martinez is an individual who resides in Harris County, Texas and who was employed by Stage Stores during the last two years.

16. Shepherd is an individual who resides in Harris County, Texas and who was employed by Stage Stores during the last two years.

17. Lindeman is an individual who resides in Fort Bend County, Texas and who was employed by Stage Stores during the last two years.

18. Subrt is an individual who resides in Harris County, Texas and who was employed by Stage Stores during the last two years.

19. Galvez is an individual who resides in Harris County, Texas and who was employed by Stage Stores during the last two years.

20. Cooper is an individual who resides in Harris County, Texas and who was employed by Stage Stores during the last two years.

21. McNeal is an individual who resides in Harris County, Texas and who was employed by Stage Stores during the last two years.

22. Aguilar is an individual who resides in Harris County, Texas and who was employed by Stage Stores during the last two years.

23. Stage Stores, Inc. is a Nevada corporation that has been served with process.

24. Specialty Retailers, Inc. is a Texas corporation that has been served with process.

25. An allegation that Stage Stores committed any act or omission should be construed to mean the company's officers, directors, vice-principals, agents, servants or employees committed such act or omission and that, at the time such act or omission was committed, it was done with the full authorization, ratification or approval of Stage Stores or was done in the normal course and scope of employment of Stage Stores' officers, directors, vice-principals, agents, servants or employees.

IV. Facts

26. Stage Stores principally operates department stores (for example, Bealls, Goody's, Palais Royal, Peebles, etc.) that focus on small to mid-sized markets throughout the United States and that sell clothing, shoes, handbags, accessories, jewelry, watches, beauty and fragrance products, gift items, and articles for the home.

27. Stage Stores does business in the territorial jurisdiction of this Court.

28. Stage Stores employed Stumpf from May 2007 to July 8, 2020, most recently as director of planning and allocation.

29. Stage Stores employed Baxter from April 2006 to July 8, 2020, most recently as a buyer.

30. Stage Stores employed McCormack from June 2013 to July 8, 2020, most recently as a buyer.

31. Stage Stores employed Paulk from February 2015 to July 8, 2020, most recently as an allocation analyst.

32. Stage Stores employed McCandless from October 2011 to July 8, 2020, most recently as a merchandise planner.

33. Stage Stores employed Sorensen from January 2013 to July 8, 2020, most recently as a buyer.

34. Stage Stores employed Martinez from July 2019 to July 8, 2020, most recently as a merchandise assistant.

35. Stage Stores employed Shepherd from January 2008 to July 8, 2020, most recently as a merchandise planner.

36. Stage Stores employed Lindeman from June 2013 to July 8, 2020, most recently as a merchandise planner.

37. Stage Stores employed Subrt from June 2012 to July 8, 2020, most recently as a merchandise planner.

38. Stage Stores employed Galvez from July 2001 to July 8, 2020, most recently as a merchandise assistant.

39. Stage Stores employed Cooper from May 2016 to July 8, 2020, most recently as an allocation analyst.

40. Stage Stores employed McNeal from June 2011 to July 8, 2020, most recently as a buyer.

41. Stage Stores employed Aguilar from May 2012 to July 8, 2020, most recently as an inbound transportation analyst.

42. Stage Stores paid wages to Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar through March 28, 2020, at the latest.

43. During the relevant period, the company had one hundred or more employees (excluding part-time employees) or one hundred or more employees who in the aggregate work at least 4,000 hours per week (exclusive of overtime hours).

44. Stage Stores employed Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar at its facility located at 2425 West Loop South in Houston, Texas, and it employed other similarly situated employees at other facilities (referred to as “the Facilities”). *See*, 20 C.F.R. §§ 639.3(i)-(j).

45. Stage Stores terminated Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar on July 8, 2020, without cause.

46. The terminations of Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar were part of a plant closing ordered by Stage Stores because they involved the permanent or temporary shutdown of the Facilities and resulted in (1) the termination of; (2) a layoff exceeding six months for; and/or (3) the reduction of hours of work by more than fifty percent during each month of any six-month period for at least fifty of Stage Stores' employees (excluding part-time employees) at the Facilities during any thirty-day period.

47. Alternatively, the terminations of Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar were part of a mass layoff ordered by Stage Stores because they resulted in (1) the termination of; (2) a layoff exceeding six months for; and/or (3) the reduction of hours of work by more than fifty percent during each month of any six-month period for either (1) at least five hundred of Stage Stores' employees (excluding part-time employees) at the Facilities or (2) at least thirty-three percent of Stage Stores'

employees (excluding part-time employees) at the Facilities, which is at least fifty employees (excluding part-time employees) during any thirty-day period.

48. Stage Stores did not provide Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal, Aguilar or any other employee who may have been reasonably expected to be affected by the plant closing or mass layoff (“affected employees”) with advance written notice of the plant closing or mass layoff in violation of 29 U.S.C. § 2102(a).

49. Stage Stores did not provide Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal, Aguilar or any other affected employee the pre-termination wages and benefits required by the WARN Act.

50. According to media reports, Stage Stores was planning for plant closings and mass layoffs—including the one that affected Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal, Aguilar—well in advance of the onset of the COVID-19 pandemic.

51. Stage Stores is liable to any affected employee who suffered an employment loss as a result of the plant closing or mass layoff ordered by the company, including Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar, for (1) back pay for

each day of violation (at a rate of compensation not less than the higher of the average regular rate received by each affected employee during the last three years of the employee's employment or the final regular rate received by such employee) and (2) benefits under an employee benefit plan described in 29 U.S.C. § 1002(3). *See also*, 29 U.S.C. § 2104(a)(7).

52. Stage Stores is liable to any affected employee who suffered an employment loss as a result of the plant closing or mass layoff ordered by the company, including Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar, for his or her reasonable attorney's fees. 29 U.S.C. § 2104(a)(6)

53. All employees of Stage Stores who were terminated without cause or suffered other employment loss as part of or as the result of a plant closing or mass layoff ordered by the company on or about March 27, 2020, and within thirty days of that date and who were not provided with advance written notice of the plant closing or mass layoff as required by the WARN Act are similarly situated to Stumpf. 29 U.S.C. § 2104(a)(5).

54. On May 10, 2020, Stage Stores filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code.

**V. Count One—
Failure to Provide Advance Written Notice of Plant Closing or Mass Layoff
in Violation of 29 U.S.C. § 2102(a)**

55. Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar adopt by reference all of the facts set forth above. *See*, Fed. R. Civ. P. 10(c).

56. As explained above, Stage Stores employed Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar at various times and in various positions.

57. During the relevant period, the company was covered by the WARN Act.

58. During the relevant period, there was a plant closing or mass layoff at the Facilities that resulted in an employment loss to Stumpf and to other affected employees.

59. Under the WARN Act, Stage Stores was required to provide Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal, Aguilar and any other affected employees with advance written notice of the plant closing or mass layoff. *See*, 29 U.S.C. § 2102(a).

60. Stage Stores did not provide Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper,

McNeal, Aguilar or the other affected employees with advance written notice of the plant closing or mass layoff as required by the WARN Act. *See*, 29 U.S.C. § 2102(a).

61. Stage Stores did not provide Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal, Aguilar or any other affected employee the pre-termination wages and benefits required by the WARN Act.

62. By failing to provide Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal, Aguilar and the other affected employees with advance written notice of the plant closing or mass layoff and by failing to them pay pre-termination wages and benefits, Stage Stores violated the WARN Act. *See*, 29 U.S.C. § 2102(a).

63. As a result of the WARN Act violation(s) described above, Stage Stores is liable to Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar for back pay, employee benefits and attorney's fees.

**VI. Count Two—
Class Action Allegations Under Fed. R. Civ. P. 23
for Violations of the WARN Act**

64. Stumpf adopts by reference all of the facts set forth above. *See*, Fed. R. Civ. P. 10(c).

65. Stumpf, the Class Representative, brings Count One against Stage Stores under Fed. R. Civ. P. 23 on behalf of the following class of persons:

All employees of Stage Stores who were terminated without cause or suffered other employment loss as part of or as the result of a plant closing or mass layoff ordered by the company on or about March 27, 2020, and within thirty days of that date and who were not provided with advance written notice of the plant closing or mass layoff as required by the WARN Act (referred to as the “WARN Act Class”).

66. The claims of the WARN Act Class, if certified for class-wide treatment, will be pursued by all similarly situated persons who do not affirmatively opt-out of the class.

67. The members of the WARN Act Class are so numerous that joinder of all members is impracticable; the exact number of putative class members is unknown at the present time but should be over one hundred.

68. There are numerous questions of law and fact common to the WARN Act Class, including:

- a. whether the members of the WARN Act Class were employees of Stage Stores who worked at the Facilities;
- b. whether Stage Stores provided the members of the WARN Act Class with advance written notice of a plant closing or mass layoff ordered by the company that resulted in their termination without cause or other employment loss; and
- c. whether Stage Stores failed to pay the members of the WARN Act Class the pre-termination wages and benefits required by the WARN Act.

69. Stumpf's claims are typical of the claims of the WARN Act Class because Stumpf and the members of the WARN Act Class all worked at the Facilities and were all part of the same plant closing or mass layoff that resulted in their termination without cause or other employment loss and that was ordered by Stage Stores without advance written notice to Stumpf and the members of the WARN Act Class; in other words, Stumpf's claims and the claims of the WARN Act Class arise out of a common course of conduct of Stage Stores and are based on the same legal and remedial theories.

70. Stumpf will fairly and adequately protect the interests of the WARN Act Class and has retained competent and capable attorneys who are experienced trial lawyers with significant experience in complex employment litigation (including class actions, collective actions, and multidistrict litigation); Stumpf and her counsel are committed to prosecuting this action vigorously on behalf of the WARN Act Class, have the financial resources to do so and do not have interests that are contrary to or that conflict with those of the proposed class.

71. Class certification of the WARN Act Class is appropriate under Fed. R. Civ. P. 23 because questions of law and fact common to the putative class members predominate over any questions affecting only individual members of the class; adjudication of these common issues in a single action has important and desirable

advantages of judicial economy, and there are no unusual difficulties likely to be encountered in the management of this case as a class action.

72. The class action mechanism is superior to any alternatives that may exist for the fair and efficient adjudication of these claims because:

- a. proceeding as a class action would permit the large number of injured parties to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of evidence, effort and judicial resources;
- b. a class action is the only practical way to avoid the potentially inconsistent results that numerous individual trials are likely to generate;
- c. class treatment is the only realistic means by which the WARN Act Class can effectively litigate against a large, well-represented corporate defendant like Stage Stores;
- d. in the absence of a class action, Stage Stores would be unjustly enriched because the company would be able to retain the benefits and fruits of the numerous violations of the WARN Act; and
- e. numerous individual actions would place an enormous burden on the courts as they will be forced to take duplicative evidence and decide the same issues relating to Stores' conduct over and over again.

73. Stage Stores has acted or refused to act on grounds generally applicable to the WARN Act Class, thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to each class as a whole; prosecution of separate actions by members of the WARN Act Class would create the risk of

inconsistent or varying adjudications with respect to individual members of the WARN Act Class that would establish incompatible standards of conduct for Stage Stores.

74. Stumpf will send notice to all members of the WARN Act Class to the extent required by Fed. R. Civ. P. 23.

**VIII. Count Three—
Attorney's Fees Under 29 U.S.C. § 2104(a)(6)**

75. Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar adopt by reference all of the facts set forth above. *See*, Fed. R. Civ. P. 10(c).

76. Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar are authorized to recover attorney's fees on their claims by statute. 29 U.S.C. § 2104(a)(6).

77. Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar have retained the professional services of the undersigned attorneys.

78. Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar have complied with the conditions precedent to recovering attorney's fees.

79. Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar have incurred or may incur attorney's fees in bringing this lawsuit.

80. The attorney's fees incurred or that may be incurred by Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar were or are reasonable and necessary.

81. Stage Stores is liable to Stumpf both individually and on behalf of the WARN Act Class, and Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar, individually, for attorney's fees by reason of the WARN Act violations described above. 29 U.S.C. § 2104(a)(6).

IX. Relief Sought

82. Stumpf, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar demand the following relief:

- a. an order allowing this action to proceed as a class action under 29 U.S.C. § 2104(a)(5) and Fed. R. Civ. P. 23;
- b. an order appointing Stumpf representative of the WARN Act Class;
- c. an order appointing MOORE & ASSOCIATES class counsel;

- d. an incentive award for Stumpf for serving as class representative if the Court allows this action to proceed as a class action under 29 U.S.C. § 2104(a)(5) and Fed. R. Civ. P. 23;
- e. judgment against Stage Stores in Stumpf's favor both individually and on behalf of the WARN Act Class and in favor of Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar, individually, for back pay, employee benefits and attorney's fees, plus interest and costs;
- f. an order designating all of the damages incurred by Stumpf, the WARN Act Class, Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar as a result of Stage Stores' violations of the WARN Act as a first priority post-petition administrative expense under 11 U.S.C. § 503(b)(1)(A) or, alternatively, as having wage priority status under 11 U.S.C. § 507(a)(4)-(5) up to \$13,650 and the remainder as a general unsecured claim; and
- g. all other relief and sums that may be adjudged against Stage Stores in Stumpf's favor both individually and on behalf of the WARN Act Class and in favor of Baxter, McCormack, Paulk, McCandless, Sorensen, Martinez, Shepherd, Lindeman, Subrt, Galvez, Cooper, McNeal and Aguilar, individually.

Respectfully Submitted,

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

As required by Fed. R. Bankr. P. 7005 and Fed. R. Civ. P. 5(a)(1), I certify that I served a copy of this document on all parties or their attorney(s) of record—who are listed below—in accordance with Fed. R. Civ. P. 5(b) as follows:

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- mail
- personal delivery
- leaving it at office dwelling
- leaving it with court clerk
- electronic means
- other means
- CM/ECF system

September 1, 2020

Date


Melissa Moore