UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
WESTINGHOUSE ELECTRIC COMPANY, LLC, *et al.*,	:	Case No. 17-10751 (MEW)
Debtor.	:	
Elton Massey, Kirt Hurlburt, Patricia Adams, John Jennings, Johnnie Hogll, and Katrina Baker, on behalf of themselves and all others similarly situated,	:	
Plaintiffs,	:	Adv. No. _____
v.	:	
Westinghouse Electric Company, LLC, WECTEC LLC, WECTEC Staffing Services, LLC, and WECTEC Global Project Services, Inc.,	:	
Defendants.	:	

CLASS ACTION ADVERSARY PROCEEDING

COMPLAINT FOR VIOLATION OF THE WARN ACT 29 U.S.C. § 2101, *et seq.*, SOUTH CAROLINA PAYMENT OF WAGES LAW AND BREACH OF CONTRACT

Plaintiffs, Kirt Hurlburt, Johnnie Hogll, John Jennings, Elton Massey, Katrina Baker, and Patricia Adams (collectively, the "Plaintiffs" or the "Class Plaintiffs"), allege on behalf of themselves and a class of similarly situated former employees of debtors, Westinghouse Electric Company, LLC ("WEC"), WECTEC LLC ("WECTEC"), WECTEC Staffing Services, Inc. ("WECTEC Staffing"), and WECTEC Global Project Services, Inc. (f/k/a CB&I Stone &

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Webster, Inc.) ("WECTEC Global") (collectively, "Defendants"), by way of this Adversary Complaint against Defendants, by and through their counsel, as follows:

NATURE OF THE ACTION

1. This Adversary Complaint is filed against Defendants pursuant to Rules 23(a), (b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure, made applicable by Rule 7023 of the Federal Rules of Bankruptcy Procedure, by Plaintiffs on behalf of themselves and all other similarly situated employees of Defendants who worked at or reported to the Virgil C. Summer Nuclear Station, located at 14368 Highway 213 Jenkinsville, South Carolina ("VC Summer Location"), until their employment was terminated without cause on their part in violation of the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2102 *et seq.* (the "WARN Act"), on or about July 31, 2017, or within 30 days of that date, or as the reasonably expected consequence of the mass layoffs or plant closing at the VC Summer Location, that occurred on or about July 31, 2017.[1]

2. For these WARN Act claims, Plaintiffs, on their behalf and on behalf of all similarly situated individuals, seek to recover 60 days wages and benefits pursuant to the WARN Act from Defendants. Plaintiffs' claims, as well as the claims of all similarly situated individuals, are entitled to administrative wage priority status pursuant to United States Bankruptcy Code § 503(b)(1)(A)(i) and (ii).

JURISDICTION AND VENUE

3. 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).

[1] On September 6, 2017, Johnnie Hogll and John Jennings filed a class proof of claim (claim number 3123) in bankruptcy case number 17-10775, against WECTEC Staffing. Also on September 6, 2017, Kirt Hurlburt and Patricia Adams filed a class proof of claim (class number 3124) in bankruptcy case number 17-10774, against WECTEC. Inadvertently, Mr. Hogll's last name was misspelled as Hill and Ms. Adams' last name was misspelled as Asa.

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

5. Venue is proper in this District pursuant to 28 U.S.C. § 1409 and 29 U.S.C. § 2104(a)(5).

THE PARTIES

6. Plaintiff Kirt Hurlburt's nominal employer[2] was WECTEC Staffing for which he was a Field Welding Engineer at the VC Summer Location until his abrupt termination on or about July 31, 2017. For the purposes of the WARN Act, Mr. Hurlburt was an employee of all Defendants.

7. Plaintiff Johnnie Hogll's nominal employer was WECTEC Staffing for which he was an FFD Technician at the VC Summer Location until his abrupt termination on or about July 31, 2017. For the purposes of the WARN Act, Mr. Hogll was an employee of all Defendants.

8. Plaintiff John Jennings' nominal employer was WECTEC and/or WECTEC Staffing, for which he was an ICPT Mechanical Lead at the VC Summer Location until his abrupt termination on or about July 31, 2017. For the purposes of the WARN Act, Mr. Jennings was an employee of all Defendants.

9. Plaintiff Elton Massey's nominal employer was WECTEC and/or WECTEC Staffing, for which he was a WTSS QC Inspector at the VC Summer Location until his abrupt termination on or about July 31, 2017. For the purposes of the WARN Act, Mr. Massey was an employee of all Defendants.

10. Plaintiff Katrina Baker's nominal employer was WEC and/or WECTEC, for which she was an IT Asset Administrative Global Specialist II, until her abrupt termination on or

[2] The term "nominal employer" is used herein to indicate the entity by which a plaintiff believes he/she may have been primarily employed and/or the entity by which he/she was told he/she was employed. The term is not intended to indicate the only entity by which a plaintiff, in fact, was employed under the WARN Act.

about July 31, 2017. For the purposes of the WARN Act, Ms. Baker was an employee of all Defendants.

11. Plaintiff Patricia Adams' nominal employer was WECTEC and/or WECTEC Global, for which she was an engineering technician. For the purposes of the WARN Act, Ms. Adams was an employee of all Defendants.

12. WEC is a Delaware limited liability company, with its headquarters located at 1000 Westinghouse Drive, Cranberry Township, PA 16066. WEC owns 100% of defendant WECTEC.

13. Defendant WECTEC is a Delaware limited liability company, with its principal office located at 1000 Westinghouse Drive, Cranberry Township, PA 16066. WECTEC owns 100% of defendants WECTEC Staffing and WECTEC Global.

14. Defendant WECTEC Global is a Louisiana corporation, with its principal office located at 1000 Westinghouse Drive, Cranberry Township, PA 16066.

15. Defendant WECTEC Staffing is a Delaware limited liability company, with its principal office located at 1000 Westinghouse Drive, Cranberry Township, PA 16066.

16. Upon information and belief, at all pertinent times hereto, WECTEC Global and WECTEC Staffing ran the "service business" of WEC and WECTEC.

17. Non-defendant Fluor Corporation ("Fluor Corp.") is a private corporation organized and existing under the laws of Delaware and having its principal place of business at 6700 Las Colinas Boulevard, Irving, Texas 75039.

18. Non-defendant Fluor Enterprises, Inc. ("Fluor Enterprises") is a private corporation organized and existing under the laws of California and having a place of business at

6700 Las Colinas Boulevard, Irving, Texas 75039 and business operations in the State of South Carolina. Fluor Enterprises is a wholly owned subsidiary of Fluor Corporation.

19. Non-defendant Fluor Daniel Maintenance Services, Inc. ("Fluor Daniel") is a Fluor affiliated entity that, upon information and belief, is wholly owned by Fluor Corp. and/or Fluor Enterprises. Fluor Daniel is a Delaware corporation and is registered to do business in South Carolina.

20. Fluor Corp., Fluor Enterprises, and Fluor Daniel are collectively referred to as "Fluor." Fluor is a U.S.-based global engineering and construction company with experience in nuclear plant construction.

21. Non-defendant SCANA Corporation ("SCANA") is a South Carolina corporation with headquarters in Richland County, South Carolina.

22. SCANA wholly owns non-defendant South Carolina Electric & Gas Company ("SCE&G"), which is a statutorily created South Carolina Service Authority. SCANA operates by and through SCE&G to supply electricity to residential, commercial and governmental customers in various counties in South Carolina.

FACTS

Background on the VC Summer project

23. On May 23, 2008, SCE&G, for itself and as agent for South Carolina Public Service Company LLC, on the one hand, and a consortium of CB&I Stone & Webster, Inc. ("S&W") and WEC (the "Consortium"), on the other hand, entered into an Engineering, Procurement and Construction Agreement ("EPC Agreement"), to, among other things, design, procure, construct and test nuclear reactors at two separate sites – the VC Summer Location and the Allen W. Vogtle Electric Generating Plant near Augusta, Georgia.

24. SCE&G and SCANA together own the VC Summer Location.

25. S&W was the nuclear engineering company responsible for physically constructing the plant, while Defendants (and, upon information and belief, other WEC affiliates) were responsible for designing, manufacturing and procuring the nuclear reactor, steam turbines and generators at the VC Summer Location.

26. Pursuant to the EPC Agreement, the Consortium was required to substantially complete the first reactor by April 1, 2016, and the second reactor by January 1, 2019, at the VC Summer Location.

27. In October 2015, after significant cost overruns on the VC Summer project, WEC formed WECTEC Global to acquire S&W from S&W's parent, Chicago Bridge & Iron Company ("CB&I").

28. Following this acquisition, WEC transferred many of S&W's non-craft employees to WECTEC, WECTEC Global, and/or WECTEC Staffing and WEC continued to maintain its employees on-site at the VC Summer Location. WECTEC, WECTEC Global and WECTEC Staffing are hereinafter collectively referred to as "the other WEC Defendants."

29. At or about the same time WEC and WEC Global acquired S&W, WEC also entered into a Subcontractor Agreement with Fluor Corp. and/or Fluor Enterprises. Upon information and belief, Fluor took over from S&W the primary responsibility for construction and assumed the role as employer for many of the S&W "craft employees" (i.e., manual labor construction employees), as well as other former S&W employees.

30. As collectively outlined in several lawsuits filed against SCANA, SCE&G, and/or their directors/officers: in 2014, SCANA and SCE&G hired Bechtel Corporation ("Bechtel") to do a comprehensive review of the VC Summer project. On or about February 5, 2016, Bechtel

produced a report on its review (the "Bechtel Report"), which outlined numerous fundamental inadequacies of the project, including, but not limited to, the construction plans were not specific enough from which the project's costs could be calculated accurately and employees worked too many hours. Bechtel recommended that a re-evaluation of the project's goals, costs and dates for completion be conducted. Upon information and belief, neither SCANA/SCE&G nor Defendants adopted Bechtel's recommendations and acted on them.

31. In or about as early as the Fall of 2016, Fluor and WEC/WECTEC assessed the status of the VC Summer project and concluded that the number of hours required to complete the project, including the expected labor costs, project management costs, and procurement costs were about $6 billion higher than had previously been estimated.

32. Based on the conclusions in this assessment, SCANA and WEC, in October 2016, agreed to a new or revised contract in the amount of $14 billion dollars.

33. By at least this time – if not as early as the production of the Bechtel Report – SCANA and WEC/WECTEC knew or reasonably should have known that Defendants would be unable to complete the VC Summer project on time and on budget.

34. In February 2017, Toshiba Corporation (which indirectly owns 87% of WEC) ("Toshiba"), provided emergency funding to WEC, which, among other things, was used to fund the other WEC Defendants. This funding allowed Defendants time to plan collectively for a potential Chapter 11 filing.

35. In March 2017, Toshiba refused to extend more money to WEC (and its subsidiaries) without collateral, such as DIP financing that could be obtained by Defendants if they were to file for bankruptcy protection under Chapter 11 of the Bankruptcy Code.

36. On March 28, 2017, WEC and WECTEC Global entered into an "Interim Assessment Agreement" ("IAA") to create an Interim Assessment Period during which the construction of the two nuclear reactor units at the VC Summer Location would continue to and through the earlier of April 28, 2017, or the termination of the IAA by SCANA and SCE&G upon five days' notice. The IAA was amended on April 28, 2017, to extend the end date to May 12, 2017, and on June 26, 2017, to extend the end date to August 10, 2017.

37. Upon information and belief, WEC and WECTEC Global entered into the IAA on their own behalf and on behalf of their subsidiaries and/or affiliated companies, including the other defendants.

38. On March 29, 2017 (the "Petition Date"), WEC and a number of its affiliates, including the other WEC Defendants (collectively referred to as the "Debtors"), commenced voluntary cases under Chapter 11 of the Bankruptcy Code (the "Bankruptcy Filings"). Debtors continued to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Code. Debtors' estates are being jointly administered.

39. On or about July 27, 2017, SCANA and SCE&G entered into an agreement with Toshiba pursuant to which Toshiba agreed to make payments through September 2022 to SCANA and SCE&G totaling $2.168 billion, with $1.2 billion being paid to SCE&G. This amount is payable regardless of whether the VC Summer project is completed or the project is completely abandoned.

40. On July 31, 2017, SCANA and SCE&G terminated the IAA and announced that it was abandoning the VC Summer project. On that same day, Defendants and Fluor terminated

virtually all of their nominal employees who worked at the VC Summer Location (which consisted of approximately 600 and 4,000 individuals, respectively).

The Single Employer Relationship Between WEC, the other WEC Defendants, Fluor, and SCANA

41. WEC, together with Debtors and other non-Debtor affiliates, operates a global business that provides design and engineering services, decommissioning services, and a variety of other critical operations both to new plant construction as well as to an existing operating fleet of nuclear power plants.

42. At the VC Summer Location, Defendants, and at all pertinent times hereto Fluor and SCANA, acted as a single employer of Plaintiffs and the other individuals who performed services and/or worked at the VC Summer Location, when balancing the following five factors:

(a) common ownership;

(b) common directors and/or officers;

(c) de facto control by the parent over the subsidiary;

(d) a unity of personnel policies emanating from a common source; and

(e) a dependency of operations between the companies.

20 C.F.R. § 639.3(a)(2).

43. Concerning common ownership regarding Defendants and non-defendants, see paragraphs 12 through 21, *supra*.

44. Concerning common directors and/or officers regarding Defendants:

(a) Daniel Sumner is the Vice President of Finance for each of the Defendants.

(b) Jose Emeterio Guiterrez ("Guiterrez") has been either the interim President or President and Chief Executive Officer of WEC since at least June 2016, and executed the IAA on behalf of both WEC and WEC Global.

(c) David Durham is Senior Vice President of New Projects and Business for WEC and President of WECTEC and WECTEC Global. Durham also signed an amendment to the IAA on behalf of WECTEC Staffing.

(d) Michael Sweeney is Senior Vice President and General Counsel for WEC, Vice President for WECTEC and WECTEC Global, and Secretary for WECTEC Staffing.

(e) Carl Churchman has been identified as "Consortium Vice President and Project Director" for WEC and the Site Director for "WECTEC" ("Churchman").

45. Concerning common directors and officers of non-defendants Fluor: (a) David Seaton is the Chairman and CEO of Fluor Corp., as well as CEO of Fluor Enterprises; (b) Carlos Hernandez is Executive Vice President, Chief Legal Officer and Secretary for Fluor Corp., as well as Secretary for Fluor Enterprises; and (c) Bruce Stanski is Executive Vice President and CFO of Fluor Corp., as well as CFO for Fluor Enterprises.

46. Concerning Defendants' unity of personnel policies, in addition to the facts alleged elsewhere herein:

(a) all of Defendants' books and records, including personnel records, have been kept at a common location - 1000 Westinghouse Drive, Cranberry Township, PA 16066;

(b) certain personnel policies implemented by WEC, including, but not limited to, a Code of Conduct and Global Ethics Code, applied to Defendants' employees at the VC Summer Location, regardless of by which defendant each was employed nominally, and

WEC appointed a common "Ethics Officer" to oversee these policies for all of Defendants' employees;

(c) employees of WECTEC Global and WECTEC Staffing were subject to the "WECTEC" employee handbook;

(d) Upon information and belief, Defendants' employee benefits plans were sponsored by WEC/WECTEC and, in certain instances, Defendants shared equally in the funding of said benefits;

(e) WEC and/or WECTEC implemented safeguards, "fitness-for-duty" programs, and background investigations on all Defendants' employees at the VC Summer Location as needed to comply with United States Nuclear Regulatory Commission (NRC) requirements;

(f) All of Defendants' employees at the VC Summer Location used the same time keeping and attendance system called "the Security Management System;"

(g) Angela Palmer was Human Resources Director for all of Defendants' employees and was employed nominally or directly by "Westinghouse/WECTEC;"

(h) David Beauchamp was the Quality Assurance and Quality Control Director for Defendants' employees and was employed nominally or directly by "Westinghouse/WECTEC;" and

(i) as averred below, WEC/WECTEC, were the decision-makers for the employment practice giving rise to this litigation – to terminate Plaintiffs and all others similarly situated on July 31, 2017 without providing advance written notice as required by WARN.

47. Regarding Fluor's unity of personnel policies, among other things:

(a) Upon information and belief, Fluor Enterprises funded Fluor Daniel's payroll and appeared on Fluor Daniels' employees' paychecks;

(b) Fluor Corp.'s Human Resources Department provided human resources services to all Fluor employees;

(c) Fluor Corp. sponsored common benefits and a 401k program for all Fluor employees;

(d) time individuals worked for Fluor Corp., Fluor Enterprises, and/or Fluor Daniels was aggregated to determine time worked for "Service Awards" given to Fluor employees;

(e) time individuals worked for WEC/WECTEC was included in calculating paid time off accrual credits for Fluor employees; and

(f) upon information and belief, employment records for all employees of Fluor were maintained on a common system, accessed via https://ess.fluormembers.com.

48. Concerning the dependency of operations factor regarding Defendants, among other things:

(a) Defendants share equipment and professionals, rely on each other to service customers, share centralized corporate offices and services, and collectively provide to each other a variety of critical functions, including, among other things, quality assurance, management, finance and accounting, and human resources;

(b) WECTEC, WECTEC Global and WECTEC Staffing run the "Services Business" for WEC and this Services Business is co-engaged with WEC's construction at the VC Summer Location;

(c) many employment costs of Defendants, including workers' compensation obligations, payroll and benefit costs, general corporate services, and information technology costs, were, at pertinent times hereto, centrally billed;

(d) prior to SCANA assuming the responsibility for funding the payroll of the Defendants' and Fluor's employees at the VC Summer Location as described below, WEC funded the payrolls of the other WEC Defendants two days prior to each payroll date; and

(e) Defendants collectively moved funds through numerous bank accounts to ensure the continued operation of each entity and kept track of the funds through a common resource planning software system.

49. The following allegations concern *de facto* control.

50. At all pertinent times hereto, upon information and belief, employees of WECTEC Global, WECTEC Staffing and Fluor, respectively, as well as the employees of WEC/WECTEC, all received direction from and/or had a solid or dotted line of reporting to a WEC/WECTEC employee. Not only this, but individuals nominally employed by Fluor trained and provided certifications to Defendants' nominal employees. Indeed, WEC management consistently promoted the concept that Defendants' nominal employees were "one team" with Fluor's nominal employees.

51. Also, at all pertinent times at the VC Summer Location, Churchman held himself out as the person ultimately in charge of not only Defendants' employees, but also of all of Fluor's employees, at the VC Summer Location. Among other things, Churchman, along with Louis Seidelman and Rod Cavalieri – each of whom are employed by WEC/WECTEC - regularly convened calls for all employees at the VC Summer Location, both before and after the

Bankruptcy Filings, to discuss the progress of the project and to set the work priorities for work there.

52. Further, at or about the time of the IAA and the Bankruptcy Filings, WEC/WECTEC held in person "all hands meetings" for Defendants' employees at the VC Summer Location to discuss the Bankruptcy Filings and the status of the VC Summer project.

53. Moreover, at or about the time of the IAA and the Bankruptcy Filings, WEC/WECTEC officials conveyed Defendants' business decision to Defendants' employees that the VC Summer project was not going to be part of Defendants' core business any longer. These officials also informed Defendants' employees that WEC and/or Defendants no longer could afford to pay their wages and to pay any of the other administrative costs at the site so SCANA and/or SCE&G would be taking over the responsibility for doing that. Indeed, SCANA and/or SCE&G had agreed in the IAA to indemnify WEC and WECTEC Global against, and pay any and all administrative expenses that they may incur under, the EPC Contract, the IAA, or related to the VC Summer project.

54. In addition, after the Bankruptcy Filings, SCANA began making changes to the "client-contractor model" they had been following at the VC Summer Location. Specifically, SCANA became far more involved in the day-to-day activities of Defendants' and Fluor's employees than SCANA had been before the Bankruptcy Filings.

55. Among other things, SCANA began leading the "Plan of the Day meetings" ("POD meetings") with Defendants' and Fluor's employees, during which topics such as safety, priorities for the day's tasks, and the status of the VC Summer project were discussed.

56. Also, SCANA, through, among others, David Parker, Robert Sees, Billy Campbell, and Maryellen Foster, took greater control over Defendants' and Fluor's employees

on site. Among other things, SCANA required Fluor and/or Defendants to rewrite their Materials Management policies to conform to SCANA's policies.

57. Notably, SCANA, along with WEC/WECTEC, routinely represented to Defendants' and Fluor's employees, that the VC Summer project would continue despite the Bankruptcy Filings and that the employees did not have to worry about losing their jobs.

58. As averred above, however, on July 31, 2017, SCANA and SCE&G abandoned the project. In a press release on that day, they – while omitting any mention of the Bechtel Report – admitted that the decision to suspend construction was based in large part on a comprehensive analysis of detailed schedule and cost data, from both project contractor WEC and subcontractor Fluor Corp., first revealed after WEC filed for bankruptcy in March.

59. On that same day (July 31, 2017), Defendants also called all of their employees into a meeting to inform them that they were being terminated immediately. Churchman led the meeting, made the announcement, and served as the agent and spokesperson for Defendants. Even though Defendants have placed the blame for the terminations on SCANA's and/or SCE&G's decision to abandon the project, Defendants, in fact, knew or reasonably should have known months, if not years before, that the costs for completing the VC Summer project were not sustainable and that terminations were inevitable.

60. Indeed, WEC/WECTEC, individually and/or collectively with Fluor and/or SCANA/SCE&G, on or about July 31, 2017, made the decision to terminate Defendants' employees who worked at the VC Summer Location and, at least 60 days before July 31, 2017, decided not to give Defendants' employees notice of what Defendants, Fluor, and/or SCANA/SCE&G reasonably should have known at the time would be mass layoffs and terminations at the plant.

61. At or about the time of the termination, Defendants collectively dealt and communicated with all of their nominal employees at the VC Summer Location and/or Defendants made no distinction between themselves when it came to those employees. For example, Defendants' employees were given a "furlough notification" wherein Defendants were collectively defined therein as "the Company."

62. Also, WEC's Human Resources employees communicated with Defendants' employees concerning "Westinghouse separation paperwork," which collectively defined Defendants (and other WEC affiliates) as "Westinghouse," and included a "Westinghouse Electric Company Separation Letter on Proprietary Information," a COBRA notice from the "Westinghouse Benefits Center" (which was the COBRA administrator for "WECTEC"), and a Separation Letter that collectively defined "WECTEC Global" and "WECTEC Staffing" as "Westinghouse" and directed employees to contact the "Westinghouse Call Center" with any questions.

WARN CLASS ALLEGATIONS

63. The Class Plaintiffs bring a 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 of Defendants, pursuant to 29 U.S.C. § 2104(a)(5) and the Federal Rules of Civil Procedure, Rule 23(a), who worked at or reported to the V.C. Summer Location and were terminated without cause on or about July 31, 2017, 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 July 31, 2017, and who are affected employees, within the meaning of 29 U.S.C. § 2101(a)(5) (the "WARN Class").

64. 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 and/or Fluor.

65. On information and belief, the identity of the WARN Class Members and the recent residential address of each of the WARN Class Members is contained in the books and records of Defendants and/or Fluor.

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

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

(a) whether the WARN Class Members were employees of the Defendants (either alone or collectively with Fluor and/or SCANA/SCE&G) who worked at or reported to the V.C. Summer Location;

(b) whether Defendants, alone or collectively with Flour and/or SCANA/SCE&G, 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, alone or collectively with Fluor and/or SCANA/SCE&G, unlawfully failed to pay the WARN Class Members 60 days wages and benefits as required by the WARN Act.

68. 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 the V.C. Summer Location

and were terminated without cause on or about July 31, 2017, due to the mass layoffs and/or plant closings ordered by Defendants, alone or collectively with Fluor and/or SCANA/SCE&G.

69. 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 WARN Act and employment litigation.

70. On or about July 31, 2017, Defendants, alone or collectively with Fluor and/or SCANA/SCE&G, 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.

71. 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 is 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.

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

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

CLAIMS FOR RELIEF

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

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

75. At all relevant times, Defendants, alone or collectively with Fluor and/or SCANA/SCE&G, as a single employer, 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.

76. At all relevant times, Defendants, alone or collectively with Fluor and/or SCANA/SCE&G, 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 V.C. Summer Location.

77. On or about July 31, 2017, Defendants, along or collectively with Fluor and/or SCANA/SCE&G, ordered mass layoffs and/or plant closings at the V.C. Summer Location, as those terms are defined by 29 U.S.C. § 2101(a)(2).

78. The mass layoffs or plant closings at the V.C. Summer Location 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 V.C. Summer Location, excluding "part-time employees," as that term is defined by 29 U.S.C. § 2101(a)(8).

79. The Plaintiffs and the WARN Class Members were terminated by Defendants alone or collectively with Fluor and/or SCANA/SCE&G without cause on their part, as part of or

as the reasonably foreseeable consequence of the mass layoffs or plant closings ordered by Defendants, alone or collectively with Fluor and/or SCANA/SCE&G, at the V.C. Summer Location.

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

81. Defendants, alone or collectively with Fluor and/or SCANA/SCE&G, were required by the WARN Act to give the Plaintiffs and the WARN Class Members at least 60 days advance written notice of their terminations.

82. Defendants, alone or collectively with Fluor and/or SCANA/SCE&G, failed to give the Plaintiffs and the WARN Class Members written notice that complied with the requirements of the WARN Act.

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

84. Defendants, alone or collectively with Fluor and/or SCANA/SCE&G, failed to pay the Plaintiffs and each of the WARN 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.

85. Plaintiffs and each of the WARN Class Members seek back-pay (and other damages) attributable to a period of time after the Bankruptcy Filings, which back pay and other damages arise as a result of Defendants' violation of federal laws. Therefore, 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).

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

Count II: Violation of the South Carolina Payment of Wages law Sections 41-10-10 *et seq.*

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

88. Defendants are "employers" under Section 41-10-10 of the South Carolina Payment of Wages law (the "Wages Law").

89. Defendants, alone or collectively with Fluor and/or SCANA/SCE&G, employed Plaintiffs, and all others similarly situated, in South Carolina.

90. In violation of the Wages Law, Defendants, alone or collectively with Fluor and/or SCANA/SCE&G, failed to timely pay, or pay at all, Plaintiffs, and all others similarly situated, all wages due under their policies, including accrued unused paid time off.

91. For the aforesaid violations, Plaintiffs, and all others similarly situated, are entitled to three times the full amount of their unpaid wages, plus costs and reasonable attorneys' fees, plus costs and reasonable attorney's fees.

Count III: Breach of Contract

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

93. Pursuant to Defendants' policies and practices, Plaintiffs, and all others similarly situated, were entitled to the payment of the value of all accrued unused paid time off following their terminations.

94. In breach of Defendants' obligations to Plaintiffs, and all others similarly situated, Defendants failed to pay the value of all accrued unused paid time off following the terminations of Plaintiffs and all others similarly situated.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, individually and on behalf of all other similarly situated persons, pray 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 Defendants 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, pension and 401(k) contributions and other COBRA benefits, for 60 days, 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;

E. three times the accrued paid time off pay due to Plaintiffs and all others similarly situated;

F. 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 Wages Law, and/or other applicable laws; and

G. Such other and further relief as this Court may deem just and proper.

Dated: November 9, 2017

/s/ Raymond Lemisch

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