21-1141(L) and 21-1143

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 21-1141

HARRY PENNINGTON, III, TIMOTHY LORENTZ, on behalf of themselves and all others similarly situated,

Plaintiffs-Appellants,

v.

FLUOR CORPORATION, FLUOR ENTERPRISES, INC., SCANA CORPORATION, FLUOR DANIEL MAINTENANCE SERVICES, INC., SOUTH CAROLINA ELECTRIC & GAS COMPANY,

Defendant-Appellees,

No. 21-1143

LAWRENCE BUTLER, LAKEISHA DARWISH, JIMI CHE SUTTON,

Plaintiffs-Appellants,

v.

FLUOR CORPORATION, FLUOR ENTERPRISES, INC.,

Defendant-Appellees,

On Appeal from the U.S. District Court for the
District of South Carolina, Rock Hill Division

BRIEF OF CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND SOUTH CAROLINA CHAMBER OF COMMERCE, AS AMICI CURIAE IN SUPPORT OF AFFIRMANCE OF DISTRICT COURT JUDGMENT FOR APPELLEES

Stephanie E. Lewis
William R. Gignilliat
Allison Chalmers Hawkins
JACKSON LEWIS P.C.
15 South Main Street, Suite 700
Greenville, SC 29601

Tara S. Morrissey
Stephanie A. Maloney
U.S. Chamber Litigation Center
1615 H Street, NW
Washington, DC 20062

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 21-1141 Caption: Harry Pennington, III v. Fluor Enterprises, Inc.

Pursuant to FRAP 26.1 and Local Rule 26.1,

South Carolina Chamber of Commerce
(name of party/amicus)

who is Amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
   If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
   If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

Other than the named Appellees/Defendants in this action, Amicus is not aware of any other publicly held entity that has a direct financial interest in the outcome of this litigaiton.

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☐NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/Stephanie E. Lewis Date: June 8, 2021

Counsel for: South Carolina Chamber of Commerc

Print to PDF for Filing

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 21-1141 Caption: Harry Pennington, III v. Fluor Enterprises, Inc.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Chamber of Commerce of the United States of America
(name of party/amicus)

who is Amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
   If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
   If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

Other than the named Appellees/Defendants in this action, Amicus is not aware of any other publicly held entity that has a direct financial interest in the outcome of this litigaiton.

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☐NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Stephanie E. Lewis Date: June 8, 2021

Counsel for: Chamber of Commerce of the U.S.

Print to PDF for Filing

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 21-1143 Caption: Lawrence Butler v. Fluor Corporation

Pursuant to FRAP 26.1 and Local Rule 26.1,

South Carolina Chamber of Commerce
(name of party/amicus)

who is Amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
   If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
   If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

Other than the named Appellees/Defendants in this action, Amicus is not aware of any other publicly held entity that has a direct financial interest in the outcome of this litigaiton.

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☐NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/Stephanie E. Lewis Date: June 8, 2021

Counsel for: South Carolina Chamber of Commerc

Print to PDF for Filing

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 21-1143 Caption: Lawrence Butler v. Fluor Corporation

Pursuant to FRAP 26.1 and Local Rule 26.1,

Chamber of Commerce of the United States of America
(name of party/amicus)

who is Amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
   If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
   If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

Other than the named Appellees/Defendants in this action, Amicus is not aware of any other publicly held entity that has a direct financial interest in the outcome of this litigaiton.

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☐NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Stephanie E. Lewis Date: June 8, 2021

Counsel for: Chamber of Commerce of the U.S.

Print to PDF for Filing

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases:

Statutes & Other Authorities:

STATEMENT OF INTEREST OF THE AMICI CURIAE[1]

Amici curiae have a substantial, legitimate interest in the provisions of the Worker Adjustment and Retraining Notification Act ("WARN Act"), 29 U.S.C. §§ 2101, *et seq.*, that establish employer coverage and liability. This Court's interpretation of the WARN Act could have far-reaching effects on the entire business community. Amici submit this brief to stress the overall importance of this case and to aid the Court in understanding how Appellants' unreasonably broad interpretation of the WARN Act would create uncertainty, discourage business-to-business transactions among unaffiliated companies, and extend the scope of liability far beyond the statute.

The Chamber of Commerce of the United States of America (the "U.S. Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the U.S. Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the U.S. Chamber regularly files amicus briefs

[1] In accordance with Federal Appellate Rule of Procedure 29(a)(4)(E), Amici state no party or counsel for a party to this appeal authored this brief in whole or in part. No party, counsel for a party, or person other than Amici Curiae, their members, or their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

in cases, like this one, that raise issues of concern to the nation's business community, including the nature and scope of employer liability.

The South Carolina Chamber of Commerce (the "S.C. Chamber") is a nonprofit, statewide organization whose purpose is to represent the interests of its members. The S.C. Chamber is a leading advocacy organization for the state's business community. An important function of the S.C. Chamber is to identify and address issues that impede economic growth and development at the state and federal level. The S.C. Chamber joins to provide a unified voice for the regional business community and to promote an environment that encourages business-to-business transactions.

Amici focus their brief on arguments that are not significantly addressed by the Parties' briefs. Specifically, to assist the Court in its determinations, Amici address the broad legal and economic implications and the unintended consequences that could arise should this Court adopt Appellants' arguments.

SUMMARY OF THE ARGUMENT

Amici curiae respectfully submit this brief, on behalf of their members, to advise the Court of the significant harm to the business community that would follow if this Court were to adopt Appellants' interpretation of the WARN Act.

First, this Court should reject Appellants' sweeping theory of single employer WARN Act coverage and liability. The crux of Appellants' argument is that wholly

separate and unrelated businesses, without integrated ownership and operations, should be treated as a single employer for purposes of WARN Act coverage and liability. This argument finds no support in the text of the WARN Act, its enabling regulations, or the consensus of authorities interpreting the Act. If this Court were to accept this expansive interpretation of the WARN Act, employers would face WARN coverage and potential liability for the acts of entirely separate and unrelated businesses—an outcome never contemplated by Congress. Similarly, small businesses with fewer than 100 employees would become covered by the WARN Act and potentially exposed to liability under the Act because their employees would be aggregated with employees of larger businesses that contract with small businesses to complete projects. Again, Congress specifically drafted the WARN Act so that it would not apply to these small employers, making the Act applicable only to large employers with 100 or more employees.[2]

Critically, adopting Appellants' single employer theory of WARN Act coverage and liability against separate entities would have implications far beyond the construction industry or the specific shutdown that occurred in this case. Appellants' theory would impact every industry and every employer that contracts, subcontracts, or simply has a business relationship with other entities to perform services or supply goods. As set forth more fully below, Amici ask this Court to

[2] 29 U.S.C. § 2101(a)(1)(A) and (B).

decline Appellants' invitation to rewrite the WARN Act and to instead affirm the reasoning of the district court in holding that each employer's coverage and liability under the WARN Act is evaluated separately.

Second, the Court should reject Appellants' effort to narrowly construe and undermine the unforeseeable business circumstances ("UBC") exception to the 60-day notice period otherwise provided by the WARN Act. The WARN Act and its regulations specifically contemplate that employers are not required to provide the full 60 days of notice where, as here, there is a business circumstance that is caused by some sudden, dramatic, and unexpected action or condition outside the employer's control. Because Appellants' arguments cannot be reconciled with the text of the WARN Act or congressional purpose behind the Act, the Court should affirm the district court's holding that Fluor is entitled to the UBC defense.

ARGUMENT

I. There Is No Support in the WARN Act Text or its Regulations for Appellants' Direct Liability Theory.

By advancing a direct liability theory to establish single employer liability against wholly separate entities, Appellants are asking the Court to rewrite the WARN Act and its regulations. The Court should reject this invitation and apply the unambiguous language of the statute and regulations, which provide for single employer liability only in very narrow circumstances not applicable here.

A. The Text of the WARN Act Does Not Support Appellants' Direct Liability Theory.

Separate and distinct entities without integrated ownership and operations are not a single "employer" within the plain meaning of the statute.[3] The WARN Act states that "*[a]n employer* shall not order a plant closing or mass layoff" until the notice requirements are met. 29 U.S.C. § 2102(a) (emphasis added). Employer is defined as "any business enterprise that employs" 100 or more full-time employees or 100 or more employees who in the aggregate work at least 4,000 non-overtime hours per week. *Id.* § 2101(a)(1)(A) and (B). Although the Act does not define "business enterprise," the statute as whole reflects Congress's intent to limit liability

[3] *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) ("In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole.")

to the business enterprise in an employer-employee relationship with the affected employees.

Under the enforcement requirements of the Act, affected employees may only recover from their employer. *Id.* § 2104(a). The statute defines "affected employee" as "employees who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff *by their employer*." *Id.* § 2101(a)(5) (emphasis added). Other than the employer, the statute identifies no other entity that may be sued by the affected employee; and thus, removes separate and distinct business enterprises from the scope of liability.[4]

B. The WARN Act Regulations Generally Treat Contracting Companies and Independent Contractors as Separate Employers.

The WARN Act expressly authorizes the Secretary of Labor to "prescribe such regulations as may be necessary to carry out this Act." *Id.* § 2107(a). The objective of the WARN Act regulations is "to establish clear principles and broad guidelines which can be applied in specific circumstances." 20 C.F.R. § 639.1(b).

The WARN Act regulations do not set forth the direct liability theory that Appellants suggest the Court adopt. Instead, the regulatory framework establishes that a contracting company is not the employer of an independent contractor's

[4] *Nw. Airlines v. Transp. Workers Union*, 451 U.S. 77, 94 (1981) (Courts should not imply a private remedy "unless . . . congressional intent [to create a private remedy] can be inferred from the language of the statute, the statutory structure, or some other source.").

employees where, as here, the employees have a separate employment relationship with the unaffiliated entity and are paid by the unaffiliated entity. Section 639.3(e) of the regulations unequivocally states that "[c]onsultant or contract employees *who have a separate employment relationship with another employer and are paid by that other employer, or who are self-employed, are not 'affected employees' of the business to which they are assigned*." *Id.* § 639.3(e) (emphasis added); *see also* 29 U.S.C. § 2102(a)(1) (requiring employers to give notice to "affected employees"). Therefore, a business entity does not have a duty to notify employees of a separate entity that directly employs and pays employees, even if those employees are assigned to work for the business entity.

The regulatory provision implementing the WARN Act's "unforeseeable business circumstance" exception confirms this understanding. It makes clear that when a contracting company terminates its relationship with an independent contractor, the independent contractor remains the "employer" of its own employees. The regulation provides that a "principal client's sudden and unexpected termination of a major contract with the employer" may be an unforeseeable business circumstance that excuses the employer from providing 60 days' advance notice because the "action . . . is outside the employer's control." 20 C.F.R. § 639.9(b)(1); *see also* 29 U.S.C. § 2102(b)(2)(A). Thus, the principal client and the "employer" are separate entities for WARN Act compliance, and the principal client does not

become the "employer" through its control over the shutdown. This provision directly refutes Appellants' theory that a company's shutdown decision transforms it into the relevant employer for a separate, unaffiliated entity.

While Department of Labor regulations contemplate that two entities may be treated as a single employer, the regulations will rarely—if ever—lead to a finding that unaffiliated entities are a single employer for purposes of the WARN Act. The regulations set forth a five-factor test to determine whether two entities may be treated as a single employer. It provides:

> Under existing legal rules, independent contractors and subsidiaries which are wholly or partially owned by a parent company *are treated as separate employers* or as a part of the parent or contracting company *depending upon the degree of their independence from the parent*. Some of the factors to be considered in making this determination are (i) common ownership, (ii) common directors and/or officers, (iii) de facto exercise of control, (iv) unity of personnel policies emanating from a common source, and (v) the dependency of operations.

20 C.F.R. § 639.3(a)(2) (emphasis added). This five-factor test has been widely adopted and applied by federal courts across the country. *See, e.g.*, *McKinney v. Carlton Manor Nursing & Rehab. Ctr., Inc.*, 868 F.3d 461, 464 (6th Cir. 2017); *Guippone v. BH S&B Holdings LLC*, 737 F.3d 221, 226 (2d Cir. 2013); *Administaff Cos. v. N.Y. Joint Bd., Shirt & Leisurewear Div.*, 337 F.3d 454, 458 (5th Cir. 2003); *Pearson v. Component Tech. Corp.*, 247 F.3d 471, 478 (3d Cir. 2001); *Ray v. Mechel Bluestone, Inc.*, No. 5:15-cv-03014, 2016 U.S. Dist. LEXIS 26314, at *12 (S.D. W.

Va. Mar. 2, 2016); *Adames-Milan v. Centennial Communs. Corp*., 500 F. Supp. 2d 14, 27 (D.P.R. 2007); *In re Shelby Yarn Co.*, 306 B.R. 523, 537-38 (W.D.N.C. 2004).

The five-factor test makes clear that separate, unaffiliated entities generally will not be considered a single employer under the WARN Act. Four of the five factors focus on the structure and integration of operations between the two entities.[5] When evaluating separate, unaffiliated entities, as is at issue here, there is almost always a lack of common ownership, common directors and/or officers, no unity of personnel policies emanating from a common source, and typically no dependency of operations. In other words, four of the five factors will not be satisfied. Indeed, as the district court noted, neither the court nor Appellants could identify "any case imposing single employer liability on the principal client and its subcontractor in the construction industry." (JA 2479.) Courts applying the five-factor test in a contractor relationship have generally concluded that the contractor and independent contractor are separate employers. *See, e.g.*, *McKinney*, 868 F.3d at 464; *Administaff*, 337 F.3d at 457-59. Unsurprisingly, single employer liability is most common with affiliated entities, such as a parent corporation and its subsidiary. *See*, *e.g.*, *Guippone*, 737 F.3d at 222, 227-28.

[5] Amici's arguments focus solely on single employer liability under the WARN Act and do not bear on questions regarding single employer or joint employer liability in other contexts.

C. The Test Proposed by Appellants Conflicts with the Regulations and Case Law.

Appellants' proposed test strips away the regulatory requirement for ownership and operational integration and elevates one factor, control, above all other factors of the DOL's five-factor test. *See* Appellants' Br. at 18 (stating that "one factor, de facto control" is independently dispositive such that "courts may aggregate and impose liability on the two employers *without reference to other factors*" (emphasis added)); *id.* at 31-32 ("Direct liability obviates the need to show integration altogether. . . The 'de facto control' factor is thus the only one of the five which can *alone* establish liability." (emphasis in original)).

Then, voyaging even farther away from the DOL's test, Appellants contend that control can be established solely by referencing a company decision that results in a shutdown or mass layoff at a facility, *id.* at 18, 33-39, 49, rather than by evaluating that company's overall control of the operations of the subsidiary or contracting company that was the direct employer of the affected employees. Boiled down to its essence, Appellants' position is that companies that simply do business with each other can be held liable as a single employer if one makes a decision that results in the other carrying out an event covered by the WARN Act. *See id.* at 36 ("Independence is absent when a contracting company makes the decision that causes its contractor to violate the WARN Act. In that case, the contractor and its

employees are treated as 'part' [of] the contracting company and it becomes the 'employer' of those employees.").

Appellants' proposed test would strike four of the five factors from the DOL's test and would add new language to Section 639.3(a)(2) stating that the control factor is measured solely by decisions that potentially lead to layoffs and plant closings. Further, they would completely strike the fourth sentence of Section 639.3(e) and the second sentence of Section 639.9(b)(1) because those regulatory provisions conflict with their proposed test.

Appellants' proposed test is unprecedented. It is untethered to the statutory text of the WARN Act, contrary to the DOL's interpreting regulations, and has no support in the case law. Similar attempts to expand the Act's coverage and liability to separate entities without integrated ownership and operations have been rejected. *See McKinney*, 868 F.3d at 464 (holding that client and contractor were distinct businesses and not a single employer because there were no common owners or officers, and, overall, the DOL factors confirmed that the entities were independent even though the contractor exercised some control over the client's operations and employees). None of the WARN Act cases cited in Appellants' brief lay out such an expansive test—that single employer coverage can be found with no ownership or

operational integration and based solely on a finding that one entity made a decision that caused another entity to conduct a shutdown or layoffs.[6]

Appellants cite heavily to *Pearson* for the proposition that the control factor is independently dispositive and trumps the other factors. But *Pearson* said no such thing. To the contrary, the Third Circuit wrote that the "de facto exercise of control" factor "has the potential to tip the balance in an otherwise close case," and that courts should interpret the DOL test to require "a higher showing of control in the absence of true ownership." *Pearson*, 247 F.3d at 490, 494. Moreover, the Third Circuit

[6] *See Administaff*, 337 F.3d at 456-58 (holding that plant owner and staffing agency were not a single employer when, as here, there were no common owners and directors; staffing agency did not participate in decision to close plant; and plant owner did not give staffing agency advance notice of its decision to close plant); *Guippone*, 737 F.3d at 222, 227-28 (evaluating whether a parent and its closely held subsidiary were a single employer and finding a genuine dispute because, *inter alia*, the parent was the sole owner and manager of the subsidiary, chose the management of the subsidiary, controlled the subsidiary's finances, specifically authorized and directed the reduction in force, and the subsidiary did not have its own board); *In re APA Transp. Corp. Consol. Litig.*, 541 F.3d 233, 235-36, 242-44 (3d Cir. 2008) (applying DOL test and holding that two businesses could not be considered a single employer – even though they shared common owners, officers, and directors – because other factors showed they were autonomous and independent); *Childress v. Darby Lumber, Inc.*, 357 F.3d 1000, 1006-07 (9th Cir. 2004) (affirming trial court's determination that a parent and its wholly owned subsidiary were a single employer because there was common ownership, they shared directors and officers, and all other factors showed that they acted as single entity); *Ray*, 2016 U.S. Dist. LEXIS 26314, at *12-13 (finding, for limited purposes of class certification, that affiliated entities with common ownership, directors and officers were a single employer); *In re Shelby Yarn Co.*, 306 B.R. at 538 (evaluating whether affiliated entities with common ownership and directors were a single employer).

affirmed summary judgment because the plaintiffs failed to prove, as required by the DOL test, that the two companies at issue were "highly integrated with respect to ownership and operations." *Id.* at 505. The Third Circuit held that the lender was not liable, even though it "made the decision" to liquidate the other company, "forcing [the other company] to close its doors" without advance notice to its employees. *Id.* at 504. This holding cannot be squared with Appellants' position here. *See* Appellants' Br. at 36-39 (arguing that SCANA is liable because it made a decision that "forced Fluor and Westinghouse to shutter their administrative offices and operations" at a worksite without 60 days' notice).

Appellants argue that the Court should import a direct liability theory that is purportedly applied in the context of discrimination statutes. *See* Appellants' Br. at 27-30 (citing *Hukill v. Auto Care, Inc.*, 192 F.3d 437, 444 (4th Cir. 1999); *Papa v. Katy Industries, Inc.*, 166 F.3d 937, 940 (7th Cir. 1999)). As an initial matter, it is far from clear that Appellants' understanding of this Court's case law is correct.[7] In

[7] *See Johnson v. Flowers Indus., Inc.*, 814 F.2d 978, 981 n.1 (4th Cir. 1987) (applying four-factor test to determine whether a parent company is the employer of its subsidiary's workers under the ADEA; factors include common ownership and common management and are not limited to the personnel decision that prompted the lawsuit); *Hukill*, 192 F.3d at 442-44 (applying same four-factor "integrated employer" test under FMLA regulations; evaluation of the factors is not limited to the personnel decision that is the subject of the lawsuit); *cf. Butler v. Drive Auto. Indus. of Am.*, 793 F.3d 404, 414 (4th Cir. 2015) (adopting nine-factor test to determine whether two distinct entities are joint employers under Title VII; evaluation of the factors is not limited to the personnel decision that is the subject of the lawsuit).

any event, the WARN Act is not an anti-discrimination statute, and Appellants have not shown that Congress or the DOL intended to incorporate any type of expanded coverage and direct liability theories under the WARN Act.

D. The Test Proposed by Appellants Is Unworkable and Would Lead to Unintended Results.

Appellants' proposed test would also be unworkable in practice. In the modern economy, there is a thriving ecosystem of business-to-business transactions and supply chains. In this environment, WARN-covered events such as plant closings and mass layoffs can result from a chain of events outside the control of any one company. This case is no exception. Appellants have pointed the finger at SCANA for making "the decision that causes its contractor to violate WARN," but they could have just as easily blamed Westinghouse for its decision to file for bankruptcy or Santee Cooper for its decision to withdraw funding for the project.

Loss of funding, supply chain disruptions, global pandemics, and other unexpected events can create a domino effect such that one business must make a decision that may cause other unaffiliated businesses to conduct layoffs. Taking Appellants' test to its logical conclusion would lead to absurd and unintended results. A hotel that decides to stop accepting guests because of a pandemic might be liable for failing to provide notice to the employees of the valet company that supports the hotel, even though it has no ownership or operational overlap with the

valet company. A semiconductor supplier that decides to terminate its contract with an auto manufacturer might be liable for failing to provide notice to the employees of the auto manufacturer and other parts suppliers who had to shut down their operations as a result of the chip shortage.[8] Although these outcomes might be possible under Appellants' test, they are impossible under the DOL's regulations. *See* 29 C.F.R. 639.9(b)(1) ("A principal client's sudden and unexpected termination of a major contract with the employer, a strike at a major supplier of the employer, and an unanticipated and dramatic major economic downturn might each be considered a business circumstance that is not reasonably foreseeable."). As interpreted by the DOL, Congress never intended to generate WARN Act liability up and down the supply chain as the result of unexpected circumstances. Shared liability is only feasible in the event of highly integrated ownership and operations.

If Appellants' test were accepted, courts would also have to deal with the amorphous question of determining which "decision" of many is the one that

[8] These are not fanciful hypotheticals. *Compare Coronavirus Pandemic Sets Hotel Industry Back 10 Years, Report Finds, available at* https://www.usnews.com/news/national-news/articles/2021-01-27/coronavirus-pandemic-sets-hotel-industry-back-10-years-report-finds ("More than 670,000 hotel industry operation jobs and nearly 4 million hospitality jobs were lost in 2020 due to the pandemic….") (last accessed May 19, 2021); *Ford to Halt Production of F-150, Bronco Sport and Other Vehicles Due to Chip Shortage, available at* https://www.cnbc.com/2021/05/19/ford-to-halt-production-of-f-150-bronco-sport-due-to-chip-shortage.html ("Ford Motor will halt or cut production at eight North American plants for varying periods of time through June due to an ongoing shortage of semiconductor chips impacting the auto industry.") (last accessed May 19, 2021).

resulted in the layoffs and establishes de facto control and single employer liability. In contrast, under the DOL's test, the question is focused on whether there is a parent or contracting company that is a single employer with another company because of highly integrated ownership and operations. That is a workable test. Appellants' test is not.

Moreover, the business community would be even less equipped than the courts to make on-the-fly business decisions and assess whether those decisions might lead to layoffs or closings at worksites operated by unaffiliated companies. Appellants' test would disincentivize the supply chain networks and business-to-business transactions among unaffiliated companies that allow our economy to operate and grow.

There is also an insurmountable practical problem created by Appellants' test. Under Appellants' theory, even subcontractors with no contractual relationship with a party upstream may be considered a single employer with that principal client. In this scenario, the principal client, its contractors, and possibly their subcontractors would not have access to the information necessary to evaluate WARN Act compliance and prepare WARN-compliant notices. For example, the principal client would not know how many employees will be affected, the job titles of the affected employees, or the contact information, such as home addresses or email addresses, of the affected employees who were employed by a downstream contractor or

subcontractor. To illustrate this dilemma, the chipmaker does not have job titles and contact information for the employees of the auto-manufacturer it contracts with or the employees of the subcontractors of the auto-manufacturer whom might be affected by the chipmaker's decision to terminate a supply contract. This unintended practical problem is yet another reason that Appellants' unprecedented test must not become the law.

Appellants' interpretation would also erode employer coverage thresholds such that a small business with only a few employees would become ensnared in unexpected WARN Act liability because it has business relationships with unaffiliated companies. Small businesses' "decisions" might lead to unaffiliated companies laying off employees, and the aggregate number of employees between the small business and the unaffiliated companies exceeds the thresholds in 29 U.S.C. § 2101(a)(1).

For example, suppose a company ("Operator") runs a farmer's market by leasing a facility, obtaining permits, contracting with a variety of farmers and vendors ("Vendors") who employ persons to sell goods at the market, and contracting with other companies ("Service Providers") who employ persons to perform maintenance and clean the market. All the companies involved are small businesses; most have a small handful of employees, and none employs more than 100 employees. Thus, none of these companies alone meet the employer coverage

threshold under the WARN Act. But, in the aggregate, more than 100 persons are employed full-time at the market. When the chief officer of the Operator becomes gravely ill, the Operator shuts down the market and terminates its contracts with the Vendors and Service Providers. This unexpected decision in turn forces the Vendors and Service Providers to lay off all their employees at the market. Under Appellants' test, the Organizer is a "single employer" with the Vendors and Service Providers, even in the absence of overlapping ownership and operational control, such that the coverage threshold is met through aggregation, and all the small businesses would be liable for failing to provide WARN Act notices. Of course, small business owners such as these would likely have never heard of the WARN Act, and Congress did not intend to impose liability on them. *See* 29 U.S.C. § 2101(a)(1).

If adopted, Appellants' unprecedented test would cascade down the supply chain and throughout the business community, envelop small businesses and service providers in its path, create uncertainty and unintended liability, and discourage unaffiliated companies from transacting with each other. Their test should be summarily rejected because it has no foundation in the statute, contradicts the regulations, is unworkable, and would severely disrupt the business community in ways never contemplated by Congress or the DOL.

II. The Lower Court Properly Applied the Unforeseeable Business Circumstances Exception.

The Court also should reject Appellants' request for a narrow interpretation of the WARN Act's unforeseeable business circumstances exception ("UBC exception"). The United States Supreme Court has rejected the argument that exceptions to employment statutes should be construed narrowly merely because the statutes have a remedial purpose, absent some textual indication to the contrary. *Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1142 (2018). The Supreme Court "reject[ed] this principle as a useful guidepost for interpreting the FLSA. Because the FLSA gives no 'textual indication' that its exemptions should be construed narrowly, 'there is no reason to give [them] anything other than a fair (rather than a 'narrow') interpretation." *Id.* Similarly, there is no license here other than to give the UBC exception a fair interpretation, rather than the narrow reading espoused by Appellants.[9]

Importantly, the WARN Act regulations specifically contemplate the incident that occurred in this case as fitting within the UBC exception:

> *A principal client's sudden and unexpected termination of a major contract with the employer*, a strike at a major supplier of the employer, and an unanticipated and dramatic major economic downturn *might each be considered a business circumstance that is*

[9] Tellingly, the WARN Act regulations state that the "faltering company" exception to the Act should be "narrowly construed," but contain no such language with respect to the UBC exception. *Compare* 20 C.F.R. § 639.9(a) (faltering company exception), *with* 20 C.F.R. § 639.9(b) (UBC exception).

> *not reasonably foreseeable. A government ordered closing of an employment site that occurs without prior notice also may be an unforeseeable business circumstance.*

20 C.F.R. § 639.9(b)(1) (emphasis added).

The Court should not accept Appellants' argument, which would effectively require Fluor to give WARN notice within hours of the shutdown in order to avail itself of the UBC exception. Again, the WARN Act itself does not require businesses to act that swiftly in order to rely on the UBC exception, stating instead, "an employer relying on this subsection shall give *as much notice as is practicable* and at that time shall give a brief statement of the basis for reducing the notification period."[10] 29 U.S.C. § 2102(b)(3) (emphasis added). Where, as here, the WARN notice was provided six business days after the closure and admittedly was not reasonably foreseeable before the closure, public policy is in no way served by finding that Fluor failed to act quickly enough. As a practical matter, when a large project is suddenly shut down, one can imagine many complexities where an

[10] In determining whether an employer has provided "as much notice as is practicable," courts routinely allow employers to delay notice to employees for at least several days while the company begins compliance with the Act. *See, e.g.*, *United Steel Workers of Am. Local 2660 v. U.S. Steel Corp.*, 683 F.3d 882, 889 (8th Cir. 2012) (holiday-weekend delay reasonable so business could form layoff plan and seek approval form the board of directors); *Gross v. Hale-Halsell Co.*, 554 F.3d 870, 878 (10th Cir. 2009) (six-day delay reasonable so business could discuss the matter with its financial advisers and lawyers, and acted quickly in light of the devastating news); *Loehrer v. McDonnell Douglas Corp.*, 98 F.3d 1056, 1062 (8th Cir. 1996) (eight-day delay reasonable so business can discuss with business advisors and determine how to respond before giving notice).

employer would need several days to determine the next course of action and to prepare and deliver WARN notices to thousands of employees.

Applying an overly technical and unrealistic timing requirement for an employer to invoke the UBC exception has far-reaching consequences beyond this case. During the last fifteen months of the COVID-19 pandemic, countless employers have relied on the UBC exception and issued WARN notices as soon as practicable, given the unpredictable and rapidly changing health risks and government orders that prohibited businesses in retail, restaurants, fitness, hospitality, and many other industries from operating.[11] In South Carolina alone, 153 businesses were forced to issue WARN notices from March 1, 2020, through March 31, 2021, during the COVID-19 pandemic.[12] Since March 1, 2020, there already have been at least 25 class actions filed nationwide for violations of the WARN Act

[11] *See* Maxouris, Christina, *California reimposes Covid-19 restrictions on 40 counties as cases surge and the governor warns of possible curfew*, CNN https://www.cnn.com/2020/11/17/us/california-covid-cases-increase-new-measures/index.html ("And this week came more bad news, with the governor announcing he was pulling the 'emergency brake' on reopening amid a surge in infections.); *see also New York City looking to close some areas seeing coronavirus surge*, CBS NEWS https://www.cbsnews.com/news/new-york-city-looking-to-close-some-areas-seeing-coronavirus-cases-surge-2020-10-04/ ("Indoor dining, which just resumed a few days ago, would be suspended. Outdoor restaurant dining would shut down in the affected neighborhoods as well, and gyms would close.")

[12] *Layoff Notification Reports*, SC Works, https://scworks.org/employer/employer-programs/at-risk-of-closing/layoff-notification-reports (last visited, May 20, 2021)

in cases involving COVID-19 layoffs.[13] Thus, the Court should be mindful that an overly-restrictive interpretation of the UBC exception as advanced by Appellants would have a potentially devastating impact against the broader business community in COVID-19 litigation. No purpose is served in crafting such a timing requirement when the elements of the UBC exception are met, as they plainly are here.

CONCLUSION

For the reasons stated above and the additional grounds set forth in Appellees' brief, this Court should affirm the district court's grant of summary judgment as to both Appellees.

Respectfully submitted,

/s/ Stephanie E. Lewis
Stephanie E. Lewis
William R. Gignilliat
Allison Chalmers Hawkins
Jackson Lewis P.C.
15 South Main Street, Suite 700
Greenville, SC 29601
Email: Stephanie.Lewis@jacksonlewis.com
Email: Robert.Gignilliat@jacksonlewis.com
Email: Allison.Hawkins@jacksonlewis.com

Counsel for the South Carolina Chamber of Commerce and the Chamber of Commerce of the United States of America

[13] *See* attached 'Exhibit A' showing class actions filed nationwide for WARN violations from March 2020 through May 9, 2021.

/s/Tara S. Morrissey
Tara S. Morrissey
Stephanie A. Maloney
U.S. Chamber Litigation Center
1615 H Street, NW
Washington, DC 20062
(202) 463-5337

Counsel for the Chamber of Commerce of the United States of America

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 5,380 words, excluding the portions of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. The brief complies with the typeface requirements of Federal Rule of Appellate procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft word in Times New Roman 14-point font.

/s/ Stephanie E. Lewis

EXHIBIT A

File Date	State	Court	Summary	Docket No.	Plaintiffs	Defendants
4/29/2021	VT	USDC Vermont	WARN ACT. Employment class action. Defendants failed to give plaintiffs proper notice before terminating them in a mass layoff, in violation of the Worker Adjustment and Retraining Notification Act, entitling them to pay and ERISA benefits.	2:21cv120	Matthew Chaney obo himself and all others similarly situated	Vermont Bread Company; Superior Baker Inc.; Koffee Kup Bakery Inc.; Koffee Kup Distribution LLC; American Industrial Acquisition Corporation
4/26/2021	TX	USDC Southern District of Texas	WARN Act. Employment Class Action. The defendant oilfield service firm fired plaintiff in March 2020 with no forewarning. Because defendant fired him as part of a mass layoff it was supposed to give him at least 60 days advanced written notice of his termination.	2:21cv80	Miguel Guerra	Coil Tubing Partners LLC
3/29/2021	NJ	USDC New Jersey	WARN ACT. Employment Class action . Defendants fired plaintiff employees without notice.	1:21cv6990	Glen Wojnar and Barry Blumenfeld, individually and on behalf of others similarly situated	J.E. Berkowitz LP; Consolidated Glass Holdings Inc; Czech Asset Management LP
3/18/2021	LA	USDC Middle District of Louisiana	WARN ACT. Employment class action. Plaintiffs were not given 60 days notice before mass layoffs were made by Stupp Bros.	3:21cv162	Anna Stoklosa, individually and on behalf of all others similarly situated	Stupp Bros. Inc. dba Stupp Corporation
2/3/2021	TN	USDC Middle District of Tennessee	WARN Act. Employment class Action. Defendants made a mass layoff without giving plaintiffs and other employees the required 60-day notice.	3:21cv81	Warren Tooley; Brandy Cook	Quickway Transportation Inc.; Quickway Logistics Inc.; Paladin Capital Inc.
2/2/2021	TX	USDC Southern District of Texas	WARN Act. Employment class action. Defendant oil drilling firm closed its plant and fired plaintiff and other employees in July. It did not give the workers the required advanced written notice it was closing the plant.	4:21cv349	Nicholas Kennedy, Mississippi resident, individually and on behalf of all others similarly situated	Turbo Drill Industries Inc. a Texas company
1/22/2021	FL	USDC Middle District of Florida	WARN Act. Employment class action notice required before plant closings and mass layoffs.	6:21cv161	Yolanda Turner, obo herself and others similarly situated	Rosen Hotels an d Resorts Inc.
1/15/2021	TX	USDC Southern District of Texas	WARN Act. Employment class action for violations of the WARN Act. Defendant did not give proper advance written notice before plaintiff's termination in March 2020.	4:21cv154	Shara Garrett, individually and on behalf of all others similarly situated	Hooters of America LLC
1/5/2021	TX	USDC Southern District of Texas	WARN Act. Emplomet class action. Defendant did not give plaintiffs 60-days advance written notice before firing them as part of a mass layoff.	4:21cv27	George Flores; Todd Schaffer; Carlos Leonardo Delcid; Leslie Diaz; Melanie Whitcomb, Texas residents, on behalf of themselves and all others similarly situated	ACCC General Agency Inc. dba ACCC Insurance Company
1/5/2021	TN	USDC Middle District of Tennessee	WARN Act. Employment Class Action. Defendant conducted a mass layoff of its employees without giving timely, advance or proper notice of the termination.	3:21cv4	Stacey Smith; Victoria Rockwell; Woodston Maddox, individually and as class representatives	Takl Inc.
12/9/2020	FL	USDC Middle District of Florida	WARN Act. Class action for employment. Defendant laid off plaintiff and other workers without advance notice as required by the WARN Act.	8:20cv2945	Eric Jones, on behalf of himself and others similarly situated	Scribe Opco Inc. dba Bic Graphic
10/3/2020	NY	USDC Southern District of New York	WARN Act. Employment class action.	1:20cv08239	Brazier et al	Real Hospitality Group, LLC et al
9/30/2020	DE	USDC Delaware	WARN Act. Employment class action. Defendant fired most of its employees without warning.	1:20cv1328	Brandon Storms, On Behalf Of Himself And All Others Similarly Situated	NS8 Inc.
9/22/2020	IL	USDC Northern District of Illinois	WARN Act. Employment class action. Defendant failed to give plaintiffs proper notice before terminating them in a mass layoff.	1:20cv5616	Joe Colmone obo himself and all others similarly situated	Fidelity National Financial Inc.
9/16/2020	DE	USDC Delaware	WARN Act. Employment class action. Defendants fired plaintiff in a mass layoff without providing cause and 60 days advance written notice.	1:20cv1238	Joshua Rosenberg, On Behalf Of Himself And All Others Similarly Situated	NS8 Inc.
9/16/2020	DE	USDC Delaware	WARN Act. Employment class action. Defendants fired plaintiff in mass layoff without providing 60 days advance written notice.	1:20tc1031	Joshua Rosenberg, on behalf of himself and others similarly situated	NS8
9/9/2020	FL	USDC Middle District of Florida	WARN Act. Employment class action for employment and declaratory judgment. Defendants fired plaintiff without providing enough advance notice.	8:20cv2114	Olga Calero, on behalf of herself and others similarly situated	Fanatics Inc.; Fanatics Retail Group Fulfillment LLC
9/3/2020	OH	USDC Northern District of Ohio	WARN Act. Employment class action. Defendant ordered the closure of two manufacturing facilities and the mass layoff of over 100 employees without providing the 60 days advance written notice.	3:20cv1988	Timothy Reser; Joseph Alejandro; William Hoffman; Amy M. Levario; Richard Huff	Atlas Industries Incorporated
8/26/2020	TX	USDC Southern District of Texas	WARN Act. Employment class action. Plaintiffs were among hundreds of employees defendant fired in March and April without giving them 60-days advanced written notice.	4:20cv2995	Scott Easom, Adrian Howard and John Nau, Texas residents, on behalf of themselves and on behalf of all others similarly situated	US Well Services Inc.
7/6/2020	TX	USDC Southern District of Texas	WARN Act. Employment class action. Defendant shuttered its medical data management business on July 3 and laid off plaintiff and more than 100 other employees.	4:20cv2364	Hailey Cook, Texas resident, individually and on behalf of all others similarly situated	EMSI Holding Company
6/18/2020	TX	USDC Southern District of Texas	WARN Act. Employment class action. Defendant employed plaintiff at its steel fabrication plant in Brookshire, Texas. It did not provide the plant's employees with the required 60-days advanced notice before laying them off in mass on April 23.	4:20cv2152	Jose Moreira, Texas resident	Spitzer Industries Inc., a Texas corp.
6/12/2020	FL	USDC Southern District of Florida	WARN Act. Employment class action.	1:20cv22433	Darryl Jones	Bcc Food Hall LLC
5/26/2020	NY	USDC Southern District of New York	WARN Act. Employment class action. Defendant failed to provide proper notice in advance of mass layoff due to COVID-19 pandemic.	1:20cv04040	Hamilton et al	The August Aichorn Center for Adolescent Residential Care, Inc.
4/30/2020	FL	USDC Middle District of Florida	WARN Act. Employment class action for employment. Defendant laid off plaintiff and other employees without the required 60 days notice due to the Covid-19 pandemic.	8:20cv1006	Arlean Green, on behalf of herself and on behalf of all others similarly situated	The Hertz Corporation
4/16/2020	FL	USDC Middle District of Florida	WARN Act. Employment class action. Defendant did not give notice to plaintiffs before a mass layoff. Defendant laid off 679 employees due to the coronavirus pandemic shutdown.	8:20cv882	Asthon Scott and Amanda Seales, on behalf of themselves and all others similarly situated	Hooters III Inc.