

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

PATRICIA DE LEON, individually,
and on behalf of all similarly situated
parties,

Plaintiffs,

v.

CALUMET PHOTOGRAPHIC, INC.,
CALUMETPHOTO.COM, LLC,
PROCAMERA, LLC,

Defendants.

Bankruptcy Case No.
14-bk-8893

TRIAL BY JURY DEMANDED

COMPLAINT

NOW COMES PATRICIA DE LE`ON, individually and on behalf of all similarly situated parties, by and through their attorneys, JONATHAN LUBIN, MATTHEW STONE of THE LAW OFFICES OF SCHNEIDER AND STONE, and R. TAMARA DE SILVA, and Complains of CALUMET PHOTOGRAPHIC, INC., CALUMETPHOTO.COM, LLC, and PROCAMERA, LLC, stating:

1. This is a class action to recover back wages that are owed under the Worker Adjustment and Retraining Notification Act (“WARN Act”), 29 U.S.C. § 2101 - 2109 *et seq.*

Parties

2. For the relevant period, Patricia De Leon was an employee of Calumet Photographic, Inc., and Calumetphoto.com, LLC, as that term is defined in 29 U.S.C. § 2101(a).

3. For the relevant period, Calument Photographic, Inc. and CalumetPhoto.com. LLC, (collectively “Calumet Defendants”) were employers of Patricia De Leon and other similarly situated employees.

4. The place of employment for Patricia De Leon, and for the majority of those employees that worked for Calumet Defendants in the State of Illinois, was located within Chicago, IL, in the Northern District of Illinois.

5. On March 12, 2014, a bankruptcy action was filed in the Northern District of Illinois, listing both Calumet Defendants as debtors. During the pendency of that bankruptcy, it was revealed that ProCamera LLC is related to the Calumet Defendants, and is therefore part and parcel of the same business enterprise.

6. It is presently unclear whether there are any other related entities that form part of the business enterprise which the Calumet Defendants and ProCamera comprise.

Jurisdiction and Venue

7. This Court has jurisdiction over the subject matter of this adversary pursuant to 28 U.S.C. §§ 157, 1331 and 1334, as well as 29 U.S.C. § 2104(a)(5).

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

9. Venue is proper pursuant to 29 U.S.C. § 2104(a)(5).

Facts Common to All Counts

10. Prior to March 12, 2014, the Calumet Defendants employed more than 100 people. One of those employees was Patricia De Leon.

11. For a period of time exceeding 60 days prior to March 12, 2014, the Calumet Defendants were aware of the fact that their company would not survive, and began making preparations for declaring bankruptcy.

12. For that period, exceeding 60 days prior to March 12, 2014, the Calumet Defendants were also aware of the fact that they would likely have to terminate most or all of their work force, if and when the bankruptcy action would be filed.

13. On information and belief, the Calumet Defendants, for over 60 days prior to the bankruptcy, were well aware that they would, in the very near future, be forced massively lay off their work force, in that over 33% of their full-time employees would have to be laid off, and that over 50 would likely have to be laid off as well.

14. At no point during that 60 day period did any representative of the Calumet Defendants provide any notice to their employees that an imminent mass layoff would occur.

15. Not only that, but on the day that the bankruptcy was filed, the Calumet Defendants terminated all of their employees at several branches (in an amount of employees that well exceeded 50), in some cases without telling them at all. At least one employee arrived for work that day to find that the doors to the plant were locked.

16. Further, many of the Calumet Defendants paid money into health care policies that were cancelled, no refunds offered, when the companies filed bankruptcy. Wages that had accrued within that pay period were not paid to employees who were terminated from the Calumet Defendants' employment.

17. ProCamera LLC has a common owner with the Calumet Defendants, all of which were owned by the same entities and groups of people.

18. The directors at ProCamera LLC are the same individuals as the former directors at the Calumet Defendants. For example, Gabriel Garcia is the president at ProCamera, LLC, just like he was the president at the Calumet Defendants for the relevant period.

19. In essence, each of the Defendants is controlled by the same group of people, and is involved in the same business.

20. On information and belief, assets of the Calumet Defendants have been moved into ProCamera LLC. Some of those assets could have been used as wages to satisfy the obligations of the Calumet Defendants under the WARN Act.

Class Allegations

21. Given the fact that the number of employees who were terminated without any notice exceeds 50, the class of employees affected by the violation of the WARN Act described above is so numerous that joinder of all members is impracticable.

22. The questions of law and fact are common to the entire class, as the relevant inquiry in each case was whether the employee received a notice that, according to the law, should have been made available to all employees collectively.

23. Patricia De Leon is similar to the rest of the class in that she, like very other member of the class, lost her job spontaneously and with no warning, despite the

fact that the Calumet Defendants realized that mass layoffs were imminent and had the means to give notice to each employee.

24. De Leon will therefore fairly and adequately protect the interests of the class.

25. If this matter is not heard as a class action, it would have to be brought individually by over 50 employees. That would cause inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for Defendants.

26. The questions of fact and law common to class members predominate over questions that affect only individual members. A class action pursuant to F.R.C.P. 23(b)(3) is therefore superior to the other available methods for fairly and efficiently adjudicating the controversy.

27. The books and records related to the identity of all members of the class, as well as their mailing addresses and other contact information and other relevant facts such as dates of employment and compensation are, on information and belief, contained within the records of the Defendants.

28. Plaintiff intends to notify all members of the class of this lawsuit pursuant to Plaintiff obligations under F.R.C.P. 23.

Count I – WARN Act

29. Plaintiff realleges Paragraphs 1 through ___ as if stated here.

30. The Calumet Defendants were employers of Plaintiffs as that term is defined by 29 U.S.C. § 2101(a)(1).

31. The Calumet Defendants' termination of Plaintiffs on March 12, 2014 is a plant closing as the term is defined by 29 U.S.C. § 2101(a)(2).

32. The plant closing resulted in employment losses as that term is defined by 29 U.S.C. § 2101(a)(2) for at least fifty of Defendant's employees as well as 33% of Defendant's workforce at each of its branches.

32. The Plaintiffs are affected employees of the Defendant as that term is defined by 29 U.S.C. § 2101(a)(5).

33. The Calumet Defendant were required to give Plaintiff and all class members notice at least 60 days advance written notice of termination.

27. The Calumet Defendants (and, by extension, ProCamera LLC) failed to give proper notice to their employees that they would be closing their operations and engaging in massive layoffs.

34. The Plaintiffs are therefore “aggrieved employees” of the Calumet Defendants as that term is defined in 29 U.S.C. § 2104(a)(7).

28. This failure to act caused significant damages to the former employees of these Defendants, who were unable to seek work or retraining in anticipation of their impending layoffs.

29. Each employee laid off by Defendants is owed back wages and, where applicable, commissions, bonuses, accrued holiday and vacation pay, 401(k) contributions and employee benefits under ERISA other than health insurance, each for sixty days after termination.

35. Since the relief requested is for wages and similar employee benefits attributable to a time period after the Calumet Defendants filed for bankruptcy, the Plaintiff’s claims are entitled to priority treatment pursuant to 11 U.S.C. § 507(a)(4)(5).

WHEREFORE, Plaintiffs request that this Honorable Court enter an Order

- (a) Certifying Plaintiffs as a class and this action as a class action;
- (b) Designating Plaintiff as Class Representative;
- (c) Appointing the undersigned attorneys as Class Counsel;
- (d) Finding these Defendants liable under the WARN Act, and requiring them to pay back wages pursuant to 28 U.S.C. § 2104 equivalent to 60 days wages from the time of termination, benefits for the same period;
- (e) Allowing those wage claims treatment as an administrative expense claim against the Calumet Defendants pursuant to 11 U.S.C. § 503(b)(1)(A),
- (f) Or as alternatively to (e), determining that the first \$10,000 of each WARN Act claim of each Plaintiff is entitled priority status under 11 U.S.C. § 507(a)(4) and the remainder as a general unsecured claim; and
- (g) Allowing Plaintiff's reasonable attorney's fees and costs as an administrative expense pursuant to 11 U.S.C. §503 and 29 U.S.C. § 2104(a)(6); and
- (h) Granting such other relief as the Court deems just and proper.

Respectfully Submitted by:

s/Jonathan Lubin

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