

and Retraining Notification Act (“WARN Act”), 29 U.S.C. § 2101 *et seq.*, and the California Labor Code § 1400 *et seq.* (“CAL WARN Act”).

4. Plaintiffs and all similarly situated employees seek to recover 60 days wages and benefits, pursuant to 29 U.S.C. § 2104 and California Labor Code §1403, from Defendant.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1367 and 29 U.S.C. § 2104(a)(5).

6. Venue is proper in this District pursuant to 29 U.S.C. § 2104(a)(5) and 28 U.S.C. § 1391(b)(1).

THE PARTIES

Plaintiffs

7. At all relevant times, Plaintiff Allen Federman was employed by ITT Tech as a Business Analyst and worked at Defendant’s headquarters facility located at 13000 North Meridian Street, Carmel, Indiana 46032 (the “Carmel Facility”).

8. At all relevant times, Plaintiff Steve Ryan, was employed by ITT Tech as an Instructor and worked at Defendant’s facilities located in National City, Torrance, and Vista, California.

9. At all relevant times, Mr. Ryan split his work time between these facilities.

10. At all relevant times, Mr. Ryan worked over 20 hours a week teaching and preparing to teach.

11. At all relevant times, Mr. Ryan was a resident of the State of California.

Defendant

12. Defendant ITT Educational Services, Inc. is a Delaware corporation with its

principal place of business located at 13000 North Meridian Street, Carmel, Indiana 46032, and conducted business in this district.

13. In addition to the Carmel Facility, which had 150 or more employees, Defendant maintained other facilities, as that term is defined in the WARN Act, including over 130 campuses in 38 states. Together with the Carmel Facility, these facilities are collectively referred to herein as the “Facilities.”

14. Upon information and belief, at all relevant times, the other similarly situated former employees who were terminated by Defendant worked, reported to, or received instructions from the Carmel Facility or one of Defendant’s other Facilities.

WARN CLASS ALLEGATIONS, 29 U.S.C. § 2104

15. Plaintiffs bring this 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, pursuant to 29 U.S.C. § 2104(a)(5) and Fed. R. Civ. P. 23(a), who worked at or reported to one of Defendant’s Facilities and were terminated without cause on or about September 6, 2016, 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 by Defendant on or about September 6, 2016, and who are affected employees, within the meaning of 29 U.S.C. § 2101(a)(5) (the “WARN Class”).

16. The persons in the WARN Class identified above (“WARN Class Members”) number approximately 8,000 and are therefore so numerous that joinder of all members is impracticable.

17. On information and belief, the identity of the members of the class and the recent residence address of each WARN Class Member is contained in the books and records of Defendant.

18. The rate of pay and benefits that were being paid by Defendant to each WARN Class Member at the time of his/her termination is contained in the books and records of the Defendant.

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

(a) whether the members of the WARN Class were employees of the Defendant who worked at or reported to Defendant's Facilities;

(b) whether Defendant 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 Defendant unlawfully failed to pay the WARN Class Members 60 days wages and benefits as required by the WARN Act.

20. Plaintiffs' claims are typical of those of the WARN Class. Plaintiff, like other WARN Class Members, worked at or reported to one of Defendant's Facilities and was terminated without cause on or about September 6, 2016, in mass layoffs and/or plant closings, as defined by 29 U.S.C. § 2101(a)(2), (3), by Defendant.

21. Plaintiffs will fairly and adequately protect the interests of the WARN Class. Plaintiffs have retained counsel competent and experienced in complex class actions, including the WARN Act and employment litigation.

22. 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 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.

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

24. The Plaintiffs intend to send notice to all members of the WARN Class to the extent required by Fed. R. Civ. P. 23.

CALIFORNIA WARN CLASS ALLEGATIONS, Cal. Labor Code § 1401

25. Plaintiff Steve Ryan (“California Class Plaintiff”) brings the Second Claim for Relief for violation of Labor Code § 1401 on behalf of himself and a class of similarly situated persons pursuant to Labor Code § 1404 and Federal Rules of Civil Procedure, Rule 23(a) and (b), who worked at or reported to one of Defendant’s Facilities and were terminated without cause on or about September 6, 2016 (the “CAL WARN Class”).

26. The persons in the CAL WARN Class identified above (“CAL 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 Defendant.

27. On information and belief, the identity of the members of the class and the recent residence address of each of the CAL WARN Class Members is contained in the books and records of Defendant.

28. On information and belief, the rate of pay and benefits that were being paid by Defendant to each CAL WARN Class Member at the time of his/her termination is contained in the books and records of the Defendant.

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

a) whether the members of the CAL WARN Class were employees of the Defendant;

b) whether Defendant unlawfully terminated the employment of the members of the CAL WARN Class without cause on their part and without giving them 60 days advance written notice in violation of the CAL WARN Act; and

c) whether Defendant unlawfully failed to pay the CAL WARN Class members 60 days wages and benefits as required by the CAL WARN Act.

30. The California Class Plaintiff's claims are typical of those of the CAL WARN Class. The California Class Plaintiff, like other WARN Class members, worked at or reported to one of Defendant's Facilities and were terminated on or about September 6, 2016, due to the termination of the Facilities ordered by Defendant.

31. The California Class Plaintiff will fairly and adequately protect the interests of the CAL WARN Class. The California Class Plaintiff has retained counsel competent and

experienced in complex class actions on behalf of employees, including the CAL WARN Act, the federal WARN Act, other similar state laws, and employment litigation.

32. Class certification of these Claims is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the CAL WARN Class predominate over any questions affecting only individual members of the CAL WARN Class, and because a class action superior to other available methods for the fair and efficient adjudication of this litigation – particularly in the context of CAL WARN Class 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 CAL WARN Class members are small compared to the expense and burden of individual prosecution of this litigation.

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

34. The California Class Plaintiff intends to send notice to all members of the CAL WARN Class to the extent required by Rule 23.

CLAIMS FOR RELIEF

Violation of the WARN Act, 29 U.S.C. § 2104

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

36. At all relevant times, Defendant 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.

37. At all relevant times, Defendant was 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 enterprise until they decided to effect mass layoffs or plant closings at the Facilities.

38. On information and belief, on or about September 6, 2016, Defendant effected mass layoffs and/or plant closings at the Facilities, as those terms are defined by 29 U.S.C. § 2101(a)(2).

39. The mass layoffs or plant closings at the Facilities 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 more than thirty-three percent (33%) of Defendant’s workforce at the Facilities, excluding “part-time employees,” as that term is defined by 29 U.S.C. § 2101(a)(8).

40. Plaintiffs and the Class Members were terminated by Defendant without cause on their part, as part of or as the reasonably foreseeable consequence of the mass layoffs or plant closings ordered by Defendant at the Facilities.

41. Plaintiffs and the WARN Class Members are “affected employees” of Defendant within the meaning of 29 U.S.C. § 2101(a)(5).

42. Defendant was required by the WARN Act to give the Plaintiffs and the WARN Class Members at least 60 days advance written notice of their terminations.

43. Defendant failed to give the Plaintiffs and the WARN Class members written notice that complied with the requirements of the WARN Act.

44. Plaintiffs and each of the Class Members, are “aggrieved employees” of the Defendant as that term is defined in 29 U.S.C. § 2104(a)(7).

45. Defendant failed to pay 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.

Violation of California Labor Code - § 1400 et seq.

46. Plaintiffs reallege and incorporate by reference all allegations in all proceeding paragraphs.

47. The California Class Plaintiff and similarly situated employees who worked at or reported to Defendant’s facilities in California and other “covered establishments,” are former “employees,” of Defendant as defined in Labor Code § 1400(a),(h).

48. Defendant terminated the employment of California Class Plaintiff and other similarly situated employees, pursuant to a “mass layoff,” “relocation” or “termination” as defined in Labor Code § 1400(d-f) on or about September 6, 2016 or thereafter.

49. At all relevant times, Defendant was an “employer” as defined in Labor Code § 1400(b).

50. Defendant violated Labor Code § 1401 by ordering a “mass layoff,” “relocation” or “termination” in California without giving written notice at least 60 days before the order took effect to (1) the employees affected by the order and (2) the Employment Development Department, the local workforce investment board, and the chief elected official of each city and

county government within which the mass layoff, relocation or termination occurred. The “mass layoff,” “relocation” or “termination” was not necessitated by a physical calamity or act of war.

51. As a result of Defendant’s violation of Labor Code § 1401, the other similarly situated California employees are entitled to damages under Labor Code § 1402 in an amount to be determined.

52. As a result of Defendant’s violation of Labor Code § 1401, Defendant is subject to a civil penalty of not more than five hundred dollars (\$500) for each day of the violation, under Labor Code § 1403.

53. The California Class Plaintiff has incurred and the other similarly situated employees will incur attorneys’ fees in prosecuting this claim and are entitled to an award of attorneys’ fees under Labor Code § 1404.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, individually and on behalf of all other similarly situated persons, prays for the following relief as against Defendant:

- A. Certification that, pursuant to Fed. R. Civ. P. 23 (a) and (b), Plaintiffs and the other similarly situated former employees constitute a single WARN Act class and a single California Class as to California employees and the California Class Plaintiff;
- B. Designation of the Plaintiffs as Class Representatives;
- C. Appointment of the undersigned attorneys as Class Counsel;
- D. A judgment in favor of the Plaintiffs and each of the “affected employees” equal to the sum of: their unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay, pension and 401(k) contributions and other ERISA

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)(4) and Labor Code § 1402(a);

- E. Interest as allowed by law on the amounts owed under the preceding paragraph;
- F. Plaintiffs' reasonable attorneys' fees and the costs and disbursements that the Plaintiffs incurred in prosecuting this action, as authorized by the WARN Act, 29 U.S.C. § 2104(a)(6) and Labor Code § 1404, and
- G. Such other and further relief as this Court may deem just and proper.

Dated: September 6, 2016

Respectfully submitted,

By: /s/ Christopher D. Loizides
Christopher D. Loizides (No. 3968)
LOIZIDES, P.A.
1225 King Street, Suite 800
Wilmington, Delaware 19801
Telephone: (302) 654-0248
Email: loizides@loizides.com

Jack A. Raisner
René S. Roupinian
OUTTEN & GOLDEN LLP
3 Park Avenue, 29th Floor
New York, New York 10016
Telephone: (212) 245-1000
Email: jar@outtengolden.com
Email: rsr@outtengolden.com

Attorneys for Plaintiffs and the putative Class