Docket #0020 Date Filed: 7/22/2024

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

in Re: **ZACHRY HOLDINGS, INC., et al.,** **Debtors**	§ § § § § § § §	**Chapter 11** **Case No. 24-90377 (MI)** **(Jointly Administered)**
AVIS LAMOTTE, on behalf of herself and those similarly situated, **Plaintiff,** **v.** **ZACHRY INDUSTRIAL, INC.,** **Defendant.**	§ § § § § § § § §	**Adversary No. 4:24-AP-03122** **JURY TRIAL DEMANDED**

DEFENDANT'S ANSWER AND AFFIRMATIVE
DEFENSES TO CLASS ACTION ADVERSARY COMPLAINT

Defendant Zachry Industrial, Inc. ("Zachry"), through its attorneys of record, responds to Plaintiff's Class Action Adversary Complaint as follows:

1. This is a Class Action Complaint brought under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101-2109 (the "WARN Act") by the Plaintiff on her own behalf and on behalf of the other similarly situated persons against Defendant Zachry Industrial, Inc. ("Zachry" or "Defendant"), Plaintiff's employer for WARN Act purposes.

ANSWER: Zachry admits Plaintiff purports to bring this Complaint under the Worker Adjustment Retraining Notification Act (the "WARN Act"), but denies the WARN Act applies under the circumstances, and alternatively denies it acted contrary to the WARN Act and Plaintiff is entitled to any relief. Zachry also admits Plaintiff purports to pursue the

claim as a class action on behalf of other similarly situated persons, but denies the claim should proceed as a class action. Zachry denies any remaining allegations in paragraph 1.

2. On or within 90 days of May 21, 2024, Defendant made a mass layoff and/or effected a plant closing by, unilaterally and without proper notice to employees or staff, terminating approximately 4,072 employees at its facility, located at 3901 Twin City Hwy, Port Arthur, TX 77642 ("Facility").

ANSWER: Zachry admits on, or within, 90 days of May 21, 2024, pursuant to a reduction in force, it laid off employees working on the Golden Pass Project (the "Project"), but denies the remaining allegations in paragraph 2.

3. Defendant failed to provide 60 days advance written notice to employees or staff as required by the WARN Act, 29 U.S.C. § 2101 *et seq*., to the affected employees.

ANSWER: Zachry admits it did not provide 60 days' advance written notice to certain employees and staff, but contends it had no duty to do so under the WARN Act. Zachry denies the remaining allegations in paragraph 3.

4. Plaintiff was officially terminated by Defendant on or around May 21, 2024.

ANSWER: Zachry admits that on or around May 21, 2024, Plaintiff was subject to a reduction of force. Zachry denies the remaining allegations in paragraph 4.

5. Defendant's reduction in nearly its entire workforce at that plant constituted a mass layoff or plant closing, commencing on or around May 21, 2024. As such, Plaintiff and other similarly situated employees, should have received the full protection afforded by the WARN Act.

ANSWER: Zachry admits it laid off employees pursuant to a reduction of force. Zachry denies the remaining allegations in paragraph 5.

6. Plaintiff's claims, as well as the claims of all similarly-situated employees, are entitled to partial administrative expense status pursuant to United States Bankruptcy Code § 503(b)(1)(A) and partial, or alternatively, full priority status under 11 U.S.C. § 507(a)(4) and (5), up to the priority cap, with the balance, if any, being a general unsecured claim.

ANSWER: Zachry denies the allegations in paragraph 6.

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

ANSWER: Zachry admits the Court has jurisdiction over Plaintiff's claim.

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

ANSWER: Zachry admits Plaintiff brings a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (O). Under Federal Rules of Bankruptcy Procedure 7012-(b), and 7012-1, Zachry consents to the entry of final orders or judgment by the Bankruptcy Judge/Court.

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

ANSWER: Zachry admits venue in this Court is proper.

10. Plaintiff Avis Lamotte is a citizen of the United States and resident of Port Arthur, Texas. Plaintiff Lamotte was employed by Defendant at all relevant times at the Facility. Plaintiff worked for Defendant for about two years. Plaintiff is an "aggrieved employee" within the meaning of 29 U.S.C. § 2104(a)(7).

ANSWER: Zachry is without knowledge or information concerning Plaintiff's current citizenship status or residence and therefore denies the same. Zachry admits it employed Plaintiff at the Project, but denies the remaining allegations in paragraph 10.

11. Defendant Zachry Industrial, Inc. is a company registered to do business in Texas with its principal place of business located at 527 Logwood Avenue, San Antonio, Texas 78221. Defendant at all times maintained and operated the Facility. Defendant may be served via its registered agent, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, TX 75201.

ANSWER: Zachry admits it is a company registered to do business in Texas with its principal place of business located at 527 Logwood Avenue, San Antonio, Texas 78221, and that it may be served via its registered agent, CT Corporation System, at 1999 Bryan St., Suite 900, Dallas, TX 75201. Zachry denies the remaining allegations in paragraph 11.

12. On May 21, 2024, Defendant filed a voluntary petition for Chapter 11 bankruptcy.

ANSWER: Zachry admits it is a joint debtor with respect to a bankruptcy action filed on May 21, 2024. Zachry denies the remaining allegations in paragraph 12.

13. Defendant is a private, Texas-based industrial manufacturing and transportation company.

ANSWER: Zachry admits it is a privately-held corporation, but denies the remaining allegations in paragraph 13.

14. On or around May 21, 2024, Plaintiff was unceremoniously terminated from employment with Defendant with no warning.

ANSWER: Zachry admits, on May 21, 2024, Plaintiff was laid off pursuant to a reduction of force on the Project. Zachry denies the remaining allegations in paragraph 14.

15. According to the Texas Workforce Commission, Defendant provided notice of the May 21, 2024, terminations on June 3, 2024. In other words, Defendant provided notice *after the fact*.

ANSWER: Zachry admits it provided formal written notice of the layoff to the Texas Workforce Commission on June 3, 2024. Zachry denies the remaining allegations in paragraph 15.

16. Defendant did not provide any WARN Act Notice as required by 29 U.S.C. §§ 2101 et seq. even though it planned to abolish, terminate, and/or layoff over one-hundred full-time employees employed there.

ANSWER: Zachry denies the allegations in paragraph 16.

17. Upon information and belief, no circumstances existed that would have permitted Defendant from reducing the notification period as provided in 29 U.S.C. § 2102(b).

ANSWER: Zachry denies the allegations in paragraph 17.

18. By failing to provide its affected employees who were temporarily or permanently terminated on or around May 21, 2024, with WARN Act Notices and other benefits, Defendant acted willfully and cannot establish that it had any reasonable grounds or basis for believing its actions were not in violation of the statute.

ANSWER: Zachry denies the allegations in paragraph 18.

19. Plaintiff brings this WARN Act claim as a Class Action pursuant to Federal Rule of Civil Procedure 23 on behalf of the following Nationwide class:

> All employees of Defendant who were terminated pursuant to a mass layoff or plant closing (as those terms are defined in the WARN Act) within 90 days of May 21, 2024.

ANSWER: Zachry admits Plaintiff purports to bring a class action claim against it. Zachry denies that class action treatment under the circumstances is appropriate, and denies it is liable to Plaintiff, or any putative class members, in any way and further the remaining allegations in paragraph 19.

20. Class Action treatment of WARN Act claims is appropriate because all of Federal Rule of Civil Procedure 23's Class Action requisites can be satisfied. For example:

a. The class includes, upon information and belief, over 50 class members, and, as such, is so numerous that joinder of all the class members is impracticable under these circumstances, thereby satisfying Federal Rule of Civil Procedure 23(a)(1).

b. Questions of law and fact are common to the class, including, inter alia, whether Defendant provided adequate notice of its mass layoff under the WARN Act, 29 U.S.C. § 2102. Thus, Plaintiff satisfies Federal Rule of Civil Procedure 23(a)(2).

c. Plaintiff is a member of the class, whose claims are typical of the claims of other class members. Plaintiff has no interests that are antagonistic to or in conflict with the interests of other class members. Thus, Plaintiff satisfies Federal Rule of Civil Procedure 23 (a)(3).

d. Plaintiff will fairly and adequately represent the class and its interests. Moreover, Plaintiff has retained competent and experienced counsel who will effectively represent the interests of the class. Thus, Plaintiff satisfies Federal Rule of Civil Procedure 23 (a)(4).

ANSWER: Zachry denies the allegations in paragraph 20 and its subparts.

21. Class certification is appropriate pursuant to Federal Rule of Civil Procedure 23(b)(1) because the prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications. This would establish incompatible standards of conduct for Defendant and/or because adjudications with respect to individual class members would as a practical matter be dispositive of the interests of non-party class members.

ANSWER: Zachry denies the allegations in paragraph 21.

22. Class certification is appropriate pursuant to Federal Rule of Civil Procedure 23(b)(2) because Defendant acted or refused to act on grounds generally applicable to the Class,

making appropriate declaratory and injunctive relief with respect to Plaintiff and the class as a whole.

ANSWER: Zachry denies the existence of any "Class" and denies the allegations in paragraph 22.

23. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over any question affecting only individual class members, and because a Class Action is superior to other available methods for the fair and efficient adjudication for this litigation.

ANSWER: Zachry denies the allegations in paragraph 23.

24. Plaintiff re-alleges and incorporates all preceding paragraphs as if set forth in full here.

ANSWER: Zachry incorporates by reference its responses from all prior paragraphs.

25. Defendant is an "employer" within the meaning of the WARN Act, 29 U.S.C § 2101(a)(1).

ANSWER: Zachry admits it is a business enterprise that employed 100 or more employees, excluding part-time employees, or 100 or more employees who in the aggregate work at least 4,000 hours per week (excluding overtime hours). Zachry denies the remaining allegations in paragraph 25.

26. Plaintiff and the putative class members were, at all relevant times, "affected employees" within the meaning of the WARN Act, 29 U.S.C § 2101(a)(5).

ANSWER: Zachry denies the allegations in paragraph 26.

27. The May 21, 2024, permanent layoffs of at least 4,072 employees at the Facility resulted in "employment losses" as defined in 29 U.S.C. § 2101(a)(3)(B)(i)(I) and (II) for at least 33 percent of the employees and at least 50 employees.

ANSWER: Zachry denies the allegations in paragraph 27.

28. For purposes of 29 U.S.C. § 2101(a)(3)(B)(i)(I) and (II), the Facility constitutes a single site of employment in that each employee's facility was the location to which relevant employees were assigned as their home base, the place from which their work was assigned, and the place to which they reported for work.

ANSWER: Zachry admits the Project, including the supporting facilities located at Sabine Pass, Texas, Baytown, Texas, Orange, Texas, Beaumont, Texas and the Zachry Human Resources/Recruiting office at Port Arthur, Texas, constitutes a single site of employment, but denies the remaining allegations in paragraph 28.

29. The WARN Act requires employers to provide 60-days' notice of any plant closing or mass layoff "to each representative of the affected employees . . . or, if there is no such representative at that time, to each affected employee," 29 U.S.C. § 2102(a)(1), and "to the State or entity designated by the State to carry out rapid response activities under [29 U.S.C. §] 3174(a)(2)(A)," as well as to "the chief elected official of the local government within which such closing or layoff is to occur," 29 U.S.C. § 2102(a)(2).

ANSWER: Zachry admits the allegations in this paragraph accurately recite statutory language, but denies it is liable to Plaintiff, or any putative class members.

30. On information and belief, prior to May 21, 2024, Defendant did not give any written notice of the plant closing and/or mass layoff to any "affected employee," including Plaintiff and the putative class, as that term is defined in 29 U.S.C § 2101(a)(5). Nor upon

information and belief did Defendant give any prior written notice to the Texas state agency, or to the chief elected official of the local government within which the mass layoff was ordered. Rather, Defendant waited after announcing the mass layoffs already occurred to do so.

ANSWER: Zachry admits it did not give written notice to Plaintiff, the Texas state agency, or the chief elected official of the local government within which the reduction in force occurred before May 21, 2024, but denies any duty to do so, and alternatively denies it acted contrary to the WARN Act. Zachry denies it had an obligation to provide notice before May 21, 2024. Zachry denies the remaining allegations in paragraph 30.

31. Defendant violated the WARN Act by failing to give timely written notice of the mass layoff as required by 29 U.S.C. § 2102(a), which began on or about May 21, 2024.

ANSWER: Zachry denies the allegations in paragraph 31.

32. As such, Plaintiff and the putative class are "aggrieved employees" within the meaning of the WARN Act, 29 U.S.C. § 2104(a)(7).

ANSWER: Zachry denies the allegations in paragraph 32.

33. The WARN Act expressly permits an "aggrieved employee" to bring a civil action individually and on behalf of the putative class to seek relief for violations of the provisions of 29 U.S.C. § 2102. See 29 U.S.C. § 2104(5).

ANSWER: Zachry admits the allegations in paragraph 33.

34. Moreover, Defendant's violations of the WARN Act were not in good faith, and Defendant had no reasonable grounds for believing that the plant closing or mass layoff it ordered was not in violation of the notice requirements at 29 U.S.C. § 2102.

ANSWER: Zachry denies the allegations in paragraph 34.

WHEREFORE, Plaintiff pray for the following relief:

1. Certification of the Class as a Class Action pursuant to Federal Rule of Civil Procedure 23(b), and designation of Plaintiff as a representative of the Class and counsel of record as Class Counsel.

ANSWER: Zachry denies Plaintiff is entitled to the forms of relief requested in paragraph 1.

2. A declaration that Defendant has violated the WARN Act;

ANSWER: Zachry denies Plaintiff is entitled to relief requested in paragraph 2.

3. A first priority administrative expense claim against Defendant pursuant to 11 U.S.C. § 503(b)(1)(A) in favor of the Plaintiff and the other similarly-situated former 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 COBRA benefits, for 60 days, that would have been covered and paid under the then-applicable employee benefits had that coverage continued for that period, all determined in accordance with the WARN Act, or alternatively, determining that the first $15,150 of the WARN Act claims of the Plaintiff and each of the other similarly-situated former employees are entitled to priority status under 11 U.S.C. § 507(a)(4)-(5), and the remainder is a general unsecured claim;

ANSWER: Zachry denies Plaintiff is entitled to the forms of relief requested in paragraph 3.

4. A judgment against Defendant and in favor of Plaintiff and the putative class for back pay to the fullest extent permitted by the WARN Act, 29 U.S.C. § 2104(a)(1)(A).

ANSWER: Zachry denies Plaintiff is entitled to the relief requested in paragraph 4.

5. A judgment against Defendant and in favor of Plaintiff and the putative class for the loss of benefits, including, but not limited to, medical expenses incurred by Plaintiff and the putative class during the employment loss, to the fullest extent allowable under the WARN Act, 29 U.S.C. § 2104(a)(1)(B).

ANSWER: Zachry denies Plaintiff is entitled to the forms of relief requested in paragraph 5.

6. A finding that Defendant's violations of the WARN Act was willful, not in good faith, and that Defendant had no reasonable grounds for believing that its mass layoff was not in violation of the notice requirements of the WARN Act, 29 U.S.C. § 2102.

ANSWER: Zachry denies Plaintiff is entitled to the forms of relief requested in paragraph 6.

7. A judgment against Defendant and in favor of Plaintiff and the putative class for litigation costs, expenses, attorney's fees to the fullest extent permitted under the WARN Act, 29 U.S.C. § 2104(a)(6), and for discretionary costs pursuant to Federal Rule of Civil Procedure 54(d);

ANSWER: Zachry denies Plaintiff is entitled to the forms of relief requested in paragraph 7.

8. A judgment against Defendant for civil penalties to the fullest extent allowable under the WARN Act, 29 U.S.C. § 2104(a)(3); and,

ANSWER: Zachry denies Plaintiff is entitled to any of the forms of relief requested in paragraph 8.

9. Such other and further relief as this Court deems just and proper and allowed under the WARN Act.

ANSWER: Zachry denies Plaintiff is entitled to the forms of relief requested in paragraph 9.

DEFENDANT'S AFFIRMATIVE AND ADDITIONAL DEFENSES AND AVOIDANCES

Zachry states the following affirmative and additional defenses AND AVOIDANCES to the Complaint, but does not assume the burden of proof on any such defenses, except as required by applicable law with respect to a particular defense asserted.

1. The Complaint is barred in whole, or in part, because it fails to state a claim upon which relief may be granted.

2. This Court does not have personal jurisdiction over the claims of any plaintiff or potential plaintiff who did not work in Texas.

3. To the extent Plaintiff and any putative class members have any WARN Act claim, Plaintiffs' demand for a jury trial should be stricken because jury trials are not permitted in WARN actions.

4. Plaintiff's claims, and the claims of any putative class member, are barred by the faltering company defense, as set forth in 29 U.S.C. § 2102(b)(1).

5. Plaintiff's claims, and the claims of any putative class member, are barred by the unforeseeable business circumstances defense, as set forth in 29 U.S.C. § 2102(b)(2)(A).

6. Plaintiff's claims, and the claims of any putative class members, are barred to the extent the Project was a temporary facility and the employees were hired with the understanding that their employment was limited to the duration of the project or undertaking, as set forth in 29 U.S. Code § 2103

7. If notice had been required under the WARN Act, which Zachry denies, Plaintiffs and other putative class members received as much notice as was practicable in light of the

business circumstances that were not reasonably foreseeable and Zachry was a faltering company; Plaintiffs and other putative class members were given notice explaining the basis for reducing the notification period.

8. Pursuant to 29 U.S.C. § 2104(a)(2), any back pay liability alleged by Plaintiff "and those similarly situated" should be reduced by the amount of any payments made by Zachry to any Plaintiffs and similarly situated employees.

9. To the extent that Zachry is found to have violated the WARN Act, pursuant to 29 U.S.C. §2104(a)(4), any act or omission was in good faith and Zachry had reasonable grounds for believing the act or omission was not a violation of the WARN Act. Accordingly, the Court in its discretion, should reduce the amount of any liability found against Zachry.

10. Plaintiff's claims, and claims by any putative class members, are barred, in whole or in part, because Zachry provided as much notice as was practicable once it became apparent force reductions or a project closure were required due to previously unforeseen business circumstances.

11. To the extent Plaintiff seeks to certify a class pursuant to Rule 23(b)(3), Plaintiff is precluded from seeking any type of additional relief under Rule 23(b)(2).

12. Any alleged damages suffered by Plaintiff, and any putative class members, were caused and/or were solely caused by third parties.

13. Without conceding Plaintiff, and any putative class members, have suffered any damages as a result of any alleged wrongdoing by Zachry, Plaintiff, and any putative class members, have failed to mitigate their claimed damages, the entitlement to which is expressly denied.

14. To the extent Plaintiff and any putative class members have mitigated their damages, Zachry is entitled to offset those amounts.

15. Zachry is not liable to Plaintiff and any putative class members who received an offer to transfer to a different site of employment within a reasonable commuting distance with no more than a 6-month break in employment or received an offer to transfer to any other site of employment regardless of distance with no more than a 6-month break in employment, and accepted within 30 days of the offer or of the closing or layoff, whichever is later.

16. Assuming its applicability is established, Plaintiff's damages, and those of all of the putative class members, are capped in accordance with the WARN Act.

17. The claim in the Complaint for penalties must fail because no wages were due and owing to Plaintiff, and members of the putative class, at the times material to their allegations.

18. All of Zachry's actions regarding Plaintiff and any putative class members were taken in good faith.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of July, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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