

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Laura Duffek,

Case No.:

on behalf of herself, and all others
similarly situated,

Plaintiffs,

CLASS ACTION COMPLAINT

v.

(JURY TRIAL DEMANDED)

iMedia Brands, Inc.,

Defendant.

Plaintiff Laura Duffek (“Duffek”), on behalf of herself and all others similarly situated, by and through her attorneys, for her complaint against Defendant iMedia Brands, Inc. (“iMedia,” the “Company,” or “Defendant”) states and alleges as follows:

OVERVIEW OF PLAINTIFFS’ CLAIMS

1. Duffek was employed with iMedia until her termination on or about March 24, 2020. In the termination letter she received on that date (“March 24 Letter”), the Company acknowledged that “under normal circumstances, iMedia would be required under the Worker Adjustment and Retraining Notification (WARN) Act to provide 60 days’ advance notice to employees covered by the WARN Act of a workforce reduction of this nature[.]”

2. No such WARN Act (“Act,” 29 U.S.C. 2101 *et seq.*) notice was provided to Duffek. According to the March 24 Letter, the Company was not subject to the notice

requirement because of “significant and recent unforeseeable business circumstances” related to the COVID-19 pandemic.

3. More than one third of iMedia’s employees at each of the Company’s two most significant locations (headquarters in Minnesota and a distribution center in Kentucky) were similarly terminated, including more than 50 employees in Minnesota and more than 50 employees in Kentucky.

4. The other terminations described in the preceding paragraph all occurred within 90 days or less of the termination of Duffek, and none of the terminated employees was given any WARN Act Notice.

5. Because COVID-19 has not in fact created circumstances that would allow iMedia to avoid its WARN Act obligations, Duffek brings this action on behalf of herself and other similarly situated former iMedia employees to recover the damages they have suffered as a result of the Company’s violation of the Act.

PARTIES

6. Plaintiff Laura Duffek, a former iMedia employee, is a resident of the State of Minnesota. At the time of her termination, she was an on-air guest and host.

7. Defendant iMedia Brands, Inc. is a Minnesota corporation with its principal place of business in Eden Prairie, Minnesota. Through its subsidiary, ShopHQ, it operates a cable, satellite, and broadcast home shopping television network. Defendant’s principal executive office, where Duffek worked, is located at 6740 Shady Oak Road, Eden Prairie, Minnesota 55344. Defendant also operates a distribution facility in Kentucky. Prior to

March 2020, Defendant had a total of approximately 900 employees at its headquarters and in Kentucky, a number that was reduced drastically in or around late March 2020.

JURISDICTION AND VENUE

8. This action is brought as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure to recover back pay, benefits, attorneys' fees, and other relief for the Company's violation of the WARN Act.

9. The Court has subject matter jurisdiction over these proceedings under 29 U.S.C. § 2104(a)(5) and 28 U.S.C. § 1331 for Plaintiffs' WARN Act claims.

10. This Court has personal jurisdiction over Defendant under Rule 4(k) of the Federal Rules of Civil Procedure because it is a Minnesota corporation that does extensive business in Minnesota, is headquartered in Minnesota, and is thus subject to the jurisdiction of a Minnesota court of general jurisdiction.

11. Venue is proper in this Court under 28 U.S.C. § 1391 because Defendant's principal executive office is in Minnesota and it conducts business in Minnesota.

FACTUAL BACKGROUND

12. Duffek worked for a predecessor of ShopHQ/iMedia, which was then known as Valuevision, from 1993 to 2004. Her second stint with the Company began in 2009 and ended with her termination on March 24, 2020. From 2009 to 2018, she worked as an independent contractor for the Company. From 2019 to her March 24, 2020 termination, she worked as a full-time employee for the Company.

13. Duffek has not found a new job since her March 24, 2020 termination.

14. Prior to the layoffs that constitute the basis for Plaintiffs' WARN Act claims, Defendant employed more than 400 people at its Eden Prairie headquarters and more than 400 people at its Kentucky distribution center.

15. Defendant terminated more than one third of the people at its Eden Prairie headquarters and more than one third of the people at its Kentucky distribution center during a 90-day period that includes March 24, 2020.

16. The March 24 Letter stated that:

While we acknowledge that under normal circumstances, iMedia would be required under the Worker Adjustment and Retraining Notification (WARN) Act to provide 60 days' advance notice to employees covered by the WARN Act of a workforce reduction of this nature, iMedia could not provide such notice that far in advance due to the significant and recent unforeseeable business circumstances described above [i.e. circumstances "including the substantial market and financial impact of the global spread of COVID-19"]. Specifically, the recent material market and financial impact of the global spread of the coronavirus and the resulting harm to iMedia's financial wellbeing, as well as other significant developments over the course of the last several days, led to the decision to institute this workforce reduction.

17. The financial difficulties experienced by Defendant predate COVID-19 by many months, and the reduction in force that iMedia now wants to blame on the pandemic was clearly related instead to these longstanding problems. There were several rounds of layoffs well before there was any COVID-19 concern.

18. The Company was called EVINE Live, Inc. ("EVINE") until July 17, 2019, and the name change was related to the price of EVINE stock, which fell below \$1.00 per share. Such a low share price meant it was ineligible for listing on the Nasdaq Global Select Market. As iMedia, the Company's stock has since traded on the Nasdaq Capital Market.

19. Well before COVID-19, the Company's financial problems continued to spiral downward even after the July 2019 name change.

20. According to its Form 10-K Annual Report filed on April 30, 2020, iMedia had to do a one-for-ten reverse stock split on December 11, 2019 to bring it "into compliance with the minimum bid price requirement for maintaining its listing on the Nasdaq Capital Market."

21. A February 6, 2020 Form 8-K filed by iMedia reports on a January 31, 2020 commitment "to an organizational restructuring to improve the performance of ShopHQ's on-air programming and to accelerate the Company's return to profitability." This organizational restructuring included a "plan of termination under which the Company incurred approximately \$2.1 million in charges, of which \$1.9 million represents severance expenses."

22. Despite the Company's financial problems, iMedia held the Invicta Voyager Cruise event from February 23, 2020 to March 4, 2020. The Company has held this event, which broadcasts shows from Florida and then a cruise ship, for the past three years. It is an extremely expensive endeavor in which the Company pays for round-trip airfare, luxury accommodations with food and transportation provided, and the price of the cruise for at least 8 hosts and around 30 to 40 crew members. The Company also pays for extra camera operators, catering costs, rental cars for employees, and trailers used prior to boarding the cruise.

23. The first case of coronavirus in the U.S. was reported on or about January 21, 2020, and iMedia did not base its decision on the need to terminate some employees on that one case.

24. iMedia's business operations are not the type that would be so seriously impacted by the pandemic as to require massive layoffs. As explained in the Company's Form 10-Q filed on December 10, 2019, iMedia and its subsidiaries are "collectively an interactive media company that manages ShopHQ, our nationally distributed shopping entertainment network, Bulldog Shopping Network and iMedia Web Services."

25. The December 2019 10-Q goes on to explain that iMedia Web Services is a "nascent" entity, and the Bulldog Shopping Network is a very recently launched new venture that aims to be "a niche television shopping network geared towards male consumers."

26. Thus, ShopHQ remains far and away where iMedia does most of its business.

Per the December 2019 Form 10-Q it:

offers a mix of proprietary, exclusive and name-brand merchandise in the categories of jewelry & watches, home & consumer electronics, beauty & wellness, and fashion & accessories directly to consumers 24 hours a day in an engaging and informative shopping experience via television, online and mobile devices. . . . ShopHQ programming is also streamed live online at shophq.com, a comprehensive digital commerce platform that sells products which appear on its television shopping network as well as an extended assortment of online-only merchandise, and is available on mobile channels and over-the-top platforms. Our programming and products are also marketed via mobile devices, including smartphones and tablets, and through the leading social media channels.

All of this activity can be conducted in the midst of a lockdown or a coronavirus-induced reduction of in-person interactions, and much of it is the sort of online commerce that might actually increase during a pandemic.

27. A May 27, 2020 press release filed with the SEC made clear that “[s]trong Q1 ShopHQ viewership trends continue, . . . reversing a five-plus year trend of year-over-year viewership declines.” The same press release also noted that “we believe that television retailing will be less impacted than other businesses [by COVID-19] because we serve our customers without them ever leaving their homes.”

28. In iMedia’s April 30, 2020 Form 10-K, there is a section on the “Impact of COVID-19 on Our Business,” in which it cites “significant uncertainty” about the “magnitude of the impact” of the pandemic. This Form 10-K also makes clear that the elimination of positions during the first quarter of 2020 was “a result of and to prepare for the potential financial impacts of the COVID-19 pandemic.” Preparation for uncertain potential financial impacts is not an unforeseeable circumstance that would constitute a valid reason for not providing notice to employees terminated in large enough numbers to trigger WARN Act obligations.

29. iMedia’s June 16, 2020 Form 10-Q similarly notes that “significant uncertainty exists concerning the magnitude of the impact and duration of the COVID-19 pandemic.”

30. Whatever the uncertainties might be, they have not kept the Company from hiring since the onset of the coronavirus pandemic and the March 24, 2020 layoffs of Duffek and numerous other similarly situated former iMedia employees.

31. Thus, the coronavirus logically fails as an excuse for the financial problems the Company was facing as of March 24, 2020 and completely fails as an excuse to avoid the WARN Act notice requirements.

WARN ACT CLASS ALLEGATIONS

32. Duffek brings this action with regard to violations of the WARN Act as a class action pursuant to Rule 23(b)(1) and/or 23(b)(3) of the Federal Rules of Civil Procedure on her own behalf and on the behalf of all other members of the Class described below.

33. Duffek seeks certification of a Class comprised of all iMedia employees at the Minnesota headquarters or the Kentucky distribution center who were terminated after receiving termination letters similar to the March 24, 2020 letter received by Duffek, excluding, however, those employees who had worked less than six months for the Company or whose hours fell below the requirements set forth in the WARN Act. Also included are employees terminated within 90 days of March 24, 2020 even if they received no such letter to the extent such 90-day period satisfies the requirements of the WARN Act, 29 U.S.C. § 2102(d) and they otherwise meet the requirements of the Act for receiving 60 days' notice.

34. The number of persons included in the Class is approximately 300 to 400 people, which makes them sufficiently numerous to make joinder impractical, and thus supports class certification. Detailed information on the size, composition, and distribution of the Class can be obtained easily through a review of iMedia's records.

35. Common questions of law and fact exist as to all members of the Class and predominate over any question affecting only individual Class members: (1) whether Defendant is an “employer” under the WARN Act; (2) whether Defendant provided the requisite notice for a plant closing or mass layoff; (3) whether Defendant had a valid reason for avoiding the WARN Act’s notice requirement; and (4) whether Defendant is required to pay sixty days’ pay and benefits to Plaintiff and other Class members.

36. The above-described terminations by Defendant were executed pursuant to uniform Company policies and practices, involved standard notification letters, and therefore resulted in harm to other iMedia employees similar to the harm suffered by Named Plaintiff Duffek.

37. Duffek’s claim is typical of the claims of Class members. Indeed, Duffek’s claim is nearly identical to the Class members’ claims except for a precise determination of damages.

38. Individual damages will depend on the Class member’s compensation from iMedia for the relevant period, which easily can be obtained from Defendant or from each individual Class member, without any need for individual discovery.

39. Duffek will fairly and adequately represent and protect the interests of the members of the Class, her interests are coextensive with the interests of other Class members and are not antagonistic to the interests of any Class member, and she has retained counsel competent and experienced in class action and employment litigation.

40. A class action is superior to other available methods for the fair and efficient adjudication of iMedia’s uniform practices because joinder of all Class members is

impractical as a result of numerosity. Prosecution of separate actions by individual Class members would create an inherent risk of inconsistent and varying adjudications with the concomitant risk of establishing incompatible and conflicting standards of conduct for iMedia or, as a practical matter, producing judgments that would be dispositive of the claims of other Class members.

41. As a practical matter, due to the vastly unequal financial resources between parties, a class action may be the only way that Class members' claims can or will be adjudicated.

42. Duffek foresees no significant difficulties in managing this action as a class action.

CAUSE OF ACTION

COUNT I

VIOLATION OF THE WARN ACT (29 U.S.C § 2101 *ET SEQ.*)

43. Duffek restates and re-alleges the allegations contained within the preceding paragraphs as though fully stated herein.

44. Defendant is an employer pursuant to the WARN Act, 29 U.S.C. § 2101.

45. The terminations of Duffek and Class members constituted a "mass layoff" under the WARN Act, 29 U.S.C. § 2101.

46. Pursuant to the WARN Act, 29 U.S.C. § 2102 and 20 C.F.R. § 639.1 to § 639.10 *et seq.*, Defendant was required to provide at least sixty days' prior written notice of the termination, or notice as soon as practicable, to the affected employees, explaining why the sixty days' prior notice was not given. No such notification was provided, and

Duffek and other Class members were terminated in violation of the Act, 29 U.S.C. § 2102(d), during a 90-day period that includes March 24, 2020.

47. Pursuant to 29 U.S.C. § 2102(a)(2), Defendant was required to provide notification of the layoff to state and local officials sixty days prior to the terminations. Defendant ordered the layoffs in violation of this section.

48. Defendant failed to pay Duffek and Class members their respective wages, salary, commissions, bonuses, accrued holiday pay, and accrued vacation for sixty days following their respective terminations as required under the WARN Act, 29 U.S.C. § 2104.

49. Defendant also failed to make pension and 401(k) contributions, provide other employee benefits under ERISA, and pay the medical expenses of Duffek and Class members for sixty days from and after the dates of their respective terminations as required under the WARN Act, 29 U.S.C. § 2104.

50. Section 2103 of the WARN Act exempts certain employers from the notice requirements of the Act, 29 U.S.C. §§ 2103(1) & (2). However, none of the WARN Act exemptions apply to Defendant. Accordingly, Defendant had an obligation to comply with WARN Act requirements, which it failed to meet.

51. Duffek and other Class members have been damaged because they have not received their back pay and associated benefits as required by the WARN Act.

52. Duffek and other Class members are entitled to have Defendant pay their attorneys' fees and costs incurred in this Action pursuant to 29 U.S.C. § 2104(a)(6).

PRAYER FOR RELIEF

WHEREFORE, Duffek, on behalf of herself and members of the Plaintiff Class, respectfully requests relief from this Court as follows:

a. Certification of this case as a class action under Rule 23 of the Federal Rules of Civil Procedure on behalf of the proposed Class and designation of Duffek as Class representative and her counsel as Class counsel.

b. Judgment in favor of Duffek and other members of Class against Defendant, and an award to each member of the Class of back pay, benefits, other damages alleged, and pre-judgment interest.

c. An award to Duffek and/or members of the Class of the costs of this action, including attorneys' fees.

d. An award to Duffek and/or members of the Class of all other just and proper relief to which they may be entitled.

e. In the alternative, if this action is not certified as a class action, Duffek prays that she be permitted to proceed on her claim individually and that she be awarded judgment for back pay, benefits, and costs, including attorney's fees, as provided in the WARN Act.

JURY DEMAND

Duffek demands trial by jury on all issues triable of right by jury.

Dated June 14, 2021

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ATTORNEYS FOR PLAINTIFFS

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [iMedia Brands Can't Use Pandemic to Skirt WARN Act Notice Obligations, Class Action Says](#)
