

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DEBI TOWNSEND, CHELSEA SMITH,)
HOLLY S. DANIELS, JENNIFER D.) Civil Action No. _____
GERVAIS and SHELLEY HENDERSON,)
individually and as class representatives for)
all similarly situated individuals,)
Plaintiffs,)

v.)

EDUCATION CORPORATION OF) **JURY DEMAND**
AMERICA, BRIGHTWOOD CAREER)
INSTITUTE, BRIGHTWOOD COLLEGE,) **CLASS ACTION**
ECOTECH INSTITUTE, GOLF)
ACADEMY OF AMERICA and)
VIRGINIA COLLEGE,)
Defendants.)

**CLASS ACTION COMPLAINT
FOR VIOLATION OF THE WORKER ADJUSTMENT AND
RETRAINING NOTIFICATION ACT 29 U.S.C. § 2101, et seq.**

Plaintiffs Debi Townsend, Chelsea Smith, Holly S. Daniels, Jennifer D. Gervais and Shelley Henderson, individually and as class representatives for all similarly situated individuals, by and through their undersigned counsel, bring this Complaint and make the following allegations, in accordance with the numbered paragraphs set forth below:

NATURE OF ACTION

1. This action is brought by former employees of Education Corporation of America (“ECA”) and its wholly owned subsidiaries Brightwood Career Institute, Brightwood College, Ecotech Institute, Golf Academy of America and Virginia College (collectively, “the ECA

Subsidiaries”), who were terminated without proper legal notice, as part of, or as a result of, campus shutdowns and/or mass layoffs at various facilities (“Facilities”), including but not limited to, campuses located in Alabama, California, Colorado, Florida, Georgia, Indiana, Maryland, Nevada, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas and Virginia.

2. ECA owns and operated private institutions of higher education throughout the United States. The ECA Subsidiaries are wholly-owned subsidiaries of ECA, a Delaware corporation, which operates from campuses throughout the United States (ECA and the ECA Subsidiaries are referred to collectively herein as “ECA”). Upon information and belief, ECA exercised direct control over the ECA Subsidiaries and made the decision to terminate employees of the ECA Subsidiaries without proper notice, severance, benefits or payment for earned wages, bonuses and other compensation.

3. As indicated above, Plaintiffs Debi Townsend, Chelsea Smith, Holly S. Daniels, Jennifer D. Gervais and Shelley Henderson (collectively, “Plaintiffs”) were terminated by ECA on or about December 5, 2018. Plaintiffs, and the members of the class they seek to represent, failed to receive proper advance notification of their terminations, in violation of the WARN Act and/or state wage and employee laws. Plaintiffs, and the members of the class they are seeking to represent, failed to receive payments owed to them under ECA’s compensation and benefit plans, actual payroll checks for payment of wages/salary, vacation benefits, deferred compensation and bonuses, including incentive bonuses, severance and retention bonuses, that were subsequently not honored or paid. The Plaintiffs bring this action on behalf of themselves, and other similarly situated former employees who worked for Defendants and who were terminated without cause, as part of, or as the result of, campus closings ordered by Defendants

and who were not provided 60 days advance written notice of their terminations by Defendants, as required by the Worker Adjustment and Retraining Notification Act (“WARN Act”), 29 U.S.C. § 2101 *et. seq.*

JURISDICTION AND VENUE

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

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

THE PARTIES

6. Class Plaintiff, Debi Townsend, was an ECA employee and worked at Virginia College in Huntsville, Alabama as a Program Director in Cosmetology, until her termination on or about December 5, 2018. Plaintiff’s termination was part of ECA’s mass layoff/campus closing and termination of its business operations at all campuses and colleges.

7. Class Plaintiff, Chelsea Smith, was an ECA employee and worked at Brightwood Career Institute in Philadelphia, Pennsylvania as a full-time Career Development Specialist, until her termination on or about December 5, 2018. Plaintiff’s termination was part of ECA’s mass layoff/campus closing and termination of its business operations at all campuses and colleges.

8. Class Plaintiff, Holly S. Daniels, was an ECA employee and worked at Virginia College in Augusta, Georgia as a full-time Student Finance Supervisor, until her termination on or about December 5, 2018. Plaintiff’s termination was part of ECA’s mass layoff/campus closing and termination of its business operations at all campuses and colleges.

9. Class Plaintiff, Jennifer D. Gervais, was an ECA employee and worked at Virginia College in Huntsville, Alabama as a full-time Cosmetology Instructor, until her termination on or about December 7, 2018. Plaintiff’s termination was part of ECA’s mass layoff/campus closing and termination of its business operations at all campuses and colleges.

10. Class Plaintiff, Shelley Henderson, was an ECA employee and worked at Brightwood College in Sacramento, California as a full-time Vocational Nursing Instructor, until her termination on or about December 5, 2018. Plaintiff's termination was part of ECA's mass layoff/campus closing and termination of its business operations at all campuses and colleges.

11. ECA is a privately-held, for-profit corporation, headquartered in Birmingham, Alabama, that operated proprietary colleges across the United States with more than 70 locations serving more than 20,000 students. Upon information and belief, ECA also operated an online school along with several affiliated businesses. ECA is incorporated in the state of Delaware. ECA's colleges offer programs of study culminating in diplomas and certificates, associate's degrees, bachelor's degrees, master's degrees and doctorate degrees at various campuses and online.

12. Defendant Brightwood Career Institute, a subsidiary wholly owned by ECA, was accredited by the Accrediting Council for Independent Colleges and Schools (ACICS) and offered programs focused on the employment needs across Pennsylvania by placing campuses in Broomall, Harrisburg, Philadelphia, Philadelphia Mills and Pittsburgh.

13. Defendant Brightwood College, a subsidiary wholly owned by ECA, was also accredited by the ACICS and offered degree and diploma programs at campuses located in California, Indiana, Maryland, Nevada, North Carolina, Ohio, Tennessee and Texas.

14. Defendant Culinary Institute of Virginia College, a subsidiary wholly owned by ECA, was accredited by the ACICS and offered culinary school training at campuses in Alabama, Florida, Georgia, North Carolina, South Carolina and Virginia.

15. Defendant Ecotech Institute, a subsidiary wholly owned by ECA, was accredited by the ACICS and offered courses in renewable energy and energy efficiency at its campus in Aurora, Colorado.

16. Defendant Golf Academy of America, a subsidiary wholly owned by ECA, was accredited by the ACICS and offered golf training at campuses in Arizona, California, Florida, South Carolina and Texas.

17. Defendant Virginia College, a subsidiary wholly owned by ECA, was accredited by the ACICS and offered diploma and associate's degree programs at campuses in Alabama, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas and Virginia.

18. Plaintiffs bring this action on behalf of themselves, and other similarly-situated former employees who worked for ECA and its wholly owned subsidiaries and were terminated without cause, as part of, or as the result of, the mass layoff/campus closing/termination of operations ordered by ECA and who were not provided 60 days advance written notice of their terminations by Defendants, as required by the Worker Adjustment and Retraining Notification Act ("WARN Act"), 29 U.S.C. § 2101 *et seq.*

WARN ACT CLASS ALLEGATIONS

19. The Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

20. The Plaintiffs bring a 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 Federal Rules of Civil Procedure, Rule 23(a), who worked at or reported to an ECA campus or Facility and were terminated without cause as the reasonably

foreseeable consequence of the mass layoff/campus closing ordered by Defendants, and who are affected employees, within the meaning of 29 U.S.C. § 2101(a)(5) (the “WARN Class”).

21. The persons in the WARN Class identified above (“WARN Class Members”) are so numerous that joinder of all members is impracticable. Upon information and belief, the Plaintiffs believe that the Class consists of at least 150-350 employees. 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 Defendants.

22. On information and belief, the identity of the members of the class and the recent residential address of each of the WARN Class Members is contained in the books and records of Defendants.

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

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

- Whether the members of the WARN Class were employees of the Defendants who worked at or reported to an ECA campus or Facility;
- Whether Defendants 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
- Whether Defendants unlawfully failed to pay the WARN Class Members 60 days wages and benefits as required by the WARN Act.

25. The Plaintiffs' claims are typical of those of the WARN Class. The Plaintiffs, like other WARN Class members, worked at or reported to the an ECA campus or Facility and were terminated without cause or as part of the mass layoff/plant closing ordered by Defendants.

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

27. The Defendants terminated the Plaintiffs' employment as part of a mass layoff/campus closing as defined by 29 U.S.C. § 2101(a)(2), (3), for which they were entitled to receive 60 days advance written notice under the WARN Act.

28. The Plaintiffs and the other similarly situated former employees are "affected employees" within the meaning of 29 U.S.C. § 2101(a)(5).

29. 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 is 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.

30. 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.

31. Plaintiffs intend to send notice to all members of the WARN Class to the extent required by Rule 23.

CLAIMS FOR RELIEF

32. Plaintiffs re-allege and incorporates by reference all allegations in all preceding paragraphs.

33. At all relevant times, Defendants 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.

34. At all relevant times, Defendants were “employers,” 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 both during and after the Defendants’ decision to orchestrate the mass layoff of their employees at the ECA campuses and ECA Subsidiaries and/or the shut-down of Defendants’ business operations.

35. The Defendants ordered and arranged for a “plant closing”, as that term is defined by 29 U.S.C. § 2101(a)(2).

36. The plant/campus closing at Defendants’ employment sites resulted in “employment losses,” as that term is defined by 29 U.S.C. § 2101(a)(2) for at least fifty of Defendants’ employees as well as thirty-three percent (33%) of Defendants’ workforce at the employment sites, excluding “part-time employees,” as that term is defined by 29 U.S.C. § 2101(a)(8), and at least 50 employees (again excluding any part-time employees) experienced an “employment loss” at single sites of employment.

37. The Plaintiffs and the Class Members were terminated by Defendants without cause on their part, as part of or as the reasonably foreseeable consequence of the mass layoff/plant closing ordered by Defendants.

38. The Plaintiffs and the Class Members are “affected employees” of Defendants, within the meaning of 29 U.S.C. § 2101(a)(5).

39. Defendants were required by the WARN Act to give the Plaintiffs and the Class Members at least 60 days advance written notice of their terminations.

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

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

42. Defendants failed to pay the Plaintiffs and each of the Class Members their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for 60 days following their respective terminations, and upon information and belief, failed to make the pension and 401(k) contributions from and after the dates of their respective terminations.

43. The relief sought in this proceeding is equitable in nature.

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

- a. Certification of this action as a Class Action;
- b. Designation of the Plaintiffs as Class Representatives;
- c. Appointment of the undersigned attorneys as Class Counsel;
- d. Judgment finding that Defendants’ conduct was a violation of the WARN Act, 29 U.S.C. § 2101 *et seq.*;

- e. Award of Damages in favor of each named Plaintiff and each Other Similarly Situated Individual, equal to 60 days' wages and benefits, pursuant to the WARN Act;
- f. Award of Damages in favor of each WARN Class Member equal to the unpaid wages, penalties, and interest due from the date the wages were due;
- g. All interest as allowed by law on the amounts owed under the preceding paragraphs;
- h. Reasonable attorneys' fees and costs; and
- i. Such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Trial by jury is demanded on all issues triable by jury.

DATED: December 7, 2018

**KLEHR HARRISON HARVEY
BRANZBURG LLP**

/s/ Sally E. Veghte

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Attorneys for Class Plaintiffs and the Putative Class

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Debi Townsend, Chelsea Smith, Holly S. Daniels, Jennifer D. Gervais and Shelley Henderson, individual and as class representatives

(b) County of Residence of First Listed Plaintiff Madison County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Sally E. Veghte (DE Bar No. 4762)
Klehr Harrison Harvey Branzburg LLP
919 Market St., Ste. 1000, Wilmington, DE 19801 302-552-5503

DEFENDANTS

Education Corporation of America, Brightwood Career Institute, Brightwood College, Ecotech Institute, Golf Academy of America, Virginia College

County of Residence of First Listed Defendant Kent County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|---|--|---|--|---|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | | | |
| <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | <input type="checkbox"/> 876 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes | |

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. 2101, et seq.; 29 U.S.C. 1001 et seq.
 Brief description of cause:
Violation of Worker Adjustment and Retraining Notification Act (WARN Act)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 12/07/2018 SIGNATURE OF ATTORNEY OF RECORD Sally E. Veghte Sally E. Veghte (Bar No. 4762)

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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