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11 Attorneys for Individual and Representative Plaintiffs

12 **IN THE UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 LAURA WERTH, CARL GOODMAN,  
and ANNA SCARPA, individually, on  
15 behalf of all others similarly situated, and  
on behalf of the general public

16  
17 Plaintiffs,

18 vs.

19 HELLER, EHRMAN, WHITE, &  
McAULIFFE LLP; HELLER, EHRMAN,  
20 WHITE & McAULIFFE A  
PROFESSIONAL CORPORATION;  
21 HELLER, EHRMAN, WHITE &  
McAULIFFE (WASHINGTON), P.S.;  
22 HELLER, EHRMAN, WHITE &  
McAULIFFE, A PROFESSIONAL  
23 CORPORATION; HELLER, EHRMAN,  
24 WHITE & McAULIFFE (OREGON), P.C.;  
25 HELLER, EHRMAN, WHITE &  
McAULIFFE (ALASKA), P.C.; HELLER  
26 EHRMAN (CHINA), P.C.; and DOES 1-  
50,

27  
28 Defendants.

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT FOR  
DAMAGES, RESTITUTION AND  
INJUNCTIVE RELIEF**

- (1) Violation of the WARN Act (29 U.S.C. § 2101 et seq.)
- (2) Violation of the California WARN Act (Cal. Labor Code § 1400 et seq.)
- (3) Failure To Pay Vacation (Cal. Labor § 227.3)
- (4) Waiting Time Penalties (California Labor Code Sections 201-203)
- (5) Breach Of Contract As To The Washington Vacation Class
- (6) Promissory Estoppel As To The Washington Vacation Class
- (7) Breach Of Contract As To The New York Vacation Class
- (8) Promissory Estoppel As To The New York Vacation Class
- (9) Unfair Business Practices (Cal. Bus. Prof Code § 17200, et. seq.)

**DEMAND FOR JURY TRIAL**

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**PRELIMINARY STATEMENT**

1. This case arises out of the dissolution of Heller Ehrman White & McAuliffe, a nationwide law firm which began doing business in San Francisco in 1890. Plaintiffs and proposed class members are employees who seek wages that Defendants have refused to pay following the abrupt termination of their employment.

2. Through this action, Plaintiffs and other similarly situated employees of Defendants seek recovery of damages in the amount of 60 days' pay and ERISA benefits by reason of Defendants' violation of the Plaintiffs' rights under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq. (the "WARN Act") and the California WARN Act, Cal. Labor Code § 1400 et seq. (the "California WARN Act"). Plaintiffs were employees of Defendants and were terminated as part of, or as a result of, mass layoffs and/or plant closings ordered by the Defendants. Defendants violated federal law and state law by failing to give Plaintiffs and other similarly situated employees of the Defendants 60 days notice as required by State and Federal Law.

3. Plaintiffs and other similarly situated employees also seek recovery of unpaid wages, including vacation time, and waiting time penalties in the State of California, as a result of Defendants' failure to pay employees all wages, including vacation time, due and owing at the time of their terminations.

**THE PARTIES**

4. Individual and Representative Plaintiff Laura Werth is an individual residing in Vallejo, California (Solano County). She was employed by Defendants from September 1996 to October 10, 2008 as a Technology Assistant in Defendants' San Francisco office.

5. Individual and Representative Plaintiff Carl Goodman is an individual residing in Seattle, Washington. He was employed by Defendants from September 2005 to October 10, 2008 as a Senior Manager of Business Development in Defendants' Seattle, Washington office.

6. Individual and Representative Plaintiff Anna Scarpa is an individual residing in Franklin Square, New York. She was employed by Defendants from approximately October 16,

1 2006 to approximately October 17, 2008 as a Manager of Professional Services in Defendants'  
2 New York office.

3 7. Defendant Heller, Ehrman, White & McAuliffe LLP (the "Heller Ehrman  
4 Partnership") is a limited liability partnership organized under the laws of the State of California.  
5 The partnership maintains offices and conducts business in the State of California, including in  
6 San Francisco.

7 8. Defendant Heller, Ehrman, White & McAuliffe, A Professional Corporation  
8 ("Heller Ehrman California") is a domestic corporation organized under the laws of the State of  
9 California. Heller Ehrman California is a parent company of the Heller Ehrman Partnership, and  
10 maintains offices and conducts business in the State of California, including in San Francisco.

11 9. Defendant Heller, Ehrman, White & McAuliffe (Washington), P.S. ("Heller  
12 Ehrman Washington") is a foreign corporation organized under the laws of the State of  
13 Washington. Heller Ehrman Washington is a parent company of the Heller Ehrman Partnership.

14 10. Defendant Heller, Ehrman, White & McAuliffe, A Professional Corporation  
15 ("Heller Ehrman New York") is a foreign corporation organized under the laws of the State of  
16 New York. Heller Ehrman New York is a parent company of the Heller Ehrman Partnership.

17 11. Defendant Heller, Ehrman, White & McAuliffe (Oregon), P.C. ("Heller Ehrman  
18 Oregon") is a foreign corporation organized under the laws of the State of Oregon. Heller  
19 Ehrman Oregon is a parent company of the Heller Ehrman Partnership.

20 12. Defendant Heller, Ehrman, White & McAuliffe (Alaska), P.C. (Heller Ehrman  
21 Alaska") is a foreign corporation organized under the laws of the State of Alaska. Heller Ehrman  
22 Alaska is a parent company of the Heller Ehrman Partnership.

23 13. Defendant Heller, Ehrman (China), P.C. ("Heller Ehrman D.C.") is a foreign  
24 corporation organized under the laws of the District of Columbia. Heller Ehrman D.C. is a parent  
25 company of the Heller Ehrman Partnership. Defendants are referred to collectively herein as  
26 "Heller Ehrman."

27 14. Defendants Does 1-50, inclusive, are sued herein under fictitious names. Their  
28 true names and capacities are unknown to Plaintiffs. When their true names and capacities are

1 ascertained, Plaintiffs will amend this complaint by inserting their true names and capacities  
2 herein. Plaintiffs are informed and believe and thereon allege that each of the fictitiously-named  
3 defendants is responsible in some manner for the occurrences herein alleged, and that the  
4 damages of Plaintiffs and the putative class members herein alleged were proximately caused by  
5 such Defendants.

6 15. Plaintiffs are informed, believe, and thereon allege that each of the Defendants  
7 herein was, at all times relevant to this action, the agent, employee, representing partner, and/or  
8 joint venturer of the remaining Defendants and was acting within the course and scope of the  
9 relationship. Plaintiffs are further informed, believe, and thereon allege that each of the  
10 Defendants herein gave consent to, ratified and authorized the acts alleged herein to the remaining  
11 Defendants.

12 16. Plaintiffs are further informed, believe, and thereon allege that the Defendants  
13 herein acted as a "single employer" at all relevant times for the purposes of the WARN Act. At  
14 all relevant times, Defendants maintained and facilities across the country that qualified for  
15 protection under the WARN Act (collectively the "Facilities").

#### 16 **JURISDICTION AND VENUE**

17 17. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 as this case  
18 is being brought under the WARN Act, 29 U.S.C. § 2101 et seq.

19 18. This Court has original jurisdiction over Plaintiffs' state law claims under 29  
20 U.S.C. § 1332(d) (the "Class Action Fairness Act"). Plaintiffs bring this case as a class action, at  
21 least one Plaintiff is a citizen of a different state than at least one Defendant, and the amount in  
22 controversy exceeds \$5,000,000.

23 19. This Court also has supplemental jurisdiction over the state law claims pursuant to  
24 28 U.S.C. § 1367.

25 20. Venue is proper in the United States District Court, Northern District of California  
26 pursuant to 28 U.S.C. § 1391, because the Heller Ehrman Partnership and Heller Ehrman  
27 California reside within this district, and because a substantial part of the events and omissions  
28 giving rise to Plaintiffs' claims occurred in this District.

1           21.     JURISDICTIONAL STATEMENT REQUIRED BY L.R. 3-5. Under L.R. 3-2(c),  
2 this civil action arose in the County of San Francisco and is therefore properly assigned to either  
3 the Oakland or San Francisco division of this District.

4                           **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

5           22.     On or about September 25, 2008, Heller Ehrman announced that it was dissolving  
6 its partnership. On that day it informed some employees that their final day would be November  
7 28, 2008.

8           23.     On or about October 3, 2008, Heller Ehrman announced that it would not be  
9 paying employees for accrued but unused vacation when they ended their employment with  
10 Heller Ehrman.

11          24.     Upon information and belief, on October 10, 2008, Defendants terminated the  
12 employment of over 100 Heller Ehrman employees nationwide.

13          25.     Upon information and belief, on October 17, 2008, Defendants terminated the  
14 employment of hundreds of Heller Ehrman employees nationwide.

15          26.     Heller Ehrman maintains a vacation policy that applies to most of its United States  
16 employees. Through that vacation policy, employees accrue vacation as they work for Heller  
17 Ehrman.

18          27.     Heller Ehrman also maintains a sabbatical program which provides additional  
19 vacation to employees who have worked 10 years or more.

20          28.     Heller Ehrman's vacation policy provides: "Employees who terminate or change  
21 their status to on-call will receive a vacation payout of all accrued vacation at their hourly rate on  
22 their last day of employment with the Firm."

23          29.     Starting approximately October 3, 2008, Heller Ehrman ceased paying employees  
24 for their unused vacation at the time of termination. Upon information and belief, Heller Ehrman  
25 has not paid unused vacation to employees whose employment ended on or after October 3, 2008.

26          30.     Plaintiff Werth had vacation time available to her when she was involuntarily  
27 terminated on October 10, 2008. Heller Ehrman has not paid her for this vacation.  
28

1           31. Plaintiff Goodman had approximately 150 hours of vacation available to him when  
2 he was involuntarily terminated on October 10, 2008. Heller Ehrman has not paid him for this  
3 vacation.

4           32. Plaintiff Scarpa had over 100 hours of vacation available to her when she was  
5 involuntarily terminated on October 17, 2008. Heller Ehrman has not paid her for this vacation.

6                           **CLASS ACTION ALLEGATIONS UNDER 29 U.S.C. § 2104 (WARN ACT)**

7           33. Plaintiffs and those they seek to represent herein were discharged without cause on  
8 their part on or about October 10, 2008 or within 30 days of that date, as the reasonable  
9 foreseeable consequence of the mass layoff or plant closing ordered by Defendants, and are  
10 “affected employees” within the meaning on 29 U.S.C. §2101(a)(5).

11           34. Plaintiffs bring this action on their own behalf, pursuant to the WARN Act, and on  
12 behalf of all other similarly situated former employees of Defendants who were terminated on or  
13 about October 10, 2008, or within 30 days of that date, and thereafter who worked at one of the  
14 Facilities until their termination.

15           35. During the 30 days starting October 10, 2008, Defendants terminated Plaintiffs’  
16 employment as part of a mass layoff and/or a plant closing as defined by 29 U.S.C. § 2101 (a)(2),  
17 (3) for which they were entitled to receive sixty (60) days advance written notice under the  
18 WARN Act.

19           36. Defendants, as a single employer, did not give Plaintiffs the statutorily required  
20 sixty (60) days notice of the mass layoff or termination in violation of the WARN Act.

21           37. Upon information and belief, at or about the time that Plaintiffs were discharged,  
22 on or after October 10, 2008, Defendants discharged hundreds of other employees at the Facilities  
23 (the “Other Similarly Situated Former Employees”).

24           38. Pursuant to 29 U.S.C. § 2104(a)(5), Plaintiffs maintain this claim on behalf of  
25 themselves and each of the Other Similarly Situated Former Employees.

26           39. Each of the Other Similarly Situated Former Employees is similarly situated to  
27 Plaintiffs in respect to his or his rights under the WARN Act, in that, *inter alia*:  
28

- 1 a. Plaintiffs and the Other Similarly Situated Former Employees were discharged  
2 by Defendants without cause on their part.
- 3 b. Plaintiffs and the Other Similarly Situated Former Employees are “affected  
4 employee(s)” within the meaning of the WARN Act 29 U.S.C. § 2101(a)(5).
- 5 c. Defendants were required by the WARN Act to give Plaintiffs and the Other  
6 Similarly Situated Former Employees at least sixty (60) days advance written  
7 notice of their respective terminations.
- 8 d. Prior to their termination, neither Plaintiffs nor the Other Similarly Situated  
9 Former Employees received written notice that complied with the requirements  
10 of the WARN Act.
- 11 e. Defendants failed to pay Plaintiffs and the Other Similarly Situated Former  
12 Employees their respective wages, salary, commissions, bonuses, accrued  
13 holiday, sabbatical, and vacation for sixty (60) calendar days following notice  
14 of their terminations and failed to make the 401(k) contributions and provide  
15 them with health insurance coverage and other employee benefits under  
16 ERISA for sixty (60) calendar days from and after notice of their respective  
17 terminations.

18 **CALIFORNIA WARN ACT ALLEGATIONS**

19 40. Plaintiff Werth and others similarly situated were employed at Defendants’  
20 facilities in California until their employment was ended in violation of Cal. Labor § 1400, et  
21 seq., within 30 days of October 10, 2008.

22 41. Plaintiffs Werth and others similarly situated were employees of Defendants, and  
23 Defendants were their employers, as those terms are defined in Cal. Labor § 1400.

24 42. Defendants operated facilities in California that were “covered establishment(s),”  
25 as that term is defined in Cal. Labor § 1400, because they employed 75 or more persons in certain  
26 facilities in the 12 months preceding October 10, 2008.

27 //

28 //

1           43. Plaintiff Werth and others similarly situated were subjected to a “mass layoff,”  
2 “relocation,” or “termination,” as those terms are defined in Cal. Labor § 1400, within 30 days of  
3 October 10, 2008.

4           44. Defendants failed to provide Plaintiff Werth and others similarly situated with the  
5 proper notice required by Cal. Labor § 1401 prior to the mass layoff, relocation, or termination.

6           45. Defendants failed to provide Plaintiff Werth and others similarly situated with 60  
7 days wages and benefits as required by Cal. Labor § 1402.

8                           **WARN ACT CLASS ACTION ALLEGATIONS UNDER RULE 23**

9           46. Plaintiffs sue under Rules 23(a), (b)(1) and (b)(3) of the Federal Rules of Civil  
10 Procedure on behalf of the following proposed WARN Classes:

11 **WARN Class:**                   All employees who worked at or reported to one of Defendants’  
12 Facilities and were terminated without cause in the 30 days starting  
13 October 10, 2008, or were terminated without cause as the  
14 reasonable foreseeable consequence of the mass layoff or plant  
15 closing ordered by Defendants on or about October 10, 2008, and  
16 who are affected employees, within the meaning of 29 U.S.C. §  
17 2101(a)(5).

18 **CA WARN Class:**               All employees who worked at or reported to one of Defendants’  
19 qualifying facilities in California and who were subject to a mass  
20 layoff, relocation, or termination ordered by Defendants on or after  
21 October 10, 2008.

22           47. **Numerosity:** The Proposed Classes are so numerous that joinder of all members  
23 is impracticable. Plaintiffs are informed and believe, and on that basis allege, that hundreds of  
24 people satisfy the definition of the Proposed Classes.

25           48. **Typicality:** The Plaintiffs’ claims are typical of the members of the Proposed  
26 Classes. Plaintiffs, and proposed class members, were involuntarily terminated by Defendants  
27 without proper notice under the WARN Act.  
28

1           49.    Superiority: A class action is superior to other available methods for the fair and  
2 efficient adjudication of the controversy, especially in the context of WARN Act litigation, which  
3 necessarily involves a single decision or set of decisions that affects the rights of hundreds of  
4 employees.

5           50.    Adequacy: Plaintiffs will fairly and adequately protect the interests of the  
6 Proposed Class, and have retained counsel experienced in representing employees in complex  
7 class litigation.

8           51.    Commonality: Common questions of law and fact exist to all members of the  
9 Proposed Class and predominate over any questions solely affecting individual members of the  
10 Proposed Class, including but not limited to:

- 11           a. whether Defendants were covered employers under the WARN Act and/or the  
12 CA WARN Act;
- 13           b. whether all Class members were protected under the WARN Act and/or the  
14 CA WARN Act;
- 15           c. whether all Class members' employment locations were covered Facilities  
16 under the WARN Act and/or the CA WARN Act;
- 17           d. whether Defendants acted as a single employer in terminating Class Members'  
18 employment;
- 19           e. whether Defendants gave at least 60 days advance written notice to the Class  
20 members, as required by the WARN Act and/or the CA WARN Act; and
- 21           f. whether Defendants failed to pay the Class members wages and to provide  
22 other employee benefits for the sixty day period following their respective  
23 terminations.

24           52.    This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because  
25 prosecution of actions by or against individual members of the class would result in inconsistent  
26 or varying adjudications and create the risk of incompatible standards of conduct for Defendant.  
27 Further, adjudication of each individual member's claim as a separate action would be dispositive  
28

1 of the interest of other individuals not party to this action, impeding their ability to protect their  
2 interests.

3 53. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because  
4 questions of law and fact common to the Proposed Class predominate over any questions  
5 affecting only individual members of the Proposed Class, and because a class action is superior to  
6 other available methods for the fair and efficient adjudication of this litigation. Litigation of these  
7 claims in one forum is efficient, especially in the context of WARN Act litigation, which  
8 necessarily involves a single decision or set of decisions that affects the rights of hundreds of  
9 employees. In addition, class certification is superior because it will obviate the need for unduly  
10 duplicative litigation that might result in inconsistent judgments about Defendant's practices.

11 54. Plaintiffs intend to send notice to all members of the Proposed Class to the extent  
12 required by Rule 23. The names and address of the Proposed Class are available from  
13 Defendants.

#### 14 VACATION TIME CLASS ACTION ALLEGATIONS

15 55. Plaintiffs sue under Rules 23(a), (b)(1), and (b)(3) of the Federal Rules of Civil  
16 Procedure on behalf of the following proposed Vacation Classes:

17 **California Vacation Class:** All former employees of Defendants in the State of California  
18 whose employment with Defendants ended on or after October 3,  
19 2008, through the trial of this case, and who had accrued but unused  
20 vacation at the time of termination.

21 **Washington Vacation Class:** All former employees of Defendants in the State of  
22 Washington whose employment with Defendants ended on or after  
23 October 3, 2008, through the trial of this case, and who had accrued  
24 but unused vacation at the time of termination.

25 **New York Vacation Class:** All former employees of Defendants in the State of New York  
26 whose employment with Defendants ended on or after October 3,  
27 2008, through the trial of this case, and who had accrued but unused  
28 vacation at the time of termination.

1           56.     Additionally and in the alternative, Plaintiffs sue under Cal. Bus. Prof. Code §  
2 17200, et. seq., on behalf of the following group of similarly situated individuals:

3 **17200 Class:**         All employees nationwide whose employment with Defendants ended on  
4                             or after October 3, 2008, through the trial of this case, and who had accrued  
5                             but unused vacation at the time of termination.

6           57.     Numerosity:   The Proposed Classes are so numerous that joinder of all members  
7 is impracticable. Plaintiffs are informed and believe, and on that basis allege, that hundreds of  
8 people who satisfy the definition of the Proposed Classes.

9           58.     Typicality:   The Plaintiffs' claims are typical of the members of the Proposed  
10 Classes. Plaintiffs are informed and believe that Heller Ehrman uniformly failed to pay accrued  
11 vacation to individuals whose employment with Heller Ehrman ended on or after October 3,  
12 2008.

13           59.     Superiority:   A class action is superior to other available methods for the fair and  
14 efficient adjudication of the controversy here, where Defendants have failed to pay wages to  
15 hundreds of employees, and Defendants' dissolution may shrink the assets available to pay  
16 employees.

17           60.     Adequacy:    Plaintiffs will fairly and adequately protect the interests of the  
18 Proposed Class, and have retained counsel experienced in representing employees in complex  
19 class litigation.

20           61.     Commonality: Common questions of law and fact exist to all members of the  
21 Proposed Class and predominate over any questions solely affecting individual members of the  
22 Proposed Class, including but not limited to:

- 23                   a. Whether Defendants maintained a policy of providing vacation to Class  
24                             Members;
- 25                   b. Whether Defendants' vacation policy required that Defendants pay Class  
26                             Members for their unused vacation at the time of termination;
- 27                   c. Whether Defendants uniformly and unlawfully failed to pay vacation time to  
28                             class members;

- 1 d. Whether Plaintiffs and Proposed Class Members who worked in California are  
2 entitled to waiting time penalties pursuant to California Labor Code § 203;  
3 e. Whether Defendants' conduct violated the California Unfair Practices Act set  
4 forth in the Business and Professions Code § 17200 *et seq.* by violating state  
5 and federal law as set forth herein; and  
6 f. The proper measure of damages sustained by the Proposed Class.

7 62. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because  
8 prosecution of actions by or against individual members of the class would result in inconsistent  
9 or varying adjudications and create the risk of incompatible standards of conduct for Defendants.  
10 Further, adjudication of each individual member's claim as a separate action would be dispositive  
11 of the interest of other individuals not party to this action, impeding their ability to protect their  
12 interests.

13 63. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because  
14 questions of law and fact common to the Proposed Classes predominate over any questions  
15 affecting only individual members of the Proposed Classes, and because a class action is superior  
16 to other available methods for the fair and efficient adjudication of this litigation. Upon  
17 information and belief, Defendants' vacation policy applied to all Class Members and Defendants  
18 uniformly failed to pay unused vacation time to all Class Members. In addition, class  
19 certification is superior because it will obviate the need for unduly duplicative litigation that  
20 might result in inconsistent judgments about Defendant's practices.

21 64. Plaintiffs intend to send notice to all members of the Proposed Class to the extent  
22 required by Rule 23. The names and address of the Proposed Class are available from  
23 Defendants.

24 **FIRST CLAIM FOR RELIEF**

25 **(Violation of the WARN Act)**

26 65. Plaintiffs allege and incorporate by reference the allegations in the preceding  
27 paragraphs.

1           66.     At all relevant times, the Defendants employed more than 100 employees who in  
2 the aggregate worked at least 4,000 hours per week exclusive of hours of overtime within the  
3 United States.

4           67.     At all relevant times, each Defendants were “employers” as that term is defined in  
5 29 U.S.C. § 2101(a)(1) and 20 C.F.R. § 639(a) and continued to operate as a business until  
6 determining to order a mass layoff and/or plant closing at the Facilities.

7           68.     The Defendants constituted a “single employer” of Plaintiffs and WARN Class  
8 members under the WARN Act.

9           69.     On or about October 10, 2008 the Defendants ordered a “mass layoff” and/or plant  
10 closing of the Facilities, as that term is defined in 29 U.S.C. § 2101(a)(2).

11           70.     The mass layoff and/or plant closing at the Facilities resulted in “employment  
12 losses,” as that term is defined by 29 U.S.C. § 2101(a)(2) for at least fifty (50) of Defendants’  
13 employees as well as 33% of Defendants’ workforce at each of the Facilities, excluding part-time  
14 employees as that term is defined by 29 U.S.C. § 2101(a)(8).

15           71.     Plaintiffs and each of the other members of the WARN Class were discharged by  
16 Defendants without cause on their part, as part of or as the reasonable foreseeable result of the  
17 mass layoff and/or plant closing ordered by Defendants at the Facilities.

18           72.     Plaintiffs and the other members of the WARN Class are “affected employees” of  
19 Defendants within the meaning of 29 U.S.C. §2101(a)(5).

20           73.     Defendants failed to give Plaintiffs and other members of the WARN Class written  
21 notice that complied with the requirements of the WARN act.

22           74.     Plaintiffs and each of the other members of the WARN Class are “aggrieved  
23 employees” of the Defendants as that term is defined in 29 U.S.C. §2104(a)(7).

24           75.     Defendants failed to pay Plaintiffs and each of the other members of the WARN  
25 Class their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued  
26 vacation for 60 days following notice of their terminations and failed to make the pension and  
27 401(k) contributions and provide employee benefits under ERISA, for 60 days following notice  
28

1 of their respective terminations. Defendants are also liable to Plaintiffs for their reasonable  
2 attorneys fees under 29 U.S.C. § 2104.

3 **SECOND CLAIM FOR RELIEF**

4 **Violation of the California WARN Act (Cal. Labor Code § 1400 et seq.)**

5 76. Plaintiffs allege and incorporate by reference the allegations in the preceding  
6 paragraphs.

7 77. In the 12 months proceeding October 10, 2008, Defendants operated facilities in  
8 California in which they employed 75 persons or more.

9 78. Defendants' actions, as described above and as they occurred at Defendants'  
10 qualifying facilities in California, constituted a "mass layoff," "relocation," or "termination,"  
11 without proper notice, in violation of the California WARN Act, Cal Labor § 1400 et seq.

12 79. Defendants are therefore liable to Plaintiff Werth and the California WARN Class  
13 for back pay and benefits for 60 days, as outlined in Cal. Labor § 1402, as well as attorneys' fees  
14 under Cal. Labor § 1404.

15 **THIRD CLAIM FOR RELIEF**

16 **(Failure To Pay Vacation Under Cal. Labor § 227.3)**

17 80. Plaintiffs allege and incorporate by reference the allegations in the preceding  
18 paragraphs.

19 81. Cal. Labor § 227.3 requires that employers who provide employees with vacation  
20 time must pay employees for all unused vacation at the time of termination of employment.

21 82. Defendant violated Cal. Labor § 227.3 by failing to pay Plaintiff Werth and the  
22 Proposed California Vacation Class the vacation time (including sabbatical time) due and owing  
23 to them at the time of the termination of their employment.

24 83. As a result of Defendants' violation of law, Plaintiff Werth and the Proposed  
25 California Vacation Class have suffered damages, including loss of earnings for unpaid vacation  
26 time in an amount to be established at trial, an award of attorneys' fees pursuant to Code of Civil  
27 Procedure section 1021.5 and other applicable law, and costs.

28

1 **FOURTH CLAIM FOR RELIEF**

2 **(Waiting Time Penalties Under Cal. Labor § 203)**

3 84. Plaintiffs allege and incorporate by reference the allegations in the preceding  
4 paragraphs.

5 85. California WARN Class and California Vacation Class Members have been  
6 terminated, or have resigned, from their positions with Defendants. Defendants, however,  
7 willfully failed to pay such Class Members all wages owed them, including vacation time and  
8 their final week's pay, within the time limits set forth in California Labor Code sections 201 and  
9 202.

10 86. Under Labor Code sections 201, 202, and 203, Class Members are entitled to  
11 waiting time penalties for Defendants' willful failure to timely pay all wages owed upon  
12 separation of their employment.

13 **FIFTH CLAIM FOR RELIEF**

14 **(Breach Of Contract As To The Washington Vacation Class)**

15 87. Plaintiffs allege and incorporate by reference the allegations in the preceding  
16 paragraphs.

17 88. A contract, oral and written, express and implied, existed between Members of the  
18 Washington Vacation Class (including Plaintiff Goodman) and Defendants.

19 89. By that contract, Defendants were required to pay employees all accrued vacation  
20 time, including sabbatical leave, at the termination of employment.

21 90. Defendants violated that contract by failing to pay vacation time to Plaintiff  
22 Goodman and Members of the Washington Vacation Class.

23 91. As a result of Defendants' breach of contract, Plaintiff Goodman and Washington  
24 Vacation Class Members suffered damages in the amount of their accrued but unpaid vacation  
25 and sabbatical time, to be determined at trial.

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1 **EIGHTH CLAIM FOR RELIEF**

2 **(Promissory Estoppel As To The New York Vacation Class)**

3 102. Plaintiffs allege and incorporate by reference the allegations in the preceding  
4 paragraphs.

5 103. Defendants reasonably expected to induce Plaintiff Scarpa and New York  
6 Vacation Class Members, and did induce Plaintiff Scarpa and New York Vacation Class  
7 Members, to rely on promises relating to the payment of unused vacation and sabbatical time.

8 104. Plaintiff Scarpa and New York Vacation Class Members reasonably relied to their  
9 detriment on promises and representations made to her by Defendants relating to the payment of  
10 unused vacation.

11 105. Defendants have refused to honor the promises made to Plaintiff Scarpa and New  
12 York Vacation Class Members.

13 106. As a result, Plaintiff Scarpa and New York Vacation Class Members are entitled to  
14 an award in equity in the amount of their unused vacation and sabbatical time, to be determined at  
15 trial.

16 **NINTH CLAIM FOR RELIEF**

17 **(Unfair Practice under the California Unfair Competition Act)**

18 107. Plaintiffs allege and incorporate by reference the allegations in the preceding  
19 paragraphs.

20 108. Section 17200 of the California Business and Professions Code — California's  
21 Unfair Competition Law — prohibits unfair competition by prohibiting, *inter alia*, any unlawful  
22 or unfair business acts or practices. The foregoing conduct by Defendants, as alleged, constitutes  
23 unlawful business actions and practices in violation of Section 17200, *et seq.*

24 109. Pursuant to Business and Professions Code § 17200 *et seq.*, Plaintiffs and 17200  
25 Class Members are entitled to restitution of the vacation time and other unpaid wages and  
26 premiums alleged herein that Defendants have improperly withheld, a permanent injunction  
27 requiring Defendants to pay vacation time to all workers as defined herein, an award of attorneys'  
28 fees pursuant to Code of Civil Procedure section 1021.5 and other applicable law, and costs.

PRAYER FOR RELIEF

110. WHEREFORE, Plaintiffs, on behalf of themselves and all members of the Proposed Classes, pray for relief as follows:

- A. That the Court determine that this action may be maintained as a class action under Federal Rule of Civil Procedure 23;
- B. That Defendants are found to have violated the provisions of the WARN Act as to Plaintiffs and the Class;
- C. That Defendants are found to have violated the provisions of the California WARN Act as to Plaintiffs and the Class;
- D. That Defendants are found to have violated Cal. Labor § 227.3 requiring payment of unused vacation upon termination;
- E. That Defendants are found to have breached a contract with Washington and New York Vacation Class Members by failing to pay unused vacation at the time of termination;
- F. For an award, of damages or in equity, in the amount of unpaid vacation owed to members of the California, Washington and New York Vacation Classes;
- G. That Defendants are found to have violated §§ 201, 202, and 203 of the California Labor Code for willful failure to pay all compensation owed at the time of separation to Plaintiffs and the Class;
- H. An award to Plaintiffs and the Class for the amount of all unpaid wages and compensation owed, including interest thereon, and penalties subject to proof at trial;
- I. That Defendants be ordered and enjoined to pay restitution to Plaintiffs and the 17200 Class due to Defendants' unlawful activities, pursuant to Business and Professions Code §§ 17200-05;

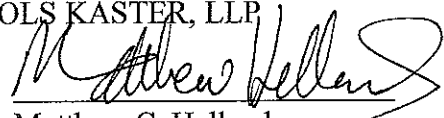
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- J. That Defendants further be enjoined to cease and desist from unlawful activities in violation of California Business and Professions Code § 17200;
- K. An award of reasonable attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5, Cal. Labor Code § 1404, 29 U.S.C. § 2104, and/or other applicable law;
- L. For leave to amend this complaint to add additional state law claims, including but not limited to claims in the District of Columbia, State of Oregon, State of Alaska, and the State of Wisconsin; and
- M. For such other and further relief, in law or equity, as this Court may deem appropriate and just.

**DEMAND FOR JURY TRIAL**

111. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and the Seventh Amendment of the United States Constitution, Plaintiffs, individually and on behalf of all others similarly situated, demand a trial by jury.

Dated: October 20, 2008

NICHOLS KASTER, LLP  
By:   
Matthew C. Helland

NICHOLS KASTER, PLLP  
ATTORNEYS FOR PLAINTIFFS AND THE  
PUTATIVE CLASS