

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
BROWARD DIVISION**

**LIONEL FLEMING, on behalf of himself and all others
similarly situated,**

Plaintiff,

v.

**PENN DUTCH FOOD CENTER, INC., A
Florida Profit Corporation, and
PENN DUTCH FOOD CENTER II, INC.,
A Florida Profit Corporation,**

Defendants.

**CLASS ACTION COMPLAINT
AND DEMAND FOR JURY TRIAL**

Plaintiff, LIONEL FLEMING, on his own behalf and on behalf of those similarly situated (collectively “Plaintiffs”), by and through his undersigned counsel, hereby files this Complaint against Defendants, PENN DUTCH FOOD CENTER, INC., and PENN DUTCH FOOD CENTER II, INC. (“Penn Dutch” or “Defendants”) and alleges as follows:

INTRODUCTION

1. This is an action brought pursuant to the Worker Adjustment and Retraining Notification Act of 1988, 29 U.S.C. § 2101 et. seq. (“WARN Act”).
2. Defendants are liable under the WARN Act for their failure to provide the Plaintiff and all others similarly situated at least 60 days advance notice of their termination, as required by the WARN Act.

JURISDICTION AND VENUE

3. This Court has jurisdiction over these claims pursuant to 28 U.S.C. § 1331.

4. Venue is proper in the Court because all facts material to all claims set forth herein occurred in Broward County, Florida.

PARTIES

5. At all times material to this action, Defendants were Florida Profit Corporations conducting business in Broward County, Florida.

6. Plaintiff worked for Defendants in Broward County, Florida.

GENERAL ALLEGATIONS

7. Plaintiffs were employed by Defendants.

8. During the week of September 11, 2019, Defendants, without warning, closed their Hollywood and Margate plants without properly notifying Plaintiffs.

9. No prior written notice was provided to the Plaintiffs as required by the WARN act.

10. Plaintiffs have retained the services of the undersigned attorneys and are obligated to pay the undersigned a reasonable fee for their services.

11. Plaintiffs demand a trial by jury on all claims alleged herein.

CLASS ACTION ALLEGATIONS

12. Plaintiffs sue under Rule 23(a) and (b) of the Federal Rules of Civil Procedure for violations of the WARN Act, on behalf of themselves, and a class of employees who worked at or reported to the Defendants' Hollywood and Margate facilities, and were laid off without cause by Defendants as part of a reasonably foreseeable result of shutdowns or mass layoffs ("Class") during the week of September 11, 2019.

13. The persons in the Class ("Class Members") are so numerous that joinder of all members is impracticable as there are, upon information and belief, approximately two-hundred (200) potential class members.

14. There are questions of law and fact common to the Class Members, namely:
 - (a) Whether the Class Members were employees of Defendants who worked at or reported to Defendants' Hollywood or Margate facilities;
 - (b) Whether Defendants ordered the termination of employment of each of the Class Members without cause on their part and without giving them 60 days advance written notice as required by the WARN Act; and
 - (c) Whether the Defendants were subject to any of the defenses provided for in the WARN Act;
15. The claims of the representative Plaintiff are typical of the claims of the Class, as he/they were laid off as part of the shutdown or mass layoff, and did not receive the requisite notice.
16. The representative Plaintiff will fairly and adequately protect the interests of the class.
17. The named Plaintiff retained counsel competent and experienced in complex class action employment litigation.
18. A class action is superior to other available methods for the fair and efficient adjudication of this controversy—particularly in the context of WARN Act and wage litigation – where the individual Plaintiff and class members may lack the financial resources to vigorously prosecute a lawsuit in federal court against corporate defendants and separate actions would create a risk of inconsistent or varying adjudications with respect to individual class members and the adjudications with respect to individual class members would be dispositive of the interests of other members.
19. Defendants have acted on grounds that apply generally to the class.

20. There are questions of law and fact common to the Class Members that predominate over any questions solely affecting individual members of the Class, including but not limited to:

- (a) Whether the Class Members were employees of Defendants who worked at or reported to Defendants' Hollywood and Margate facilities;
- (b) Whether Defendants ordered the termination of employment of each of the Class Members without cause on their part and without giving them 60 days advance written notice as required by the WARN Act; and
- (c) Whether Defendants were subject to any of the defenses provided for in the WARN Act.

WARN ACT ALLEGATIONS

21. Plaintiff and other similarly situated employees were laid off as part of plant shutdowns or mass layoffs of a single site of employment as defined by the WARN Act, for which they were entitled to receive 60 days advance written notice under the WARN Act.

22. At all relevant times, Defendants employed two hundred (200) or more employees, exclusive of part-time employees, or employed 100 or more employees who in the aggregate worked at least 4,000 hours per week exclusive of hours of overtime within the United States as defined by the WARN Act, and employed more than one hundred employees at each of its Hollywood and Margate plants.

23. At all relevant times, Defendants were "employers" as that term is defined by the WARN Act.

24. During the week of September 11, 2019, Defendants ordered "shutdowns" or "mass layoffs" as that term is defined by the WARN Act.

25. Defendants' actions at the Hollywood and Margate locations resulted in an "employment loss" as that term is defined by the WARN Act for at least 33% of its workforce, and at least 50 of its employees, excluding (a) employees who worked less than six of the twelve months prior to the date WARN notice was required to be given and (b) employees who worked an average of less than 20 hours per week during the 90-day period prior to the date WARN notice was required to be given.

26. Defendants' termination of the Class Members' employment constituted plant shutdowns or mass layoffs at a single site of employment as defined by the WARN Act.

27. The Plaintiff and each of the Class Members who were employed by Defendants and then terminated by Defendant as a result of Defendants' executing plant shutdowns or mass layoffs at the Hollywood and Margate facilities were "affected employees" as defined by the WARN Act.

28. The Plaintiff and each of the Class Members are "aggrieved employees" of Defendants as that term is defined by the WARN Act.

29. Pursuant to the WARN Act, Defendants were required to provide at least 60 days prior written notice of the layoff, or notice as soon as practicable, to the affected employees, or their representative, explaining why the sixty (60) days prior notice was not given.

30. Defendants failed to give at least sixty (60) days prior notice of the layoff in violation of the WARN Act.

31. Defendants failed to pay the Plaintiff and each of the Class Members their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for 60 working days following their respective layoffs, and failed to make the pension and 401(k)

contributions, provide other employee benefits under ERISA, and pay their medical expenses for 60 calendar days from and after the dates of their respective terminations.

32. As a result of Defendants' failure to pay the wages, benefits and other monies as asserted, the Plaintiff and Class Members were damaged in an amount equal to the sum of the members' unpaid wages, accrued holiday pay, accrued vacation pay, accrued sick leave pay and benefits which would have been paid for a period of sixty (60) calendar days after the date of the their terminations.

33. All administrative notice requirements and prerequisites have been satisfied.

COUNT I
VIOLATIONS OF THE WARN ACT AGAINST DEFENDANT

34. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 32 as if fully stated herein.

35. Defendants' failure to provide Plaintiffs advanced written notice of their layoffs constitutes a violation of the Warn Act.

WHEREFORE, Plaintiff prays that this Court award the following relief:

- (a) An amount equal to the sum of: unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay pension and 401(k) contributions and other ERISA benefits, for sixty (60) working days following the member employee's termination, that would have been covered and paid under the then applicable employee benefit plans had that coverage continued for that period, all determined in accordance with the WARN Act, 29 U.S.C§2104(a)(1)(A);
- (b) Certification that, pursuant to Fed. R. Civ. P. 23 (a) and (b) and the WARN Act, Plaintiffs and the Other Similarly Situated Former Employees constitute a single class;

- (c) Designation of Plaintiff, LIONEL FLEMING, as the Class Representative;
- (d) Appointment of the undersigned attorneys as Class Counsel;
- (e) Interest as allowed by law on the amounts owed under the preceding paragraphs;
- (f) The reasonable attorneys' fees and the costs and disbursements the Plaintiffs incur in prosecuting this action, as authorized by the WARN Act; and
- (g) Such other and any other additional relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs further demand a jury trial on all issues so triable as of right.

Dated this 23rd day of September 2019.

Respectfully submitted

/s/ Noah E. Storch

Noah E. Storch, Esq.

Florida Bar No. 0085476

RICHARD CELLER LEGAL, P.A.

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Davie, Florida 33324

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E-mail: noah@floridaovertimelawyer.com

Trial Counsel for Plaintiffs

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

LIONEL FLEMING, on behalf of himself and all others similarly situated,

Plaintiff(s)

v.

PENN DUTCH FOOD CENTER, INC., A Florida Profit Corporation, and PENN DUTCH FOOD CENTER II, INC., A Florida Profit Corporation,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) PENN DUTCH FOOD CENTER, INC. STEVE WEINBERG-REGISTERED AGENT 7805 SW 6TH COURT PLANTATION, FL 33324

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

RICHARD CELLER LEGAL, P.A. NOAH E. STORCH, ESQUIRE 10368 W. STATE ROAD 84, SUITE 103 DAVIE, FLORIDA 33324 TELEPHONE: (866) 344-9243 E-mail: noah@floridaovertimelawyer.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)*
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

LIONEL FLEMING, on behalf of himself and all
others similarly situated,

Plaintiff(s)

v.

PENN DUTCH FOOD CENTER, INC., A
Florida Profit Corporation, and
PENN DUTCH FOOD CENTER II, INC.,
A Florida Profit Corporation,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) PENN DUTCH FOOD CENTER II, INC.
STEVE WEINBERG-REGISTERED AGENT
7805 SW 6TH COURT
PLANTATION, FL 33324

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are:

RICHARD CELLER LEGAL, P.A.
NOAH E. STORCH, ESQUIRE
10368 W. STATE ROAD 84, SUITE 103
DAVIE, FLORIDA 33324
TELEPHONE: (866) 344-9243
E-mail: noah@floridaovertimelawyer.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)*
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked. Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.