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14 *Attorneys for Plaintiffs and proposed Class Members*

15
16 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

18 BENJAMIN SIERS, individually and on
19 behalf all others similarly situated,

20 Plaintiff,

21 v.

22 VELODYNE LIDAR, INC.,

23 Defendant.

Case No. _____

COMPLAINT FOR VIOLATIONS OF

FEDERAL AND STATE WARN ACT

CLASS ACTION

DEMAND FOR JURY TRIAL

1 1. On or about March 30, 2020, Defendant Velodyne Lidar, Inc. (“Velodyne” or
2 “Defendant”) terminated the employment of over 140 employees at its San Jose location, which
3 constitutes 33% or more of the workforce at that site of employment, with only one day of written
4 notice. While Velodyne’s written notice told employees that the layoffs were caused by the recent
5 COVID-19 pandemic, that representation is not consistent with Velodyne’s recent business
6 activities. Velodyne had already begun transferring production jobs overseas beginning in the
7 summer of 2019 and had planned to continue doing so prior to the outbreak of COVID-19.
8 Velodyne’s written notice failed to provide employees with a reason for why it was giving them
9 just one day’s notice, when a layoff was reasonably foreseeable before that time.

11 2. Plaintiff brings this action on behalf of himself, and other similarly situated former
12 employees who worked for Velodyne and who were terminated without cause as part of, or as the
13 foreseeable result of, the plant closing or mass layoff conducted by Velodyne beginning on or
14 about March 30, 2020 and who were not provided 60 days advance written notice of their
15 terminations by Velodyne, as required by the Worker Adjustment and Retraining Notification Act
16 (“WARN Act”), 29 U.S.C. § 2101 *et seq.* (“Federal WARN”) and the California WARN Act, Cal.
17 Lab. Code §§ 1400–1408 (“California WARN”), collectively herein “WARN Acts.”

19 **JURISDICTION AND VENUE**

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21 3. This Court has jurisdiction over the Federal WARN claim pursuant to 28 U.S.C.
22 § 1331 and 29 U.S.C. § 2104(a)(5), and jurisdiction over the California WARN claim pursuant to
23 28 U.S.C. § 1367 because it is so related to the federal WARN claim in its original jurisdiction
24 that they form part of the same case or controversy under Article III of the U.S. Constitution.

1 4. Venue is proper for the Federal WARN Act pursuant to 29 U.S.C. § 2104(a)(5),
2 because the violation is alleged to have occurred here and Defendant transacts business here.
3 Venue is proper over the California WARN Act claim pursuant 28 U.S.C. § 1391(b) because
4 Defendant resides here and a substantial part of the events or omissions giving rise to the claim
5 occurred here.

6
7 **THE PARTIES**

8 5. Plaintiff Benjamin Siers was employed by Velodyne as a production engineer at
9 Velodyne’s worksite located in San Jose, California until he was terminated on or about March
10 30, 2020. The worksite, on information and belief, during any 30-day period employed 50 or
11 more employees excluding any part-time employees.

12 6. Defendant Velodyne Lidar is a corporation organized under the laws of the State
13 of Delaware and has its principal place of business in 5521 Hellyer Avenue, San Jose, CA 95138.
14 Defendant employs or employed 100 or more employees, excluding part-time employees.

15 7. Until beginning on or about March 30, 2020, Plaintiff and all similarly situated
16 employees were employed by Defendant and worked at or reported to Defendant’s worksite in
17 San Jose.

18
19 **CLASS ACTION ALLEGATIONS**

20 8. Plaintiff brings this claim for violation of the WARN Acts on behalf of themselves
21 and on behalf of all other similarly situated former employees, pursuant to 29 U.S.C. §
22 2104(a)(5), Cal. Lab. Code § 1404, and Fed. R. Civ P. 23(a), who worked at, reported to, or
23 received assignments from Defendant’s worksite and were terminated without cause beginning on
24 or about March 30, 2020, and within 30 days of that date, or were terminated without cause as the
25 reasonably foreseeable consequence of the mass layoff and/or plant closing ordered by Defendant
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1 beginning on or about March 30, 2020, and who are affected employees, within the meaning of
2 29 U.S.C. § 2101(a)(5) and Cal. Lab. Code § 1400(h) (“WARN Class”).

3 9. The persons in the WARN Class identified above (“WARN Class Members”) are
4 so numerous that joinder of all members is impracticable. Although the precise number of such
5 persons is unknown, the facts on which the calculation of that number can be based are presently
6 within the sole control of Defendant.
7

8 10. On information and belief, the identity of the members of the class and the recent
9 residence address of each of the WARN Class Members is contained in the books and records of
10 Defendant.

11 11. On information and belief, the rate of pay and benefits that were being paid by
12 Defendant to each WARN Class Member at the time of his/her termination is contained in the
13 books and records of the Defendant.
14

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

17 (a) whether the members of the WARN Class were employees of the Defendant
18 who worked at or reported to Defendant’s worksite;

19 (b) whether Defendant unlawfully terminated the employment of the members of
20 the WARN Class without cause on their part and without giving them 60 days advance written
21 notice in violation of the WARN Acts;

22 (c) whether Defendant can prove that any exemptions under the WARN Acts
23 apply; and
24

25 (d) whether Defendant unlawfully failed to pay the WARN Class members 60 days
26 wages and benefits as required by the WARN Acts.
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1 13. Plaintiff's claims are typical of those of the WARN Class. Plaintiff, like other
2 WARN Class Members, worked at Defendant's worksite and was terminated without cause
3 beginning on or about March 30, 2020, due to the mass layoff and/or plant closing ordered by
4 Defendant.

5 14. Plaintiff Benjamin Siers (the "Representative Plaintiff") will fairly and adequately
6 protect the interests of the WARN Class. Representative Plaintiff has retained counsel competent
7 and experienced in complex class actions, especially employment litigation.

8 15. On or about March 30, 2020, Defendant terminated Plaintiff's employment as part
9 of a mass layoff or a plant closing as defined by 29 U.S.C. § 2101(a)(2), (3) of Federal WARN,
10 and a mass layoff, relocation, or termination as defined by Cal. Lab. Code § 1400(d), (e), or (f),
11 for which they were entitled to receive 60 days advance written notice under the WARN Acts.
12 Class certification of these claims is appropriate under Fed. R. Civ. P. 23(b)(3) because questions
13 of law and fact common to the WARN Class predominate over any questions affecting only
14 individual members of the WARN Class, and because a class action is superior to other available
15 methods for the fair and efficient adjudication of this litigation – particularly in the context of the
16 WARN Acts, where individuals may lack the financial resources to vigorously prosecute a
17 lawsuit in federal court against a corporate defendant, and damages suffered by individual
18 WARN Class members are small compared to the expense and burden of individual prosecution
19 of this litigation.
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22 16. Concentrating all litigation concerning Class members' rights under the WARN
23 Acts in this Court will obviate the need for unduly duplicative litigation that might result in
24 inconsistent judgments, will conserve the judicial resources and the resources of the parties, and
25 is the most efficient means of resolving Class members' rights under the WARN Acts.
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1 17. Plaintiff intends to send notice to all members of the WARN Class to the extent
2 required by Rule 23.

3 **CLAIMS FOR RELIEF**

4 **Count I: Violation of the Federal WARN Act**

5 18. Plaintiff realleges and incorporates by reference all allegations in all preceding
6 paragraphs.
7

8 19. At all relevant times, Defendant employed more than 100 employees who in the
9 aggregate worked at least 4,000 hours per week, exclusive of hours of overtime, within the United
10 States.

11 20. At all relevant times, Defendant was an “employer,” as that term is defined in
12 29 U.S.C. § 2101(a)(1) and 20 C.F.R. § 639(a) and continued to operate as a business until they
13 decided to order a mass layoff or plant closing at the worksite.
14

15 21. On or about March 30, 2020, Defendant ordered a mass layoff and/or plant closing
16 at the Facility, as those terms are defined by 29 U.S.C. § 2101(a)(2).

17 22. The mass layoff or plant closing at the worksite resulted in “employment losses,”
18 as that term is defined by 29 U.S.C. §2101(a)(2) for at least fifty of Defendant’s employees as
19 well as thirty-three percent (33%) of Defendant’s workforce at the Facility, excluding “part-time
20 employees,” as that term is defined by 29 U.S.C. § 2101(a)(8).
21

22 23. Plaintiff and the Class Members were terminated by Defendant without cause on
23 their part, as part of or as the reasonably foreseeable consequence of the mass layoff or plant
24 closing ordered by Defendant at the worksite.

25 24. Plaintiff and the Class Members are “affected employees” of Defendant, within
26 the meaning of 29 U.S.C. § 2101(a)(5).
27
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1 25. Defendant was required by the WARN Act to give the Plaintiff and the Class
2 Members at least 60 days advance written notice of their terminations.

3 26. Defendant failed to give the Plaintiff and the Class members written notice that
4 complied with the requirements of the WARN Act.

5 27. Plaintiff and each of the Class Members are “aggrieved employees” of the
6 Defendant as that term is defined in 29 U.S.C. § 2104 (a)(7).
7

8 28. Defendant failed to pay the Plaintiff and each of the Class Members their
9 respective wages, salary, commissions, bonuses, accrued holiday pay, and accrued vacation for 60
10 days following their respective terminations, and failed to make the pension and 401(k)
11 contributions and provide employee benefits under COBRA for 60 days from and after the dates
12 of their respective terminations.

13 29. The WARN Act claim in this Count I is equitable in nature.
14

15 **Count II: Violation of the California WARN Act**

16 30. Plaintiff realleges and incorporates by reference all allegations in all preceding
17 paragraphs.

18 31. At all relevant times, Defendant was an “employer,” because it has directly or
19 indirectly owned and operated a covered establishment in San Jose that employed, within the
20 preceding twelve months, 75 or more employees, pursuant to Cal. Lab. Code §§ 1400(a), (b).
21

22 32. On or about March 30, 2020, Defendant ordered a mass layoff, relocation, or
23 termination, as those terms are defined by Cal. Lab. Code §§ 1400(c)–(f).

24 33. Plaintiff and the Class Members are “employees” of Defendant, within the
25 meaning of Cal. Lab. Code § 1400(h).

26 34. Defendant was required by the California WARN Act to give the Plaintiff and the
27 Class Members at least 60 days advance written notice of their terminations.
28

1 35. Defendant failed to give the Plaintiff and the Class members 60 days written notice
2 that complied with the requirements of the California WARN Act, including Executive Order N-
3 31-20, in violation of Cal. Lab. Code § 1402(a)

4 36. Defendant failed to pay the Plaintiff and each of the Class Members their
5 respective wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for 60
6 days following their respective terminations, and failed to make the pension and 401(k)
7 contributions and provide employee benefits under COBRA for 60 days from and after the dates
8 of their respective terminations.
9

10 **PRAYER FOR RELIEF**

11 WHEREFORE, the Plaintiff, individually and on behalf of all other similarly situated
12 persons, pray for the following relief as against Defendant:

- 13 A. Certification of this action as a class action;
- 14 B. Designation of the Representative Plaintiff as the Class Representatives;
- 15 C. Appointment of the undersigned attorneys as Class Counsel;
- 16 D. A judgment against Defendant in favor of the Plaintiff and the class of other similarly
17 situated former employees equal to the sum of: their unpaid wages, salary, commissions, bonuses,
18 accrued holiday pay, accrued vacation pay, pension and 401(k) contributions and other COBRA
19 benefits, for 60 days, that would have been covered and paid under the then-applicable employee
20 benefit plans had that coverage continued for that period, all determined in accordance with the
21 WARN Act, 29 U.S.C. § 2104 (a)(1)(A);
- 22 E. Such other and further relief as this Court may deem just and proper.

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25 A JURY IS DEMANDED FOR THE CALIFORNIA WARN ACT CLAIM
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Dated: April 3, 2020

Respectfully submitted,

By: /s/ Jahan C. Sagafi
 Jahan C. Sagafi

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** pro hac vice motion forthcoming*
Attorneys for Plaintiffs and proposed Class Members

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

BENJAMIN SIERS, on behalf of himself and all others similarly situated

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

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

OUTTEN & GOLDEN LLP

One California Street, 12th Floor, San Francisco, CA (415)384-9533

DEFENDANTS

Velodyne Lidar, Inc.

County of Residence of First Listed Defendant Santa Clara 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
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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. § 2104(a)(5), Cal. Lab. Code § 1404, and Fed. R. Civ P. 23(a)

Brief description of cause:

Violations of the WARN Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$ 75,000.00 or greater

CHECK YES only if demanded in complaint:

JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

SAN FRANCISCO/OAKLAND

X SAN JOSE

EUREKA-MCKINLEYVILLE

DATE 04/03/2020

SIGNATURE OF ATTORNEY OF RECORD

s/ Jahan C. Sagafi

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate 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 Federal Rule of Civil Procedure 8(a), 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.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 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.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 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; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. 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.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount 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.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.