

CIVIL COVER SHEET

JS 44 - Rev. 12/07 (and rev 1-16-08)

This 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 PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

DEFENDANTS

Adam Bergman, Kendrick Patterson, Michael Attanese and Andrea Levy

Thelen LLP and Thelen, Reid, Brown, Rayman & Steiner LLP

FILE BY FAX

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

County of Residence of First Listed Defendant: San Francisco (IN U.S. PLAINTIFF CASES ONLY)

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

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

Attorneys (If Known)

Steven A. Blum
Blum Collins LLP
707 Wilshire Boulevard, Suite 4880
Los Angeles, CA 90017 (213) 572-0400

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EDL

ADR

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

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

- 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)

- PTF DEF
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)

Grid of categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, 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 Remanded or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Judge from Magistrate Judgment
8 Appeal to District

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 U.S.C. Sect. 2101

VI. CAUSE OF ACTION

Brief description of cause: Warn Act Violation

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 10 Million CHECK YES only if demanded in complaint JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

SAN FRANCISCO/OAKLAND SAN JOSE

DATE 11/23/08

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature: Steven A. Blum

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ADAM BERGMAN, KENDRICK
PATTERSON, MICHAEL ATTIANESE,
and ANDREA LEVY, each individually,
and on behalf of all others similarly
situated and the general public,

Plaintiffs,

vs.

THELEN LLP, a California limited
liability partnership, THELEN, REID,
BROWN, RAYSMAN & STEINER LLP, a
California limited liability partnership,
and DOES 1-500,

Defendants.

CV 08 5322

CV 08 5322

E-filing

COMPLAINT FOR:

- (1) Violation of the WARN Act (29 U.S.C. § 2101 *et seq.*);
- (2) Breach Of Contract; and
- (3) Promissory Estoppel

CLASS ACTION

DEMAND FOR JURY TRIAL

ORIGINAL
 FILED
 02 NOV 24 PM 3:51
 CLERK OF DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 [Signatures]

FILE BY FAX

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1 Plaintiffs Adam Bergman, Kendrick Patterson, Michael Attianese, and Andrea Levy
2 on behalf of themselves and all similarly situated persons allege:

3
4 PRELIMINARY STATEMENT

5
6 1. This case arises out of the collapse of Thelen LLP, a San Francisco based
7 law firm. Plaintiffs and the proposed class members are employees of Thelen LLP and
8 Does 1 through 400 who seek wages that Defendants have failed and refused to pay
9 following the abrupt termination of their employment.

10
11 2. Through this action, Plaintiffs and other similarly situated employees of
12 Defendants seek recovery of damages in the amount of 60 days pay and ERISA
13 benefits by reason of Defendants' violation of the Plaintiffs' rights under the Worker
14 Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 *et seq.* (the "WARN Act").
15 Plaintiffs were employees of Defendants and were terminated as part of mass layoffs
16 or plant closings ordered by the Defendants. Defendants violated federal law by
17 failing to give Plaintiffs and other similarly situated employees of the Defendants 60
18 days notice as required by federal law.

19
20 3. Plaintiffs and other similarly situated employees also seek recovery of
21 unpaid wages, including vacation time, as a result of Defendants' failure to pay
22 employees all wages, including vacation time, due and owing at the time their
23 employment was terminated.

1 THE PARTIES

2
3 4. Individual and Representative Plaintiffs Adam Bergman, Kendrick
4 Patterson, Michael Attianese, and Andrea Levy are individuals. Mr. Bergman,
5 Mr. Patterson, and Mr. Attianese reside in New York. They were employed by
6 Defendants until November 30, 2008. Mr. Bergman worked as a senior associate tax
7 attorney. Mr. Patterson worked as a senior associate intellectual property attorney.
8 Mr. Attianese worked as the manager of information technology. They worked in
9 Defendants' New York office. Ms. Levy resides in West Hartford, Connecticut. She
10 was employed as an associate attorney by Defendants until November 30, 2008. She
11 worked in Defendants' Hartford, Connecticut office.

12
13 5. Plaintiffs are informed and believe and thereon allege that Defendant
14 Thelen LLP is a limited liability partnership organized under the laws of the State of
15 California, that it maintains offices and conducts business in the State of California,
16 including in San Francisco, Palo Alto, and Los Angeles, and that its principal place of
17 doing business is in San Francisco, California.

18
19 6. Plaintiffs are informed and believe and thereon allege that Defendant
20 Thelen, Reid, Brown, Raysman & Steiner LLP is a limited liability partnership
21 organized under the laws of the State of California, that it maintains offices and
22 conducts business in the State of California, including in San Francisco, Palo Alto, and
23 Los Angeles, and that its principal place of doing business is in San Francisco,
24 California. Defendants Thelen LLP and Thelen, Reid, Brown, Raysman & Steiner are
25 collectively referred to herein as "the Law Firm."

26
27 7. Defendants Does 1-500, inclusive, are sued herein by these fictitious
28 names. Their true names and capacities are unknown to Plaintiffs. When their true
names and capacities are ascertained, Plaintiffs will amend this complaint by inserting

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

5
6 8. Plaintiffs are informed and believe and thereon allege that each of the
7 Defendants herein gave consent to, ratified or authorized the acts alleged herein, and
8 that each of the Defendants knowingly aided, abetted or conspired with the others to
9 commit the acts alleged herein.

10
11 9. There exists, and at all times herein mentioned there existed, a unity of
12 interest and ownership between the Law Firm and Defendant Does 1 through 400,
13 such that any individuality and separateness between them have ceased, and the Law
14 Firm is the alter ego of Defendant Does 1 through 400. Adherence to the fiction of the
15 separate existence of the Law Firm as an entity distinct from Defendant Does 1
16 through 400 would permit an abuse of the corporate privilege and would sanction
17 fraud or promote injustice.

18
19 10. Plaintiffs are informed and believe and thereon allege that the Law Firm
20 has dissolved, and that Defendant Does 1 through 400 are the successors in interest of
21 the Law Firm.

22
23 11. Plaintiffs are informed and believe and thereon allege that Defendant
24 Does 401 through 500 are successors of the Law Firm for labor law purposes.
25 Defendant Does 401 through 500 are law firms or other entities that have substantially
26 continued the same business operations of the Law Firm, with substantially the same
27 employees working in similar jobs and working conditions, with similar supervisory
28 personnel, using similar methods and offering similar services.

1 23. Plaintiffs bring this action on their own behalf, pursuant to the WARN
2 Act, and on behalf of all other similarly situated employees and former employees in
3 the New York and Hartford offices who were terminated on or about October 30, 2008.

4
5 24. During the 30 days starting October 30, 2008, Defendants terminated
6 Plaintiffs' employment as part of a mass layoff or plant closing as defined by 29 U.S.C.
7 § 2101(a)(2), (3) for which Plaintiffs were entitled to receive sixty (60) days advance
8 written notice under the WARN Act.

9
10 25. Defendants, as a single employer, did not give Plaintiffs the statutorily
11 required sixty (60) days notice of the mass layoff or termination in violation of the
12 WARN Act.

13
14 26. Plaintiffs are informed and believe and thereon allege that at or about the
15 time they were discharged, on or after October 30, 2008, Defendants discharged many
16 other employees at the Facilities (the "Other Similarly Situated Former Employees").

17
18 27. Pursuant to 29 U.S.C. § 2104(a)(5), Plaintiffs maintain this claim on behalf
19 of themselves and each of the Other Similarly Situated Former Employees.

20
21 28. Plaintiffs do not currently maintain this on behalf of any employees
22 entitled to the protection of California Labor Code Section 203 or District of Columbia
23 Code Section 32-1303, but later may seek leave to add such employees.

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

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a. Plaintiffs and the Other Similarly Situated Former Employees were discharged by Defendants without cause on their part.

b. Plaintiffs and the Other Similarly Situated Former Employees are "affected employee(s)" within the meaning of the WARN Act 29 U.S.C. § 2101(a)(5).

c. Defendants were required by the WARN Act to give Plaintiffs and the Other Similarly Situated Former Employees at least sixty (60) days advance written notice of their respective terminations.

d. Prior to their termination, neither Plaintiffs nor the Other Similarly Situated Former Employees received written notice that complied with the requirements of the WARN Act.

e. Defendants failed to pay Plaintiffs and the Other Similarly Situated Former Employees their respective wages, salary, commissions, bonuses, accrued holiday, sabbatical, and vacation pay for sixty (60) calendar days following notice of their terminations and failed to make 401(k) contributions and provide them with health insurance coverage and other employee benefits under ERISA for sixty (60) calendar days from and after notice of their respective terminations.

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

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

- a. Defendants were covered employers under the WARN Act;
- b. all Class members were protected under the WARN Act;
- c. all Class members' employment locations were covered Facilities under the WARN Act;
- d. Defendants acted as a single employer in terminating Class members' employment;
- e. Defendants gave at least 60 days advance written notice to the Class members, as required by the WARN Act; and
- f. Defendants failed to pay the Class members wages and to provide other employee benefits for the 60-day period following their respective terminations.

36. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because prosecution of actions by or against individual members of the Class may result in inconsistent or varying adjudications and create the risk of incompatible standards of conduct for Defendants.

1 Connecticut Vacation Subclass: All former employees of
2 Defendants in the State of Connecticut whose employment
3 with Defendants ended on or after October 30, 2008, through
4 the trial of this case, and who had accrued but unused
5 vacation at the time of termination.

6
7 40. Numerosity: The Proposed Vacation Subclasses are so numerous that
8 joinder of all members is impracticable. Plaintiffs are informed and believe and
9 thereon allege that at least 50 and potentially hundreds of people satisfy the definition
10 of the Proposed Vacation Subclasses.

11
12 41. Typicality: The Plaintiffs' claims are typical of the members of the
13 Proposed Vacation Subclasses. Plaintiffs are informed and believe and thereon allege
14 that the Law Firm uniformly failed to pay accrued vacation to individuals whose
15 employment with the Law Firm ended on or after October 30, 2008.

16
17 42. Superiority: A class action is superior to other available methods for the
18 fair and efficient adjudication of the controversy here, where Defendants have failed to
19 pay wages to at least 50 and potentially hundreds of employees, and Defendants'
20 dissolution may shrink the assets available to pay employees.

21
22 43. Adequacy: Plaintiffs will fairly and adequately protect the interests of the
23 Proposed Classes, and have retained counsel experienced in representing employees in
24 complex class litigation.

25 44. Commonality: Common questions of law and fact exist to all members of
26 the Proposed Vacation Subclasses and predominate over any questions solely affecting
27 individual members of the Proposed Vacation Subclasses, including but not limited to
28 whether:

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a. Defendants maintained a policy of providing vacation to Subclass members;

b. Defendants' vacation policy required that Defendants pay Subclass members for their unused vacation at the time of termination; and

c. Defendants uniformly and unlawfully failed to pay vacation time to Subclass members.

45. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because prosecution of actions by or against individual members of the class may result in inconsistent or varying adjudications and create the risk of incompatible standards of conduct for Defendants.

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

47. Plaintiffs intend to send notice to all members of the Proposed Subclasses to the extent required by Rule 23. The names and addresses of members of the Proposed Subclasses are available from Defendants.

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FIRST CLAIM FOR RELIEF FOR
VIOLATION OF THE WARN ACT
(Against All Defendants)

48. Plaintiffs incorporate by reference the allegations in the preceding paragraphs.

49. The 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.

50. Each Defendant was an "employer" as that term is defined in 29 U.S.C. § 2101(a)(1) and 20 C.F.R. § 639.3(a) and continued to operate as a business until deciding to order a mass layoff or plant closing at the Facilities.

51. The Defendants constituted a "single employer" of Plaintiffs and WARN Class members under the WARN Act.

52. On or about October 30, 2008 the Defendants ordered a "mass layoff" or "plant closing" of the Facilities, as those terms are defined in 29 U.S.C. § 2101(a)(2),(3).

53. Plaintiffs are informed and believe and thereon allege that the mass layoff or plant closing at the Facilities resulted in "employment losses," as that term is defined by 29 U.S.C. § 2101(a)(2) for at least 50 of Defendants' employees as well as 33% of Defendants' workforce at each of the Facilities, excluding part-time employees as that term is defined by 29 U.S.C. § 2101(a)(8).

54. Plaintiffs and each of the other members of the WARN Class were discharged by Defendants without cause on their part, as part of or as the reasonably

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foreseeable result of the mass layoff or plant closing ordered by Defendants at the Facilities.

55. Plaintiffs and the other members of the WARN Class are "affected employees" of Defendants within the meaning of 29 U.S.C. §2101(a)(5).

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

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

58. Defendants failed to pay Plaintiffs and each of the other members of the WARN Class their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation pay for 60 days following notice of their terminations and failed to make the pension and 401(k) contributions and provide employee benefits under ERISA, for 60 days following notice of their respective terminations. Defendants are also liable to Plaintiffs for their reasonable attorneys fees under 29 U.S.C. § 2104.

1 SECOND CLAIM FOR RELIEF FOR
2 BREACH OF CONTRACT AS TO THE NEW YORK VACATION SUBCLASS AND
3 CONNECTICUT VACATION SUBCLASS
4 (Against All Defendants)
5

6 59. Plaintiffs incorporate by reference the allegations in the preceding
7 paragraphs.
8

9 60. A contract, oral and written, express and implied, existed between
10 Members of the New York Vacation Subclass (including Plaintiffs Bergman, Patterson,
11 and Attianese) and Defendants.
12

13 61. A contract, oral and written, express and implied, existed between
14 Members of the Connecticut Vacation Subclass (including Plaintiff Levy) and
15 Defendants.
16

17 62. By those contracts, Defendants were required to pay employees all
18 accrued vacation time, including sabbatical leave, at the termination of employment.
19

20 63. Defendants violated that contract by failing to pay vacation time to
21 Plaintiffs Bergman, Patterson, Attianese, and Levy, and to Members of the New York
22 Vacation Subclass and the Connecticut Vacation Subclass.
23

24 64. As a result of Defendants' breach of contract, Plaintiffs Bergman,
25 Patterson, Attianese, and Levy and the New York Vacation Subclass Members and
26 Connecticut Vacation Subclass Members suffered damages in the amount of their
27 accrued but unpaid vacation and sabbatical time, to be determined at trial.
28

1 THIRD CLAIM FOR RELIEF FOR
2 PROMISSORY ESTOPPEL AS TO THE NEW YORK VACATION CLASS AND
3 CONNECTICUT VACATION CLASS

4 (Against All Defendants)
5

6 65. Plaintiffs incorporate by reference the allegations in the preceding
7 paragraphs.

8
9 66. Defendants reasonably expected to and did induce Plaintiffs Bergman,
10 Patterson, Attianese, and Levy and the New York Vacation Subclass Members and
11 Connecticut Vacation Subclass Members to rely on promises relating to the payment of
12 unused vacation and sabbatical time.

13
14 67. Plaintiffs Bergman, Patterson, Attianese, and Levy and the New York
15 Vacation Subclass Members and Connecticut Vacation Subclass Members reasonably
16 relied to their detriment on promises and representations made to them by Defendants
17 relating to the payment for unused vacation.

18
19 68. Defendants have refused to honor the promises made to Plaintiffs
20 Bergman, Patterson, Attianese, and Levy and the New York Vacation Subclass
21 Members and Connecticut Vacation Subclass Members.

22
23 69. As a result, Plaintiffs Bergman, Patterson, Attianese, and Levy and the
24 New York Vacation Subclass Members and Connecticut Vacation Subclass Members
25 are entitled to an award in equity in the amount of their unused vacation and
26 sabbatical time, to be determined at trial.
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1
2 PRAYER FOR RELIEF
3

4 70. WHEREFORE, Plaintiffs, on behalf of themselves and all members of the
5 Proposed Classes and Subclasses, pray for relief as follows:
6

7 A. That the Court determine that this action may be maintained as a
8 class action under Federal Rule of Civil Procedure 23;

9
10 B. That Defendants are found to have violated the provisions of the
11 WARN Act as to Plaintiffs and the WARN Class;

12
13 C. That Defendants are found to have breached a contract with New
14 York Vacation Subclass Members and the Connecticut Vacation Subclass
15 Members by failing to pay unused vacation at the time of termination;

16
17 D. For an award, of damages or in equity, in the amount of unpaid
18 vacation owed to members of the New York Vacation Subclass and the
19 Connecticut Vacation Subclass;

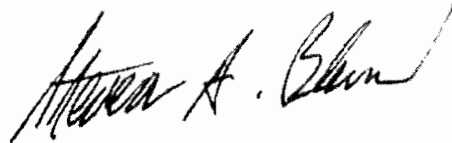
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21 E. For an award to Plaintiffs and all class members for the amount of
22 all unpaid wages and compensation owed, including interest thereon, and
23 penalties subject to proof at trial;

24
25 F. An award of reasonable attorneys' fees and costs pursuant to 29
26 U.S.C. § 2104, and other applicable law; and
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G. For such other and further relief, in law or equity, as this Court may deem appropriate and just.

BLUM COLLINS LLP
STEVEN A. BLUM
CRAIG M. COLLINS

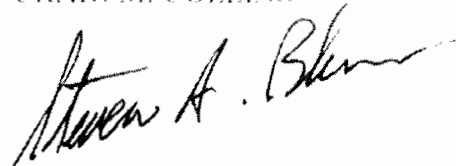


STEVEN A. BLUM
Attorneys for Plaintiffs

1 DEMAND FOR JURY TRIAL

2
3 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and the
4 Seventh Amendment of the United States Constitution, Plaintiffs, individually and on
5 behalf of all others similarly situated, demand a trial by jury.
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9 BLUM COLLINS LLP
10 STEVEN A. BLUM
11 CRAIG M. COLLINS

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13 STEVEN A. BLUM
14 Attorneys for Plaintiffs
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