

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
Case No. 9:19-cv-81422-RLR**

JOYCE JONES and
MARGARET SCHNITZER, on behalf of themselves
and a class of those others similarly situated,

Plaintiffs,

v.

CLASS ACTION

THE JEROME GOLDEN CENTER FOR
BEHAVIORAL HEALTH, INC.

Defendant.

**DEFENDANT, ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS'
FIRST AMENDED COMPLAINT**

Defendant, THE JEROME GOLDEN CENTER FOR BEHAVIORAL HEALTH, INC,
by and through undersigned counsel and pursuant to Federal Rules of Civil Procedure
Rule 12(b)(6), files this Answer and Affirmative Defenses to Plaintiffs' First Amended
Complaint, and states as follows:

NATURE OF THE ACTION

1. Defendant denies the allegations contained in Paragraph 1 of Plaintiffs' First
Amended Complaint and demands strict proof thereof.

JURISDICTION AND VENUE

2. Defendant admits the allegations contained in paragraph 2 of Plaintiffs' First
Amended Complaint for jurisdictional purposes only.

3. Defendant admits the allegations contained in paragraph 3 of Plaintiffs' First Amended Complaint for jurisdictional purposes only.

THE PARTIES

4. Defendant denies the allegations as phrased in Paragraph 4 of Plaintiffs' First Amended Complaint and therefore denies same and demands strict proof thereof.

5. Defendant denies the allegations as phrased in Paragraph 5 of Plaintiffs' First Amended Complaint and therefore denies same and demands strict proof thereof.

6. Defendant denies the allegations as phrased in Paragraph 6 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

7. Defendant denies the allegations contained in Paragraph 7 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

8. Defendant admits the allegations contained in Paragraph 8 of Plaintiffs' First Amended Complaint.

9. Defendant admits the WARN Act defines as to a "plant closing". Otherwise, denies and demands strict proof thereof.

10. Defendant admits the WARN Act defines a "mass layoff". Otherwise, denies and demands strict proof thereof.

11. Defendant denies the allegations contained in Paragraph 11 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

12. Defendant denies the allegations contained in paragraph 12 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

13. Defendant denies the allegations contained in paragraph 13 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

14. Defendant denies the allegations contained in paragraph 14 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

15. Defendant denies the allegations contained in paragraph 15 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

16. Defendant denies the allegations contained in paragraph 16 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

17. Defendant denies the allegations contained in paragraph 17 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

18. Defendant denies the allegations contained in paragraph 18 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

19. Defendant denies the allegations contained in paragraph 19 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

20. Defendant denies the allegations contained in paragraph 20 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

21. Defendant denies the allegations contained in paragraph 21 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

22. Defendant admits the allegations contained in paragraph 22 of Plaintiffs' First Amended Complaint.

23. Defendant denies the allegations as phrased in paragraph 23 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

24. Defendant denies the allegations contained in paragraph 24 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

25. Defendant denies the allegations as phrased contained in paragraph 25 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

26. Defendant denies the allegations as phrased in paragraph 26 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

27. Defendant denies the allegations contained in paragraph 27 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

28. Defendant denies the allegations as phrased in paragraph 28 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

29. Defendant denies the allegations contained in paragraph 29 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

30. Defendant denies the allegations as phrased in paragraph 30 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

31. Defendant denies the allegations contained in paragraph 31 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

32. Defendant denies the allegations as phrased in paragraph 32 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

33. Defendant denies the allegations contained in paragraph 33 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

34. Defendant denies the allegations as phrased in Paragraph 34 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

35. Defendant denies the allegations as phrased in Paragraph 35 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

36. Defendant admits the allegations contained in paragraph 36 of Plaintiffs' First Amended Complaint.

37. Defendant denies the allegations as phrased in Paragraph 37 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

38. Defendant denies the allegations as phrased in Paragraph 38 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

39. Defendant denies the allegations as phrased in Paragraph 39 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

40. Defendant denies the allegations as phrased in Paragraph 40 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

41. Defendant denies the allegations as phrased in Paragraph 41 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

42. Defendant denies the allegations contained in paragraph 42 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

43. Defendant denies the allegations contained in paragraph 43 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

44. Defendant denies the allegations contained in paragraph 44 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

45. Defendant denies the allegations contained in paragraph 45 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

46. Defendant denies the allegations contained in paragraph 46 of Plaintiffs' First Amended Complaint and therefore denies same and demands strict proof thereof.

47. Defendant denies the allegations contained in paragraph 47 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

48. Defendant denies the allegations contained in paragraph 48 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

49. Defendant denies the allegations contained in paragraph 49 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

50. Defendant denies the allegations contained in paragraph 50 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

51. Defendant denies the allegations contained in paragraph 51 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

52. Defendant denies the allegations contained in paragraph 52 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

53. Defendant denies the allegations contained in paragraph 53 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

54. Defendant denies the allegations contained in paragraph 54 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

55. Defendant denies the allegations contained in paragraph 55 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

56. Defendant denies the allegations contained in paragraph 56 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

57. Defendant denies the allegations contained in paragraph 57 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

58. Defendant denies the allegations contained in paragraph 58 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

CLASS ACTION ALLEGATIONS

59. Defendant denies the allegations contained in paragraph 59 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

60. Defendant denies the allegations contained in paragraph 60 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

61. Defendant denies the allegations contained in Paragraph 61 including sub parts a through c of Plaintiffs' First Amended Complaint and demands strict proof thereof.

62. Defendant denies the allegations contained in paragraph 62 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

63. Defendant denies the allegations contained in paragraph 63 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

64. Defendant denies the allegations contained in paragraph 64 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

65. Defendant denies the allegations contained in paragraph 65 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

66. Defendant denies the allegations contained in paragraph 66 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

67. Defendant denies the allegations contained in paragraph 67 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

68. Defendant denies the allegations contained in Paragraph 68 including sub parts a through c of Plaintiffs' First Amended Complaint and demands strict proof thereof.

CAUSE OF ACTION WARN ACT VIOLATIONS

69. Defendant denies the allegations contained in paragraph 69 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

70. Defendant denies the allegations contained in paragraph 70 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

71. Defendant denies the allegations contained in paragraph 71 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

72. Defendant denies the allegations contained in paragraph 72 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

73. Defendant denies the allegations contained in paragraph 73 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

74. Defendant denies the allegations contained in paragraph 74 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

75. Defendant denies the allegations contained in paragraph 75 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

76. Defendant denies the allegations contained in paragraph 76 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

77. Defendant denies the allegations contained in paragraph 77 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

78. Defendant denies the allegations contained in paragraph 78 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

79. Defendant denies the allegations contained in paragraph 79 of Plaintiffs' First Amended Complaint and demands strict proof thereof.

WHEREFORE, Defendant, THE JEROME GOLDEN CENTER FOR BEHAVIORAL HEALTH, INC, respectfully requests the entry of judgment in its favor and against Plaintiffs', together with an order awarding attorneys' fees and costs pursuant to 29 U.S.C. § 2104(6), and such other and further relief as the Court deems just and proper.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

As a First Affirmative Defense, this Defendant would state that, the Complaint fails to state a claim as to which relief can be granted as with respect to its claims against JEROME GOLDEN CENTER FOR BEHAVIORAL HEALTH, INC.

SECOND AFFIRMATIVE DEFENSE

As a Second Affirmative Defense, this Defendant would state that, no violation of the WARN Act occurred, because the notification period was reduced due to business circumstances that were not reasonably foreseeable as of the time that notice would have been required.

THIRD AFFIRMATIVE DEFENSE

As a Third Affirmative Defense, this Defendant would state that, no violation of the WARN Act occurred pursuant to 29 U.S.C. § 2102(b)(1).

FOURTH AFFIRMATIVE DEFENSE

As a Fourth Affirmative Defense, this Defendant would state that, no violation of the WARN Act occurred to the extent that the Plaintiffs did not suffer an employment loss within the meaning of the WARN Act.

FIFTH AFFIRMATIVE DEFENSE

As a Fifth Affirmative Defense, this Defendant would state that, should any damages be awarded against JEROME GOLDEN CENTER FOR BEHAVIORAL HEALTH, INC., they should be reduced pursuant to 29 U.S.C. § 2104(2).

SIXTH AFFIRMATIVE DEFENSE

As a Sixth Affirmative Defense, this Defendant would state that, should any damages be awarded against JEROME GOLDEN CENTER FOR BEHAVIORAL HEALTH, INC., they should be reduced because any act or omission of JEROME GOLDEN CENTER FOR BEHAVIORAL HEALTH, INC. was in good faith and JEROME GOLDEN CENTER FOR BEHAVIORAL HEALTH, INC. had reasonable grounds for believing that such act or omission was not a violation of the WARN Act.

SEVENTH AFFIRMATIVE DEFENSE

As an Seventh Affirmative Defense, this Defendant would state that, to the extent Plaintiffs did not suffer an employment loss within the meaning of the WARN Act, they lack standing to pursue this claim.

EIGHTH AFFIRMATIVE DEFENSE

As a Eighth Affirmative Defense, this Defendant would state that, to the extent any of the closed facilities employed under 50 employees who suffered an employment loss, any claim under the WARN Act is barred.

NINTH AFFIRMATIVE DEFENSE

As a Ninth Affirmative Defense, this Defendant would state that, as of the time that notice would have been required JEROME GOLDEN CENTER FOR BEHAVIORAL HEALTH, INC. was actively seek capital or business which, if obtained, would have

enabled the employer to avoid or postpone the shutdown and JEROME GOLDEN CENTER FOR BEHAVIORAL HEALTH, INC. reasonably and in good faith believed that giving notice required would have precluded JEROME GOLDEN CENTER FOR BEHAVIORAL HEALTH, INC. from obtaining the needed capital or business.

TENTH AFFIRMATIVE DEFENSE

As an Tenth Affirmative Defense, this Defendant would state that JEROME GOLDEN CENTER FOR BEHAVIORAL HALTH, INC. gave as much notice as was practical pursuant to 29 USC 2102 (b)(3).

MOTION TO STRIKE

Defendant, JEROME GOLDEN CENTER FOR BEHAVIORAL HEALTH, INC. by and through the undersigned attorneys, files this Motion to Strike and states as follows:

1. Plaintiff are bringing this claim pursuant to the WARN ACT 29 USC 2101-2109.
2. On page 13 of the Plaintiffs First Amended Complaint (D.E. 12), Plaintiffs demand a trial by jury.
3. However, remedies available under the WARN ACT are equitable in nature and do not exist at common law. As such there is no statutory or constitutional right to a trial by jury. See Pierluca v. Quality Resources, Inc., 2017 WL 1409825 (M.D. Florida 2017- a case in which plaintiffs' counsel in this case was counsel of record as well). See also Bledsoe v. Emery Worldwide Airlines, Inc. 635 F. 3d 836, 840-45(6th Cir. 2011).

WHEREFORE, Defendant, THE JEROME GOLDEN CENTER FOR BEHAVIORAL HEALTH, INC, respectfully requests this Honorable Court grant the herein Motion and strike Plaintiffs request for a jury trial and any further relief that the Court may deem just under the circumstances.

CERTIFICATE OF GOOD FAITH

Pursuant to Local Rule 7.1(a)(3)(A), I hereby certify that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in this motion in a good faith effort to resolve the issues raised in the motion and has been unable to do so.

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Defendant.

_____ /

CERTIFICATE OF SERVICE

I hereby certify that on the **3rd day of January, 2020**, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ LISA M. MUNOZ

SERVICE LIST

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
Case No. 9:19-cv-81422-RLR**

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