CASE NO. 21-11911

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELVA BENSON,
Plaintiff-Appellee,

v.

ENTERPRISE LEASING COMPANY OF ORLANDO, LLC;
& ENTERPRISE HOLDINGS, INC.,
Defendants-Appellants.

On appeal from the
United States District Court
for the Middle District of Florida

BRIEF OF AMICI CURIAE THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, NATIONAL RETAIL FEDERATION, AND RESTAURANT LAW CENTER IN SUPPORT OF APPELLANTS

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CORPORATE DISCLOSURE STATEMENT AND CERTIFICATE OF INTERESTED PERSONS

Pursuant to Federal Rule of Appellate Procedure 26.1, amici curiae the Chamber of Commerce of the United States of America, National Retail Federation, and Restaurant Law Center ("Amici") state that none has a parent corporation; that none is a publicly held corporation; and that no publicly held corporation has 10% or greater ownership in any amicus.

Pursuant to Circuit Rule 26.1-1, Amici adopt the Certificate of Interested Persons filed by Appellants and make the following additions:

- Amador, Angelo, Counsel for Restaurant Law Center, Amicus Curiae in Support of Appellants;
- Chamber of Commerce of the United States of America, Amicus Curiae in Support of Appellants;
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- Maloney, Stephanie, Counsel for Chamber of Commerce of the United States of America, Amicus Curiae in Support of Appellants;
- Martz, Stephanie, Counsel for National Retail Federation, Amicus Curiae in Support of Appellants;
- Miscimarra, Philip A., Counsel for amici curiae;
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INTEREST OF THE AMICI CURIAE

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the Nation's business community.

The National Retail Federation ("NRF") is the world's largest retail trade association, representing all aspects of the retail industry. NRF's membership includes discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants, and Internet retailers. Retail is the nation's largest private sector employer, supporting one in four U.S. jobs – 52 million working Americans. Contributing $3.9 trillion to annual GDP, retail is a daily barometer for the nation's economy. NRF regularly advocates for the interests of retailers, large and small, in a variety of forums, including before the legislative, executive, and judicial branches of government.

Restaurant Law Center is a public policy organization affiliated with the National Restaurant Association, the world's largest foodservice trade association. The industry is comprised of over one million establishments that represent a broad and

diverse group of owners and operators—from large national outfits, to small, family-run neighborhood restaurants, and everything in between. The industry employs over 15 million people and is the nation's second-largest private-sector employer. Through regular participation in amicus briefs on behalf of the industry, the Restaurant Law Center provides courts with the industry's perspective on legal issues that have industry-wide implications.

The Chamber, NRF, and Restaurant Law Center (the "Amici") and their members and employees have a vital interest in this case, which arises under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 *et seq*. ("WARN Act," "WARN" or the "Act"). The WARN Act requires employers to issue 60 days' advance written notice before certain events that constitute a "plant closing" or "mass layoff." However, the Act contains a "natural disaster" exception—set forth in Section 3(b)(2)(B)—which states: "*No notice under this [Act] shall be required* if the plant closing or mass layoff *is due to any form of natural disaster,* such as a flood, earthquake, or the drought currently ravaging the farmlands of the United States." 29 U.S.C. § 2102(b)(2)(B) (emphasis added).

This case has particular importance to the Amici and to employers and employees generally. While Enterprise was profoundly affected by the global COVID-19 pandemic—which decimated its car rental business—the COVID-19 pandemic affected a broad array of businesses whose interests are represented by the Amici, including manufacturers, retailers, service providers, hotels, restaurants, and others.

Moreover, WARN Section 3(b)(2)(B) makes WARN's 60-day notice requirement inapplicable to "*any form* of natural disaster." *Id.* (emphasis added). Accordingly, this case—involving the scope of WARN Section 3(b)(2)(B)—has wide-ranging implications in all kinds of catastrophic events which, as provided in WARN, are outside the scope of WARN's 60-day notice requirement.[1]

1 No counsel for a party authored this brief in whole or in part, and no person other than the amici curiae, their members, and counsel contributed money that was intended to fund the preparation or submission of this brief.

STATEMENT OF ISSUES

1. Does the natural disaster exception to WARN's 60-day notice requirement apply only when a natural disaster is the direct cause of a plant closing or mass layoff, or does it apply whenever a natural disaster is the but-for cause?

2. Did the district court err in concluding that, because the COVID-19 pandemic did not level any buildings, it was not the direct cause of the layoffs that employers ordered in the early weeks of the pandemic?

INTRODUCTION

In March 2020, American businesses were hit by COVID-19, "an abrupt and exogenous shock." GENE FALK ET AL., CONG. RSCH. SERV., R46554, UNEMPLOYMENT RATES DURING THE COVID-19 PANDEMIC 2 (2021), *available at* http://fas.org/sgp/crs/misc/R46554.pdf. No sector of the economy was spared as millions of Americans contracted the disease and hundreds of millions more tried to avoid it. Businesses rapidly responded by scaling back their operations or shutting down temporarily. *See id.* at 4.

Though COVID-19's impact was felt widely and deeply, many businesses survived. And they survived, in part, because they were permitted (and, in many cases, were commanded) to make the difficult choice to order layoffs and similar measures as soon as the pandemic struck. Thanks to their ability to respond immediately to a cataclysmic natural event—consistent with the WARN Act's natural disaster exception—many more employers are emerging intact, which benefits employees, their families, communities, and the overall economy.

Yet, just as they are restoring normal operations, many employers are facing an entirely man-made challenge: class-action lawsuits challenging business actions that were necessitated by the COVID-19 pandemic. As illustrated in this case, some claimants allege that, even when the pandemic caused demand for products and services to evaporate, employers were required to issue 60-day notices, while continuing the employment of affected employees for 60 additional days.

WARN's natural disaster exception clearly provides otherwise. WARN Section 3(b)(2)(B) states:

> No notice under this chapter shall be required if the plant closing or mass layoff is due to any form of natural disaster, such as a flood, earthquake, or the drought currently ravaging the farmlands of the United States.

29 U.S.C. § 2102(b)(2)(B).

In the decision below, the district court interpreted the natural disaster exception narrowly. So narrowly, in fact, that the court's interpretation in many cases would nullify the protection afforded by WARN Act Section 3(b)(2)(B). The court held that the natural disaster exception applies only when layoffs are a "*direct result* of a natural disaster." Doc. 77, p. 10 (quoting 20 C.F.R. § 639.9(c)). In the court's view, COVID-19 layoffs were the direct result of macroeconomic trends and were only the "indirect result" of a natural disaster. *See id.*

The district court's decision is wrong. The Amici agree with Enterprise that the text of the natural disaster exception clearly indicates Congress's intent for the exception to apply whenever a natural disaster is the but-for cause of a layoff. Common sense and the structure of WARN reinforce Enterprise's textual interpretation. Amici also explain why the COVID-19 pandemic was the cause of last year's layoffs under *any* standard of causation.

SUMMARY OF ARGUMENT

The structure of WARN confirms that the natural disaster exception applies whenever a natural disaster is the but-for cause of a plant closing or mass layoff. Congress enumerated three exceptions to the 60-day notice requirement. One of them, the unforeseeable business circumstances exception, affirmatively permits employers to implement plant closings or mass layoffs with less than 60 days' notice when they are "caused by business circumstances that were not reasonably foreseeable as of the time that notice would have been required." 29 U.S.C. § 2102(b)(2)(A). The unforeseeable business circumstances exception is often fact-intensive to resolve, so employers who raise this exception usually must go through discovery, sometimes trial, before a court can resolve whether it applies.

Natural disasters are different. By their nature (in fact, *because of* nature), natural disasters affect entire communities—employers and employees alike—without warning. When they strike, everyone knows it. Recognizing the uniqueness of natural disasters, Congress carved them out and created a standalone natural disaster exception that is easier to resolve than the unforeseeable business circumstances exception. Instead of burdening employers and courts with WARN Act litigation after a natural disaster, the easy-to-administer natural disaster exception facilitates rebuilding communities when disasters subside.

In the decision below, by holding that the natural disaster exception requires proof of direct cause instead of but-for cause, the district court eliminated the advantages of the WARN Act's standalone natural disaster exception. Direct cause is typically fact-intensive and hard to resolve early in litigation. As a result, the lower court decision functionally eliminates the natural disaster exception by making it as hard to resolve as the unforeseeable business circumstances exception—if not harder.

That said, even if the natural disaster exception requires proof of direct cause, the district court erred in hastily concluding that Enterprise could not demonstrate that COVID-19 was the direct cause of its layoffs. The court's conclusion rests on a faulty premise—that a natural disaster must destroy infrastructure in order to be the direct cause of a plant closing or mass layoff under WARN. That's too narrow a view of natural disasters and business operations. Businesses need capital, labor, and customers, and a disaster that destroys the supply of labor and the demand for many goods and services (as COVID-19 did) is no less the cause of layoffs than a disaster that destroys capital. What's more, the court also improperly concluded that a natural disaster cannot possibly be a direct cause when it temporarily upsets economic forces; assuming direct cause is the right level of causation, a natural disaster can be the direct cause of layoffs by directly affecting demand for the employer's goods and services. Reasonable people could easily conclude that Enterprise's layoffs were directly linked to COVID-19 via a short, single chain of events.

ARGUMENT

I. The district court's rejection of but-for causation eliminates the advantages of the natural disaster exception.

WARN's principal requirement is that covered employers must give employees at least 60 days' notice before a mass layoff or plant closing. *See* 29 U.S.C. § 2102(a). The notice must be specific enough for employees to learn "whether their jobs will continue to exist and how long they may be without work." Final Rule: Worker Adjustment and Retraining Notification, 54 Fed. Reg. 16,042, 16,063 (Apr. 20, 1989); *see* 20 C.F.R. § 639.7 (Content of Notice). An employer who fails to give enough notice faces substantial civil liability. *See* 29 U.S.C. § 2104(a).

Though employers often have superior information about their upcoming employment decisions—information employees can use to make informed decisions about their own lives—the WARN Act's exceptions recognize that this is not always the case and that holding employers liable for not providing 60 days' notice would sometimes harm businesses and their communities. Thus WARN's 60-day notice requirement is moderated by three commonsense exceptions. The "faltering company" exception applies when providing 60 days' notice would be counterproductive to the employer's efforts to raise capital to sustain its business. *See* 29 U.S.C. § 2102(b)(1). The "unforeseeable business circumstances" exception applies when a sudden event makes providing 60 days' notice impossible. *See id.* § 2102(b)(2)(A). And the "natural disaster" exception applies when a large-scale catastrophe makes

providing 60 days' notice unnecessary, for when a natural disaster strikes, everyone knows it. *See id.* § 2102(b)(2)(B).

At first glance, the unforeseeable business circumstances exception and the natural disaster exception might seem similar or overlapping. The former includes any "sudden" and "unexpected" event that is "outside the employer's control," 20 C.F.R. § 639.9(b)(1), and natural disasters surely check those boxes. Yet on closer inspection, it becomes apparent that the two exceptions are critically different—because they have different scopes.

Almost anything—a canceled contract, bad investments, or government-imposed import restrictions—can be framed as "business circumstances that were not reasonably foreseeable as of the time that notice would have been required." 29 U.S.C. § 2102(b)(2)(A). Without some limitation on the exception's availability, it could swallow the 60-day notice requirement based on arguments that most layoffs are unplanned. Congress mitigated that risk by limiting the unforeseeable business circumstance exception to layoffs that were "not reasonably foreseeable," *id.* § 2102(b)(2)(A), and when the employer gave employees "as much notice as is practicable," *id.* § 2102(b)(3). Those usually are fact-intensive issues. *See* Doc. 77, p. 12. They may require discovery and sometimes require a trier of fact to resolve. Meaning, the unforeseeable business circumstances exception is often ill-suited to resolution early during litigation, such as on a motion to dismiss. The cost and effort of

litigating the unforeseeable business circumstances exception serve as a check on the exception.

By contrast, fewer events qualify as natural disasters. A natural disaster is when powerful forces of nature cause serious and widespread harm. "A word is known by the company it keeps," *S.D. Warren Co. v. Me. Bd. of Envtl. Prot.*, 547 U.S. 370, 378 (2006) (citation omitted), and the words that keep company with "natural disaster" in the text of the exception ("flood," "earthquake," and "the drought currently ravaging the farmlands of the United States") reinforce how natural disasters are categorically distinct from unforeseeable business circumstances. Natural disasters affect large areas, not just single businesses. Natural disasters are indiscriminate, hurting employers and employees alike, not just single businesses. These features of natural disasters inherently limit the natural disaster exception's availability. Artful pleading cannot transform an ordinary unforeseeable event into an extraordinary natural disaster, so there is no justification for judicially limiting the exception or making it harder for employers to satisfy.

Yet that is what the district court did here when it interpreted the natural disaster exception as requiring direct causation instead of but-for causation. But-for causation is the lowest level of causation, "the minimum concept of cause." *Burrage v. United States*, 571 U.S. 204, 211 (2014) (quoting *United States v. Hatfield*, 591 F.3d 945, 948 (7th Cir. 2010)). Higher levels of causation, like direct or primary causation, are typically fact-intensive; they require ruling out secondary or tertiary causes and

making value judgments about causes. That, in turn, necessitates discovery, often requires resolution by a trier of fact, and makes the natural disaster exception as fact-intensive as the unforeseeable business circumstances exception.

Congress wouldn't have carved out natural disasters from other unforeseeable business circumstances, and put natural disasters into a separate exception, if Congress intended for that exception to be *harder* to satisfy. The structure of WARN's exceptions strongly suggests that the natural disaster exception should be *easier* to satisfy.

That makes sense. Natural disasters cause widespread harm, and all available resources are needed for recovery. The district court's interpretation of the natural disaster exception, however, will divert substantial resources to litigation and slow recovery. Because the higher standard of causation puts the natural disaster exception out of reach, some employers will provide 60 days' notice and forgo speedy layoffs (which will drain their capital), and other employers will press forward with speedy layoffs and defend their decisions in litigation (which will drain their capital). Litigating direct causation will also drain judicial resources after a disaster. Because natural disasters affect entire communities, not just isolated businesses, federal courts will face a flood of lawsuits challenging many employers' responses to a single natural disaster.

As natural disasters are different from unforeseeable business circumstances, so WARN's natural disaster exception is different from its unforeseeable business circumstances exception. The district court's rejection of but-for causation for the natural disaster exception functionally merges the two and eliminates the advantages of the separate exception. If affirmed, the district court's direct-causation standard will cause hardship for employers in an array of industries, extending far beyond the facts of this case. This Court should reverse. But-for causation is the only interpretation of the natural disaster exception that makes sense of WARN's scheme and gives effect to the distinct exceptions to the 60-day notice requirement.

II. COVID-19 was the direct cause of last year's layoffs.

It is important for this Court to reverse the district court's direct-cause interpretation of the natural disaster exception. Though this case is about *one* natural disaster, COVID-19, this Court's interpretation of the exception will be precedent for *all* natural disasters. Global pandemics like COVID-19 are rare, but every year, the States comprising the Eleventh Circuit are struck by other forms of natural disasters, especially hurricanes. Employers in this Circuit need to know, before disaster strikes, whether the natural disaster exception requires direct causation or but-for causation.

That said, this Court could alternatively hold that COVID-19 was the direct cause of last year's layoffs. The district court opined that COVID-19 could be only an indirect cause of those layoffs because the disease didn't "suddenly wipe[] out" facilities or staff in the way that floods do. Doc. 77, p. 11. That is a false comparison.

Business enterprises use both capital and labor and, of course, need customers. *See Comm'r v. Culbertson*, 337 U.S. 733, 740 (1949). Natural disasters can directly affect a business's capital, like the flood the district court hypothesized. Natural disasters also can directly affect a business's labor or customer base.

COVID-19 did not level buildings, true, but that's only to say that COVID-19 is not the kind of natural disaster that destroys capital. COVID-19 is the kind of natural disaster that incapacitates labor and customers. And so, when the pandemic arrived in March 2020, many people could not go to work or would not go to work. Even where traveling out of one's home was not legally restricted, it was widely viewed as a substantial risk for contracting and spreading the disease, and most Americans responded by staying home. A pandemic may be unlike a flood *that wipes out a factory*; it is more like a flood that spares a factory but wipes out roads and bridges so employees cannot or do not report for work. If the factory owner laid off employees or closed the factory while the roads and bridges were being rebuilt, one surely would say that the flood directly caused the layoffs. So too here. *See* Elizabeth Weber Handwerker et al., *Employment Recovery in the Wake of the COVID-19 Pandemic*, MONTHLY LAB. REV., U.S. BUREAU OF LAB. STATS. (Dec. 2020), *available at* https://doi.org/10.21916/mlr.2020.27 ("The COVID-19 pandemic is unusual because it also disrupts labor supply. Health concerns, family demands, and government policies all play roles in who can work and when.").

The district court's causation analysis (Doc. 77, pp. 10–11) is legally erroneous because it ignored COVID-19's direct impact on the American workforce. Instead, the court erroneously perceived only "a more tenuous connection" between Enterprise's layoffs and COVID-19: COVID-19 caused people to stop traveling, which in turn caused reduced demand for rental cars, which in turn caused Enterprise to lay off employees. Doc. 77, p. 10. In the court's view, that chain of events shows that COVID-19 was only an indirect cause of Enterprise's layoffs. But that, too, is wrong as a matter of law.

Direct cause does not mean immediate cause. *See Simpson v. Sanderson Farms, Inc.*, 744 F.3d 702, 712 (11th Cir. 2014). Indeed, such a demanding level of cause would be absurd for WARN, for the immediate cause of every mass layoff or plant closing will always be the employer's action of ordering the mass layoff or plant closing. Direct cause is akin to proximate cause, *see Cause*, BLACK'S LAW DICTIONARY (11th ed. 2019), and thus encompasses a single chain of related events.

Here, what the district court viewed as a series of events was, in actuality, a single chain of related events that fulfills direct causation. The economic forces that devastated demand for goods and services were themselves directly caused by the COVID-19 pandemic; thus one could fairly and reasonably say that the disaster directly caused the layoffs. Ask any ordinary person why, in 2020, high school graduations were canceled, why families couldn't visit their grandparents, why movie the-

aters, restaurants, and bars closed, or why manufacturers began mass producing ventilators and face masks. Most will answer "COVID-19"—even though the novel coronavirus that causes the disease did not immediately cause those things. *See, e.g.*, Bill Shaikin, *As Sports Shut Down, Little Guys Do Too*, L.A. TIMES, (Mar. 15 2020) ("four major sports leagues shutting down indefinitely because of the coronavirus pandemic"); Jesse Newman, *Closed Because of the Coronavirus, Restaurants Clear Out Their Pantries*, WALL ST. J. (Apr. 4, 2020); Robert Channick, *Glassdoor Lays Off 300 Workers Due to COVID-19*, CHI. TRIBUNE (May 12, 2020).

Economists already have observed that the unemployment/re-employment cycle during and after COVID-19 looks exactly as it does during and after other natural disasters, like floods and hurricanes. *See* Steven M. Mance, *Estimating State and Local Employment in Recent Disasters—from Hurricane Harvey to the COVID-19 Pandemic*, MONTHLY LABOR REVIEW, U.S. BUREAU OF LAB. STATS. (Apr. 2021), *available at* https://doi.org/10.21916/mlr.2021.9. ("The steepness and suddenness of these job losses, followed by a rapid (if partial) recovery, were more reminiscent to the losses seen after major hurricanes than those seen during a typical recession."). The district court erred as a matter of law in hastily concluding that the global pandemic was not the direct cause of Enterprise's layoffs.

III. The ramifications of this Court's decision will be widely felt.

Congress designed the WARN Act's 60-day notice requirement to apply to plant closings and mass layoffs caused by events that can reasonably be anticipated. It is

equally clear that the statute's 60-day notice requirement plainly does not apply to events that arise without *any* warning. This is why WARN contains the natural disaster exception. When natural disasters occur, requiring the continuation of employment for 60 days (the period encompassed by WARN notices) would cause greater dislocation by causing greater damage—indeed, threatening the very existence—of businesses who desperately need to conserve resources to make it more likely that affected employees can eventually be reemployed.

There can be no doubt that that is what happened last year throughout the entire country. When the full force of the COVID-19 pandemic hit the United States in March 2020, the national layoff rate hit its highest recorded rate because employers in all industries quickly responded to the disaster. *See Layoffs and Discharges in Small, Medium, and Large Establishments*, BUREAU OF LAB. STATS., U.S. DEP'T OF LAB., THE ECONOMICS DAILY (Oct. 14, 2020), *available at* https://www.bls.gov/opub/ted/2020/layoffs-and-discharges-in-small-medium-and-large-establishments.htm. As the national unemployment numbers "surged to 17.7 million, the highest quarterly average in the history of the data series," it is remarkable that "[v]irtually all of this increase consisted of people on *temporary layoff*." Sean M. Smith et al., *Unemployment Rises in 2020, as the Country Battles the COVID-19 Pandemic*, MONTHLY LABOR REVIEW, U.S. BUREAU OF LAB. STATS. (June 2021), *available at* https://www.bls.gov/opub/mlr/2021/article/unemployment-rises-in-2020-as-the-country-battles-the-covid-19-pandemic.htm (emphasis added).

As the label suggests, temporary layoffs occur when furloughed employees expect to be recalled, and that is exactly what has happened and what continues to happen. The number of American now reporting that they are on temporary layoff has dropped by almost 90% from their pandemic highs. *See Employment Situation News Release*, U.S. BUREAU OF LAB. STATS. (June 4, 2021), *available at* https://www.bls.gov/news.release/archives/empsit_06042021.htm. Employees are being recalled back to work. Though some businesses expect to have fewer employees going forward, the vast majority expect to have at least as many as they had before the pandemic. *See Nearly 8 in 10 Small Businesses Now Fully or Partially Open, New Poll Shows*, U.S. CHAMBER OF COMMERCE (June 3, 2021), *available at* https://www.uschamber.com/press-release/nearly-8-10-small-businesses-now-fully-or-partially-open-new-poll-shows. Indeed, the United States now faces a severe worker *shortage*, with a record number of job openings, but not enough workers to fill them. *See* U.S. BUREAU OF LAB. STATS., https://www.bls.gov/ (last visited July 9, 2021).

Macroeconomic data do not tell individual stories, yet they strongly suggest that employers acted in good faith when they resorted to layoffs in 2020. American companies did the right thing by ordering immediate layoffs, and they are doing the right thing by rehiring their employees. Though tough and unfortunate, last year's immediate layoffs are one reason why the domestic economy has bounced back so quickly and strongly.

Proliferating WARN Act litigation, however, poses a real threat to this recovery. Most business owners report they are worried about having to defend against lawsuits related to the coronavirus. *See* U.S. CHAMBER OF COMMERCE, *supra*. A survey of federal dockets in the last year validates those concerns. Twenty-five percent of labor and employment litigation initiated this year relates to the pandemic. *See Coronavirus Lawsuits More Than Double In 2021*, JDSUPRA (June 8, 2021), *available at* https://www.jdsupra.com/legalnews/coronavirus-lawsuits-more-than-double-3975643. Employers in a wide range of industries—travel,[2] oil and gas,[3] retail,[4] manufacturing,[5] and more[6]—already have been hit with class-action lawsuits challenging whether the employment decisions they made last year comported with WARN's

2 *See* Complaint, *Balderen v. Four Seasons Miami Emp. Inc.*, No. 1:21-cv-21842-JAL, 2021 WL 1974299 (S.D. Fla. May 17, 2021); Class Action Complaint, *Brazier v. Real Hosp. Grp., LLC*, No. 1:20-cv-08239, 2020 WL 5889405 (S.D.N.Y. Oct. 3, 2020); Class Action Complaint, *Turner v. Rosen Hotels & Resorts, Inc.*, No. 6:21-cv-00161 (M.D. Fla. Jan 22, 2021).

3 *See Easom v. US Well Servs., Inc.*, No. CV H-20-2995, 2021 WL 1092344 (S.D. Tex. Mar. 22, 2021).

4 *See* Class Action Complaint, *Duffek v. iMedia Brands, Inc.*, No. 0:21-cv-01413, 2021 WL 2477082 (D. Minn. June 16, 2021); Class Action Complaint, *Calero v. Fanatics, Inc.*, No. 8:20-cv-02114, 2020 WL 5417019 (M.D. Fla. Sept. 9, 2020)

5 Class Action Complaint, *Jones v. Scribe Opco, Inc.*, No. 8:20-cv-02945, 2020 WL 7250767 (M.D. Fla. Dec. 9, 2020).

6 Complaint and Demand for Jury Trial, *Butler v. Portfolio Recovery Assocs., LLC*, No. 2:20-cv-00403-AWA-DEM, 2020 WL 4452088 (E.D. Va. May 12, 2020); Class Action Complaint, *Tooley v. Quickway Transp., Inc.*, No. 3:21-cv-00081 (M.D. Tenn. Feb. 3, 2021); Complaint, *Colmone v. Fid. Nat'l Fin., Inc.*, No. 1:20-cv-05616 (N.D. Ill. Sep 22, 2020),

advance-notice requirement. Perversely, these lawsuits are possible only because the employers survived the pandemic by making the hard choice to lay off employees temporarily.

These suits are just the beginning. Whole swaths of the economy will face hard-to-resolve WARN class actions challenging last year's layoffs if the district court's interpretation of the natural disaster exception isn't overturned. If WARN class actions can be brought on behalf of millions of workers, damages could easily run into the billions, harming American companies just as they are starting to recover from a once-in-a-lifetime pandemic.

*** *** ***

Few statutes have an extraordinary circumstances exception written into them. But WARN does. Congress presciently understood that restricting employers' flexibility to respond to a natural disaster with layoffs would compound and prolong a disaster's economic consequences. And so the natural disaster exception to WARN's 60-day notice requirement clearly shields employers who order mass layoffs in a disaster's wake. Given the unprecedented magnitude of last year's temporary layoffs, it's evident that many American employers believed the exception shielded them and relied on it. The district court's decision, which contravenes the text and structure of WARN, frustrates employers' well-founded reliance interests and carries significant ramifications for economic recovery. This Court should reverse.

CONCLUSION

For the reasons stated above, the order on appeal on should be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 29(a)(4)(g), I certify that BRIEF OF AMICI CURIAE THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, NATIONAL RETAIL FEDERATION, AND RESTAURANT LAW CENTER IN SUPPORT OF APPELLANTS meets the type-volume limitations of Rule 29(a)(5) because it contains 4,418 words.

/s/ Philip A. Miscimarra