

1 Gail Lin, Cal St. Bar. No. 212334
OUTTEN & GOLDEN LLP
2 601 S. Figueroa St, Ste 4050
Los Angeles, CA 90017
3 Tel.: (323) 673-9900
Fax: (646) 509-2073
4 Email: gl@outtengolden.com

5 Jack A. Raisner¹
René S. Roupinian²
6 Robert N. Fisher, Cal St. Bar. No. 302919
OUTTEN & GOLDEN LLP
7 685 Third Avenue, 25th Floor
New York, New York 10017
8 Tel.: (212) 245-1000
Email: rsr@outtengolden.com
9 Email: jar@outtengolden.com
Email: rfisher@outtengolden.com

10 *Attorneys for Plaintiff Georgina Guinane, on behalf of*
11 *herself and all others similarly situated*

12
13 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA
14 **WESTERN DIVISION**

15 GEORGINA GUINANE, on behalf of
16 herself and all others similarly situated,

17 Plaintiff,

CASE NO. 2:18-cv-9584

18 v.

19 DEFY MEDIA, LLC,

20 Defendant.

21
22 **CLASS ACTION COMPLAINT FOR**
23 **(1) VIOLATION OF WARN ACT 29 U.S.C. § 2101, ET SEQ.**
AND (2) VIOLATION OF CALIFORNIA LABOR CODE § 1400 ET. SEQ.

24 Plaintiff Georgina Guinane (“Plaintiff”) alleges on her own behalf and the class of those
25 similarly situated as follows:
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28 ^{1 and 2} Not admitted to the Bar of the U.S. District Court C.D. Calif. Applications for admission
pro hac vice to be filed.

1 **NATURE OF THE ACTION**

2 1. Defendant operates a media company that creates and distributes digital content,
3 including gaming and other entertainment. Plaintiff worked for Defendant at its facility in
4 Beverly Hills, California until she was terminated without cause on or about November 6, 2018.
5 Beginning on or about that date, Defendant ordered the terminations of approximately 80
6 employees without cause.
7

8 2. The Plaintiff brings this action on behalf of herself and the other similarly situated
9 former employees who worked for Defendant and who were terminated without cause, as part of,
10 or as the result of, the mass layoffs or plant closings ordered by Defendant on or about November
11 6, 2018 and within thirty (30) days of that date, and who were not provided 60 days advance
12 written notice of their terminations by Defendant, as required by the Worker Adjustment and
13 Retraining Notification Act (“WARN Act”), 29 U.S.C. § 2101 *et seq.*, and the California Labor
14 Code § 1400 *et. seq.* (“CAL-WARN Act”).
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16 3. Plaintiff and all similarly situated employees seek to recover 60 days wages benefits,
17 pursuant to 29 U.S.C. § 2104, from Defendant.
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19 **JURISDICTION AND VENUE**

20 4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, 29 U.S.C.
21 § 2104(a)(5).

22 5. A violation of the WARN Act alleged herein occurred in this District.

23 6. Venue in this Court is proper pursuant to 29 U.S.C. § 2104(a)(5).
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THE PARTIES

Plaintiff

7. Plaintiff was employed by Defendant and worked at the Defendant’s facility located at 8750 Wilshire Blvd, Suite 200, Beverly Hills, California (the “Facility”) until her termination on or about November 6, 2018.

8. Beginning on or about November 6, 2018, Defendant ordered the terminations without cause of approximately 80 other similarly situated employees who worked at the Facility.

Defendant

9. Upon information and belief and at all relevant times, Defendant Defy Media, Inc. is a New York corporation with its headquarters located at 1001 Avenue of the Stars, Suite 701, New York, New York 10001.

10. Upon information and belief and at all relevant times, Defendant was formed in 2013 through the merger of media companies Alloy Digital and Break Media.

11. Until on or about November 6, 2018, Plaintiff and all similarly situated employees were employed by Defendant and worked at or reported to the Facility.

WARN ACT CLASS ALLEGATIONS

12. Plaintiff brings this action on her own behalf and on behalf of all other similarly situated former employees of Defendant who worked at or reported to the Facility and were terminated without cause beginning on or about November 6, 2018 and within 30 days of that date, or as the reasonably foreseeable consequence of the mass layoffs or plant closings ordered by Defendant on that date, pursuant to 29 U.S.C. § 2104(a)(5).

13. The persons in the Class identified above (“Class Members”) are so numerous that joinder of all members is impracticable. Although the precise number of such persons is

1 unknown, the facts on which the calculation of that number can be based are presently within the
2 sole control of Defendant.

3 14. On information and belief, the identity of the members of the class and the recent
4 residence address of each of the Class Members is contained in the books and records of
5 Defendant.

6 15. On information and belief, the rate of pay and benefits that were being paid by
7 Defendant to each Class Member at the time of his/her termination is contained in the books and
8 records of the Defendant.

9 16. There are questions of law and fact common to the Class Members that
10 predominate over any questions affecting individual members.

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

- 14 (a) whether the Class Members were employees of the Defendant who worked
15 at or reported to Defendant's Facility;
- 16 (b) whether Defendant terminated the employment of the Class Members
17 without cause on their part and without giving them 60 days advance
18 written notice; and
- 19 (c) whether Defendant paid the Class members 60 days wages and benefits as
20 required by the WARN Act.

21 18. Plaintiff's claim is typical of those of the WARN Class. Plaintiff, like other
22 WARN Class members, worked at or reported to Defendant's Facility and was terminated
23 without cause on or about November 6, 2018, due to the mass layoff and/or plant closing ordered
24 by Defendant.

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1 19. Plaintiff will fairly and adequately protect the interests of the WARN Class.
2 Plaintiff has retained counsel competent and experience in complex class actions, including the
3 WARN Act and employment litigation.

4 20. Class certification of these claims is appropriate under Fed. R. Civ. P. 23(b)(3)
5 because questions of law and fact common to the WARN Class predominate over any questions
6 affecting only individual members of the WARN Class, and because a class action is superior to
7 other available methods for the fair and efficient adjudication of this litigation – particularly in
8 the context of WARN Act litigation, where individual plaintiffs may lack the financial resources
9 to vigorously prosecute a lawsuit in federal court against a corporate defendant, and damages
10 suffered by individual WARN Class members are small compared to the expense and burden of
11 individual prosecution of this litigation.
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13 21. Concentrating all the potential litigation concerning the WARN Act rights of the
14 members of the Class in this Court will obviate the need for unduly duplicative litigation that
15 might result in inconsistent judgments, will conserve the judicial resources and the resources of
16 the parties and is the most efficient means of resolving the WARN Act rights of all the members
17 of the Class.
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19 22. Plaintiff intends to send notice to all members of the WARN Class to the extent
20 required by Rule 23.
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22 23. A class action is superior to other available methods for the fair and efficient
23 adjudication of this controversy – particularly in the context of WARN Act litigation, where
24 individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal
25 court against corporate Defendant.
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1 **CALIFORNIA WARN CLASS ALLEGATIONS, Cal. Labor Code § 1401**

2 24. Plaintiff brings the Second Claim for Relief for violation of Labor Code § 1401 on
3 behalf of herself and a class of similarly situated persons pursuant to Labor Code § 1404 and
4 Federal Rules of Civil Procedure, Rule 23(a) and (b), who worked at or reported to Defendant's
5 Facility and were terminated without cause beginning on or about November 6, 2018 (the "CAL
6 WARN Class")
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8 25. The persons in the CAL WARN Class identified above ("CAL WARN Class
9 Members") are so numerous that joinder of all members is impracticable. Although the precise
10 number of such persons is unknown, the facts on which the calculation of that number can be
11 based are presently within the sole control of Defendant.
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13 26. On information and belief, the identity of the members of the class and the recent
14 residence address of each of the CAL WARN Class Members is contained in the books and
15 records of Defendant.

16 27. On information and belief, the rate of pay and benefits that were being paid by
17 Defendant to each CAL WARN Class Member at the time of his/her termination is contained in
18 the books and records of Defendant.

19 28. Common questions of law and fact exist as to members of the CAL WARN Class,
20 including, but not limited to, the following:
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22 (a) whether the members of the CAL WARN Class were employees of the
23 Defendant;

24 (b) whether Defendant unlawfully terminated the employment of the members
25 of the CAL WARN Class without cause on their part and without giving them 60 days advance
26 written notice in violation of the CAL WARN Act; and
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1 (c) whether Defendant unlawfully failed to pay the CAL WARN Class
2 members 60 days wages and benefits as required by the CAL WARN Act.

3 29. The California Class Plaintiff's claims are typical of those of the CAL WARN
4 Class. The California Class Plaintiff, like other WARN Class members, worked at or reported to
5 the Facility and was terminated on or about November 6, 2018, due to the terminations ordered
6 by Defendant.
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8 30. The California Class Plaintiff will fairly and adequately protect the interests of the
9 CAL WARN Class. The California Class Plaintiff has retained counsel competent and
10 experienced in complex class actions on behalf of employees, including the CAL WARN Act, the
11 federal WARN Act, other similar state laws, and employment litigation.
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13 31. Class certification of these Claims is appropriate under Fed. R. Civ. P. 23(b)(3)
14 because questions of law and fact common to the CAL WARN Class predominate over any
15 questions affecting only individual members of the CAL WARN Class, and because a class action
16 superior to other available methods for the fair and efficient adjudication of this litigation –
17 particularly in the context of CAL WARN Class Act litigation, where individual plaintiffs may
18 lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate
19 defendant, and damages suffered by individual CAL WARN Class members are small compared
20 to the expense and burden of individual prosecution of this litigation.
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22 32. Concentrating all the potential litigation concerning the CAL WARN Act rights of
23 the members of the Class in this Court will obviate the need for unduly duplicative litigation that
24 might result in inconsistent judgments, will conserve the judicial resources and the resources of
25 the parties and is the most efficient means of resolving the CAL WARN Act rights of all the
26 members of the Class.
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1 33. The California Class Plaintiff intends to send notice to all members of the CAL
2 WARN Class to the extent required by Rule 23.

3 **CLAIMS FOR RELIEF**

4 **First Claim: Federal WARN Act, U.S.C. § 2101 et seq.**

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

7
8 35. 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 36. At all relevant times, Defendant was an “employer,” as that term is defined in 29
12 U.S.C. § 2101 (a)(1) and 20 C.F.R. § 639(a).

13 37. At all relevant times, Plaintiff and the other similarly situated former employees
14 were employees of Defendant as that term is defined by 29 U.S.C. §2101.

15 38. On or about November 6, 2018, and within 30 days thereafter, Defendant ordered
16 mass layoffs and/or plant closings at its Facility, as that term is defined by 29 U.S.C. § 2101(a)(2).

17 39. The mass layoffs and/or plant closings at the Facility resulted in “employment
18 losses,” as that term is defined by 29 U.S.C. § 2101(a)(2) for at least fifty of Defendant’s
19 employees as well as more than 33% of Defendant’s workforce at the Facility, excluding “part-
20 time employees,” as that term is defined by 29 U.S.C. § 2101(a)(8).

21 40. Plaintiff and the Class Members were terminated by Defendant without cause on
22 their part, as part of or as the reasonably foreseeable consequence of the mass layoffs or plant
23 closings ordered by Defendant at the Facility.

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

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

5 44. The Plaintiff is, 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 45. Defendant failed to pay Plaintiff and each of the Class Members their respective
9 wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for 60 days
10 following their respective terminations and failed to make the pension and 401(k) contributions
11 and provide employee benefits under ERISA, other than health insurance, for 60 days from and
12 after the dates of their respective terminations.
13

14 **Second Claim: Violation of California Labor Code - § 1400 et. seq.**

15 46. Plaintiff realleges and incorporates by reference all allegations in all proceeding
16 paragraphs.

17 47. Plaintiff brings the Second Claim for Relief for violation of Labor Code § 1401 on
18 behalf of herself and a class of similarly situated persons pursuant to Labor Code § 1404 and
19 Federal Rules of Civil Procedure 23(a) and (b), who worked at, or reported to and received
20 assignments from Defendant’s Facility and were terminated without cause on or about November
21 6, 2018 and thereafter (the “CAL WARN Class”).
22

23 48. Pursuant to Labor Code § 1400(b), “[e]mployer’ means any person . . . who
24 directly or indirectly owns and operates a covered establishment. A parent corporation is an
25 employer as to any covered establishment directly owned and operated by its corporate
26 subsidiary.”
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1 49. Upon information and belief, Defendant is the employer of the CAL WARN Class
2 as that term is defined by Labor Code § 1400(b) because they directly or indirectly owned and
3 operated at least one covered establishment.

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

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

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

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

- 16 a. whether the members of the CAL WARN Class were employees of the
17 Defendant;
18 b. whether Defendant unlawfully terminated the employment of the members
19 of the CAL WARN Class without cause on their part and without giving
20 them 60 days advance written notice in violation of the CAL WARN Act;
21 c. whether Defendant unlawfully failed to pay the CAL WARN Class
22 members 60 days wages and benefits as required by the CAL WARN Act;
23 and
24 d. whether the Plaintiff’s claims are typical of those of the CAL WARN
25 Class.

26 54. Plaintiff, like other CAL WARN Class members, worked at or reported to
27 Defendant’s Facility and were terminated beginning on or about November 6, 2018 and
28 thereafter, due to the closure of the Facility ordered by Defendant.

1 55. Plaintiff will fairly and adequately protect the interests of the CAL WARN Class.
2 Plaintiff has retained counsel competent and experienced in complex class actions on behalf of
3 employees, including the CAL WARN Act, the federal WARN Act, other similar state laws, and
4 employment litigation.

5 56. Class certification of these Claims is appropriate under Fed. R. Civ. P. 23(b)(3)
6 because questions of law and fact common to the CAL WARN Class predominate over any
7 questions affecting only individual members of the CAL WARN Class, and because a class action
8 is superior to other available methods for the fair and efficient adjudication of this litigation –
9 particularly in the context of CAL WARN Class Act litigation, where individual plaintiffs may
10 lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate
11 defendant, and damages suffered by individual CAL WARN Class members are small compared
12 to the expense and burden of individual prosecution of this litigation.

13 57. Concentrating all the potential litigation concerning the CAL WARN Act rights of
14 the members of the Class in this Court will obviate the need for unduly duplicative litigation that
15 might result in inconsistent judgments, will conserve the judicial resources and the resources of
16 the parties and is the most efficient means of resolving the CAL WARN Act rights of all the
17 members of the Class.

18 58. Plaintiff intends to send notice to all members of the CAL WARN Class to the
19 extent required by Rule 23.

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23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, the Plaintiff, individually and on behalf of all other similarly situated
25 persons, prays for the following relief as against Defendant:

26 A. Certification that, pursuant to Fed. R. Civ. P. 23 (a) and (b), Plaintiff and the other
27 similarly situated former employees constitute a single class;
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- 1 B. Designation of the Plaintiff as Class Representative;
- 2 C. Appointment of the undersigned attorneys as Class Counsel;
- 3 D. A judgment in favor of Plaintiff and each of the “affected employees” equal to the
- 4 sum of: their unpaid wages, salary, commissions, bonuses, accrued holiday pay,
- 5 accrued vacation pay, pension and 401(k) contributions and other ERISA benefits,
- 6 for 60 days, that would have been covered and paid under the then-applicable
- 7 employee benefit plans had that coverage continued for that period, all determined
- 8 in accordance with the WARN Act, 29 U.S.C. § 2104(a)(1)(4) and the California
- 9 Labor Code § 1402(a);
- 10
- 11 E. Interest as allowed by law on the amounts owed under the preceding paragraph;
- 12
- 13 F. Plaintiff’s reasonable attorneys’ fees and the costs and disbursements that the
- 14 Plaintiff incurred in prosecuting this action, as authorized by the WARN Act, 29 U.S.C. §
- 15 2104(a)(6); and
- 16 G. Such other and further relief as this Court may deem just and proper.

17 DATED: November 13, 2018

Respectfully submitted,

18 /s/ Gail Lin
19 Gail Lin
20 OUTTEN & GOLDEN LLP
21 601 S. Figueroa St, Ste 4050
22 Los Angeles, CA 90017
23 Tel.: (323) 673-9900
24 Fax: (646) 509-2073
25 Email: gl@outtengolden.com

26 Jack A. Raisner²
27 René S. Roupinian²
28 Robert N. Fisher, Cal St. Bar. No. 302919
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Email: rfisher@outtengolden.com

*Attorneys for Plaintiff and the other similarly
situated former employees*