

1 David M. Reeder (SBN 133150)  
2 **REEDER LAW CORPORATION**  
3 1880 Century Park East, Suite 1200  
4 Los Angeles, CA 90067  
5 P: (310) 557-8911 F: (310) 557-0380  
6 Email: david@reederlaw.com

7 Stuart J. Miller (SJM 4276)  
8 **LANKENAU & MILLER, LLP**  
9 132 Nassau Street, Suite 423  
10 New York, NY 10038  
11 P: (212) 581-5005 F: (212) 581-2122

12 Mary E. Olsen (OLSEM4818)  
13 M. Vance McCrary (MCCRM4402)  
14 David C. Tufts (TUFTD7673)  
15 **THE GARDNER FIRM, P.C.**  
16 210 South Washington Avenue  
17 Mobile, AL 36602  
18 P: (251) 433-8100 F: (251) 433-8181

19 *Attorneys for Plaintiff Thomas C. Capizzi*

20 **UNITED STATES BANKRUPTCY COURT**  
21 **CENTRAL DISTRICT OF CALIFORNIA**  
22 **LOS ANGELES DIVISION**

23 In re:  
24 RHYTHM AND HUES, INC.,  
25 Debtor and Debtor in Possession.

26 Case No.: 2:13-bk-13775-NB  
27 Chapter 11  
28 Adv. No. \_\_\_\_\_

29 THOMAS C. CAPIZZI on his own behalf and  
30 on behalf of all other persons similarly situated,

31 Plaintiff,

32 v.

33 RHYTHM AND HUES, INC.,

34 Defendant.

35 **CLASS ACTION ADVERSARY PROCEEDING**  
36 **COMPLAINT [VIOLATION OF WORKER**  
37 **ADJUSTMENT AND RETRAINING**  
38 **NOTIFICATION ACT, 29 U.S.C. §§ 2101 – 2109**  
39 **AND CALIFORNIA LABOR CODE §§ 1400 ET**  
40 **SEQ.]**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**COMPLAINT**

1. Plaintiff Thomas C. Capizzi, by and through his undersigned counsel, on behalf of himself and all other persons similarly situated, hereby alleges as follows:

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157, 1331, 1334 and 1367.

3. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (B) and (O).

**NATURE OF THE ACTION**

4. This is a class action for the recovery by Plaintiff Thomas Capizzi and other similarly situated employees of the Defendant of damages in the amount of 60 days’ pay and ERISA benefits by reason of Defendant’s violation of the Plaintiff’s rights under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101 – 2109, and its California counterpart California Labor Code §§ 1400 – 1408 (collectively, the “WARN Act”). The Plaintiff was an employee of the Defendant and was terminated as part of, or as a result of, a mass layoff ordered by the Defendant on or about February 10, 2013. As such, the Defendant violated the WARN Act by failing to give the Plaintiff and other similarly situated employees of the Defendant at least 60 days’ advance notice of termination, as required by the WARN Act. As a consequence, the Plaintiff and other similarly situated employees of the Defendants are entitled under the Cal WARN Act to recover from the Defendants 60 days’ wages and ERISA benefits, none of which has been paid.

**PARTIES**

5. At all relevant times, Defendant maintained and operated a “Facility” comprised of operations located at 2100 East Grand Avenue, El Segundo, CA 90245 (the “Facility”).

6. On or about February 13, 2013, Defendant filed with this Court voluntary petition for relief under Chapter 11 of Title 11 of the United States Code.

7. Until his termination by Defendants, the Plaintiff and other similarly situated persons were employees of Defendant who worked at or reported to the Facility.

**CLASS ACTION ALLEGATIONS 29 U.S.C. § 2104**

8. The Plaintiff and each person he seeks to represent herein, was discharged on or

1 about February 10, 2013 by the Defendant without cause on his or her part and are “affected  
2 employees” within the meaning of 29 U.S.C. § 2101(a)(5).

3 9. The Plaintiff brings this action on his own behalf and, pursuant to the WARN Act,  
4 and Rules 7023(a) and (b)(3) of the Federal Rules of Bankruptcy and Rules 23(a) and (b) of the  
5 Federal Rules of Civil Procedure, on behalf of all other similarly situated former employees of  
6 Defendant who were terminated on or about February 10, 2013 who worked at the Facility until their  
7 termination.

8 10. On February 10, 2013 Defendant terminated the Plaintiff’s employment as part of a  
9 mass layoff which qualifies as an event for which he was entitled to receive to sixty (60) days’  
10 advance written notice under the WARN Act.

11 11. At or about the time that the Plaintiff was discharged, on or about February 10, 2013  
12 and thereafter, Defendant discharged approximately 253 other employees at the Facility (the “Other  
13 Similarly Situated Former Employees”).

14 12. Pursuant to WARN Act 29 U.S.C. § 2104(a)(5), the Plaintiff maintains this claim on  
15 behalf of each of the Other Similarly Situated Former Employees and for his or her benefit.

16 13. Each of the Other Similarly Situated Former Employees is similarly situated to the  
17 Plaintiff in respect to his or her rights under the WARN Act.

18 14. The Plaintiff and the Other Similarly Situated Former Employees were discharged by  
19 Defendant, without cause on his or her part.

20 15. The Plaintiff and each Other Similarly Situated Former Employees are “affected  
21 employees” within the meaning of WARN Act 29 U.S.C. § 2101(a)(5).

22 16. Defendant was required by the WARN Act to give the Plaintiff and each Other  
23 Similarly Situated Former Employees at least sixty (60) days prior written notice of their respective  
24 terminations.

25 17. Prior to their terminations, neither the Plaintiff nor the Other Similarly Situated  
26 Former Employees received written notice that complied with the requirements of the WARN Act.

27 18. Defendant failed to pay the Plaintiff and the Other Similarly Situated Former  
28 Employees their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued

1 vacation for sixty (60) days following their respective terminations and failed to make the 401(k)  
2 contributions and provide health insurance coverage and other employee benefits under ERISA with  
3 respect to them for sixty (60) days from and after the dates of their respective terminations.

4 **CLASS ACTION ALLEGATIONS RULE 7023 (a) and (b)**

5 19. The Plaintiff asserts this claim on behalf of himself and the Other Similarly Situated  
6 Former Employees pursuant to Rules 7023 (a) and (b) (3) of the Federal Rules of Bankruptcy and  
7 Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure.

8 20. The Plaintiff and the Other Similarly Situated Former Employees constitute a class  
9 within the meaning of Rules 7023 (a) and (b) (3) of the Federal Rules of Bankruptcy and Rules 23(a)  
10 and (b)(3) of the Federal Rules of Civil Procedure (The "Class").

11 21. Common questions of law and fact are applicable to all members of the Class.

12 22. The common questions of law and fact arise from and concern the following facts and  
13 actions, among others, that Defendant committed or failed to commit as to all members of the Class:  
14 all Class members enjoyed the protection of the WARN Act; all Class members were employees of  
15 Defendant who, prior to the terminations, worked at the Facility; Defendant terminated the  
16 employment of all the members of the Class without cause on their part and without giving them at  
17 least sixty (60) days' prior written notice as required by the WARN Act; and Defendant failed to pay  
18 the Class members wages and to provide other employee benefits for the sixty (60) day period  
19 following their respective terminations.

20 23. The questions of law and fact common to the members of the Class, as above noted,  
21 predominate over any questions affecting only individual members, and thus, this Class claim is  
22 superior to other available methods for the fair and efficient adjudication of this controversy.

23 24. The Plaintiff's claims are typical of the claims of other members of the Class in that  
24 for each of the several acts described above, the Plaintiff is or was an injured party.

25 25. The Plaintiff will fairly and adequately protect and represent the interests of the Class.

26 26. The Plaintiff has the time and resources to prosecute this action and has retained  
27 counsel who have had extensive experience in matters involving employee rights, the WARN Act,  
28 class action litigation and bankruptcy court litigation.

1           27.     The Class is so numerous as to render joinder of all members impracticable as there  
2 are approximately 254 persons who are included in the Class.

3           28.     The Class meets the requirements of Fed. R. Civ. P. 23(a) for Class certification.

4           29.     The Class meets the requirements of Fed. R. Civ. P. 23(b)(3) because the questions of  
5 law or fact common to the members of the Class predominate over any questions affecting only  
6 individual members, and that a class action is superior to other available methods for the fair and  
7 efficient adjudication of the controversy.

8           30.     No Class member has an interest in individually controlling the prosecution of a  
9 separate action under the WARN Act.

10          31.     No litigation concerning the WARN Act rights of any Class member has been  
11 commenced.

12          32.     Concentrating all the potential litigation concerning the WARN Act rights of the  
13 Class members in this Court will avoid a multiplicity of suits, will conserve judicial resources and  
14 the resources of the parties and is the most efficient means of resolving the WARN Act rights of all  
15 the Class members.

16          33.     On information and belief, the identity of the Class members is contained in the  
17 books and records of Defendant.

18          34.     On information and belief, a recent residence address of each of the Class members is  
19 contained in the books and records of Defendant.

20          35.     On information and belief, the rate of pay and benefits that was being paid by  
21 Defendant to each Class member at the time of his/her termination is contained in the books and  
22 records of Defendant.

23          36.     As a result of Defendant's violation of the WARN Act, the Plaintiff and the other  
24 members of the Class have been damaged in amounts equal to the sum of: (a) their respective lost  
25 wages, salaries, commissions, bonuses, accrued holiday pay, accrued vacation pay, 401 (k)  
26 contributions for sixty (60) days; (b) the health and medical insurance and other fringe benefits that  
27 they would have received or had the benefit of receiving, for a period of sixty (60) days after the  
28 dates of their respective terminations; and (c) medical expenses incurred during such period by such

1 persons that would have been covered and paid under the then applicable employee benefit plans had  
2 that coverage continued for that period.

3 **THE CLAIM FOR RELIEF**

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

7 38. At all relevant times, the Defendant was an “employer”, as that term is defined in 29  
8 U.S.C. § 2101(a)(1) and 20 C.F.R. § 639(a) and continued to operate as a business until it  
9 determined to order a mass layoff at the Facility.  
10

11 39. On or about February 10, 2013, the Defendant ordered a “mass layoff” at the Facility,  
12 as that term is defined by 29 U.S.C. § 2101(a)(1) and Cal. Lab. Code § 1400(d).

13 40. The mass layoff at the Facility resulted in “employment losses,” as that term is  
14 defined by 29 U.S.C. §2101(a)(2) for at least fifty (50) of Defendant’s employees as well as 33% of  
15 Defendant’s workforce at the Facility, excluding “part-time employees,” as that term is defined by  
16 29 U.S.C. §2101(a)(8).  
17

18 41. The Plaintiff and each of the other members of the Class were discharged by the  
19 Defendant without cause on his or her part as part of or as the reasonably foreseeable result of the  
20 mass layoff ordered by the Defendant at the Facility.

21 42. The Plaintiff and each of the other members of the Class are “affected employees” of  
22 the Defendant within the meaning of 29 U.S.C. §2101(a)(5).

23 43. The Defendant was required by the WARN Act to give the Plaintiff and each of the  
24 other members of the Class at least 60 days advance written notice of his or her termination.

25 44. The Defendant failed to give the Plaintiff and other members of the Class written  
26 notice that complied with the requirements of the WARN Act.  
27

28 45. The Plaintiff and each of the other members of the Class is an “aggrieved employee”

1 of the Defendant as that term is defined in 29 U.S.C. §2104 (a)(7).

2 46. The Defendant failed to pay the Plaintiff and each of the other members of the Class  
3 their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for  
4 60 days following their respective terminations and failed to make the pension and 401(k)  
5 contributions and provide employee benefits under ERISA, other than health insurance, for 60 days  
6 from and after the dates of their respective terminations.

7 47. The relief sought in this proceeding is equitable in nature.

8  
9 WHEREFORE, Plaintiff on his own behalf and on behalf of the other Class members  
10 demands judgment against Defendant as follows:

11 A. An allowed claim against Defendant in favor of the Plaintiff and Class members  
12 equal to the sum of unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued  
13 vacation pay pension and 401(k) contributions and other ERISA benefits, for 60 days, that would  
14 have been covered and paid under the then applicable employee benefit plans had that coverage  
15 continued for that period, all determined in accordance with the WARN Act, 29 U.S.C.  
16 §2104(a)(1)(A) and California Labor Code §§ 1400 *et seq.* The first \$10,950 of the WARN Act  
17 claims of the Plaintiff and each other Class member are entitled to priority status, under 11 U.S.C. §  
18 507(a)(4) and the balance in general unsecured claim.

19  
20 B. Certification that the Plaintiff and the other Class members constitute a single class;

21 C. Appointment of the undersigned attorneys as Class Counsel;

22 D. Appointment of Plaintiff as the Class Representative and payment of reasonable  
23 compensation to him for his services as such;

24  
25 E. An allowed administrative priority claim under 11 U.S.C. § 503 for the reasonable  
26 attorneys' fees and the costs and disbursements that the Plaintiff incur in prosecuting this action, as  
27 authorized by the WARN Act; and

28 F. Such other and further relief as this Court may deem just and proper.

1  
2 Dated: February 15, 2013

Respectfully submitted,

3 **REEDER LAW CORPORATION**

4  
5 By: /s/ DAVID M. REEDER  
6 David M. Reeder (SBN 133150)

7 *Attorney for Plaintiff Thomas C. Capizzi, on his own*  
8 *behalf and on behalf of all other persons similarly*  
9 *situated*

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
DEADLINE.COM