KLEHR HARRISON HARVEY BRANZBURG LLP
Charles A. Ercole, *Pro Hac Vice*
Jeffrey Kurtzman (Bar # 7689)
Lee D. Moylan, *Pro Hac Vice*
1835 Market St. Suite 1400
Philadelphia, Pa 19103
Tel: 215) 569-2700

KELLER ROHRBACK L.L.P.
1201 Third Ave., Ste 3200
Seattle, WA 98101
Lynn L. Sarko, *Pro Hac Vice*
Mark Griffin, *Pro Hac Vice*
Tana Lin, *Pro Hac Vice*
Deirdre Glynn Levin, *Pro Hac Vice*
Tel: (206) 623-1900

SIMON, RAY & WINIKKA, LLP
Matt Ray
Dan Winikka
2525 McKinnon Street
Suite 540
Dallas, TX 75201
Tel: (214) 871-2292

Additional Counsel on Signature Page

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
HOSTESS BRANDS, INC., *et al.*[1]	:	Case No. 12-22052 (RDD)
Debtors.	:	(Jointly Administered)
Mark Popovich, William Dean, Robert Gregory, Henry Dini, Fred Shourds, and Michael Jablonowski, Individually and as Class Representatives on behalf of a Putative Class of all others similarly situated,	:	Master Docket Adversary No. 12-08314 (RDD)
Plaintiffs,	:	
Hostess Brands, Inc., IBC Sales Corporation; IBC Services, LLC, IBC Trucking, LLC, Interstate Brands Corporation, and MCF Legacy, Inc.,	:	
Defendants.	:	

[1] The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Hostess Brands, Inc. (0322), IBC Sales Corporation (3634), IBC Services, LLC (3639), IBC Trucking, LLC (8328), Interstate Brands Corporation (6705), and MCF Legacy, Inc. (0599).

CONSOLIDATED CLASS ACTION ADVERSARY PROCEEDING COMPLAINT FOR VIOLATIONS OF THE FEDERAL WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT, 29 U.S.C. § 2101 ET SEQ.

I. NATURE OF THE ACTION

Plaintiffs Mark Popovich, William Dean, Robert Gregory, Henry Dini, Fred Shourds, and Michael Jablonowski, on behalf of themselves and other similarly situated individuals (the "Class Members"), bring this action against Hostess Brands, Inc., IBC Sales Corporation, IBC Services, LLC, IBC Trucking, LLC, Interstate Brands Corporation, and MCF Legacy, Inc. (collectively "Hostess" or "Defendants"), for violations of the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq., ("WARN Act"). Plaintiffs seek to recover 60 days of wages and benefits from Defendants for Class Members who were terminated without cause as part of plant closings or mass layoffs ordered by Hostess without the notice required by the WARN Act. Plaintiffs' post-petition claims for wages under the WARN Act are entitled to first priority administrative expense status. 11 U.S.C. § 503(b)(1)(A).

Plaintiffs allege the following based upon their personal knowledge, through the investigation of their attorneys, or based upon information and belief:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157, 1331, 1334, and 1367 and 29 U.S.C. § 2104(a)(5).

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B) and (0).

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 29 U.S.C. § 2104(a)(5).

III. THE PARTIES

A. Plaintiffs

4. Plaintiff Mark Popovich is a resident of Toledo, Ohio. Mr. Popovich was employed full time as a loader in the shipping department at the Hostess facility in Northwood, Ohio for more than the last six of the twelve months preceding the date on which the WARN notice was required to be issued. Approximately 150 employees worked at the Northwood, Ohio Hostess Facility until it shut down on or about November 16, 2012.

5. Plaintiff William Dean is a resident of Columbus, Georgia. Mr. Dean was employed full time as an engineer at the Hostess facility in Columbus, Georgia for more than the last six of the twelve months preceding the date on which the WARN notice was required to be issued. Approximately 400 employees worked at the Columbus, Georgia Hostess Facility until it shut down on or about November 16, 2012.

6. Plaintiff Robert Gregory is a resident of Columbus, Georgia. Mr. Gregory was employed full time as an engineer at the Hostess facility in Columbus, Georgia for more than the last six of the twelve months preceding the date on which the WARN notice was required to be issued.

7. Plaintiff Henry Dini is a resident of Birmingham, Alabama. Mr. Dini was employed full time as shipper loader at the Hostess facility in Birmingham, Alabama for more than the last six of the twelve months preceding the date on which the WARN notice was required to be issued.

8. Plaintiff Fred Shourds is a resident of La Mirada, California. Mr. Shourds was employed full time as a route sales representative for Hostess for more than the last six of the

twelve months preceding the date on which the WARN notice was required to be issued and was based out of Anaheim, California.

9. Plaintiff Michael Jablonowski is a resident of Albany, New York. Mr. Jablonowski was employed full time as a route sales representative for Hostess for more than the last six of the twelve months preceding the date on which the WARN notice was required to be issued and was based out of Watervliet, New York.

B. Defendants

10. Hostess is comprised of six separate legal entities: Hostess Brands, Inc., Interstate Brands Corporation, IBC Sales Corporation, IBC Trucking, LLC, IBC Services, LLC, and MCF Legacy, Inc.

11. Hostess Brands, Inc. is a Delaware corporation with its principal place of business located at 6031 Connection Drive, Irving, Texas 75039. Hostess Brands, Inc. conducted business in this District.

12. Interstate Brands Corporation is a Delaware corporation with its principal place of business located at 6031 Connection Drive, Irving, Texas 75039. Hostess Brands, Inc. is the direct corporate parent of Interstate Brands Corporation. Interstate Brands was responsible for plant-level manufacturing operations for Hostess. Interstate Brands conducted business in this District.

13. IBC Sales Corporation is a Delaware corporation with its principal place of business located at 6031 Connection Drive, Irving, Texas 75039. Hostess Brands, Inc. is the direct corporate parent of IBC Sales Corporation. IBC Sales conducted Hostess' wholesale distribution and retail sales operations. IBC Sales conducted business in this District.

14. IBC Trucking, LLC is a Delaware limited liability company with its principal place of business located at 6031 Connection Drive, Irving, Texas 75039. Hostess Brands, Inc. is the direct corporate parent of IBC Trucking, LLC. IBC Trucking operated Hostess' in-house trucking fleet. IBC Trucking conducted business in this District.

15. IBC Services, LLC is a Missouri limited liability company with its principal place of business located at 6031 Connection Drive, Irving, Texas 75039. Hostess Brands, Inc. is the direct corporate parent of IBC Services, LLC. IBC Services performed certain limited corporate management functions for Hostess. IBC Services, LLC conducted business in this District.

16. MCF Legacy, Inc. is a California corporation with its principal place of business located at 6031 Connection Drive, Irving, Texas 75039. Hostess Brands, Inc. is the direct corporate parent of MCF Legacy. MCF Legacy previously operated the Mrs. Cubbison's Foods business, a grocery crouton sales business, which was sold in May 2011. MCF Legacy conducted business in this District.

IV. FACTUAL ALLEGATIONS

17. The purpose of the WARN Act is to:

> provide[ ] protection to workers, their families and communities by requiring employers to provide notification 60 calendar days in advance of plant closings and mass layoffs. Advance notice provides workers and their families some transition time to adjust to the prospective loss of employment, to seek and obtain alternative jobs and, if necessary, to enter skill training or retraining that will allow these workers to successfully compete in the job market. WARN also provides for notice to State dislocated worker units so that dislocated worker assistance can be promptly provided.

20 C.F.R. § 639.1.

18. Pursuant to the WARN Act:

> An employer shall not order a plant closing or mass layoff until the end of a 60-day period after the employer serves written notice of such an order –

> (1) to each representative of the affected employees as of the time of the notice or, if there is no such representative at that time, to each affected employee; ***and***
>
> (2) to the State or entity designated by the State to carry out rapid response activities under section 2864 (a)(2)(A) of this title, and the chief elected official of the unit of local government within which such closing or layoff is to occur.

29 U.S.C. § 2102(a) (emphasis added).

19. Further, "[r]olling notice, in the sense of routine periodic notice, given whether or not a plant closing or mass layoff is impending, and with the intent to evade the purpose of the Act rather than give specific notice as required by WARN, is not acceptable." 20 C.F.R. § 639.10(b).

20. Hostess was one of the largest wholesale bakers and distributors of bread and snack cakes in the United States, producing products under brands such as Butternut®, Ding Dongs®, Dolly Madison®, Drake's®, Home Pride®, Ho Hos®, Hostess®, Merita®, Nature's Pride®, Twinkies® and Wonder®.

21. On January 11, 2012, Defendants filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code (the "Petition Date").

22. According to the January 11, 2012 Affidavit Of Brian J. Driscoll[2] In Support Of First Day Motions And In Accordance With Local Bankruptcy Rule 1007-2 filed in Case No. 12-22052-rdd (Bankr. S.D.N.Y.) ("Driscoll Affidavit"), Hostess was operating 36 bakeries, 565 distribution centers, approximately 5,500 delivery routes and 570 bakery outlet stores (collectively "Hostess Facilities") with approximately 19,000 employees throughout the United States as of the Petition Date. ECF No. 3.

---

[2] At the time he signed the affidavit, Mr. Driscoll was the Chief Executive Officer and a member of the board of directors of Hostess Brands, Inc.

23. On January 25, 2012, Hostess filed a Motion of Debtors and Debtors in Possession to (A) Reject Certain Collective Bargaining Agreements and (B) Modify Certain Retiree Benefit Obligations, Pursuant to Section 1113(c) and 1114(g) of the Bankruptcy Code (ECF No. 174) ("Initial 1113/1114 Motion") in which it sought to reject their collective bargaining agreements with various unions.

24. According to the Initial 1113/1114 Motion, Hostess stated that an obstacle to reorganization was "their obligations under collective bargaining agreements that cover their nearly 15,000 active union employees." Hostess further represented, "Hostess simply cannot emerge as a viable competitor unless they are relieved of a number of significant financial commitments and arcane work rules imposed by their collective bargaining agreements." ECF No. 174 at ¶ 9-10.

25. Hostess subsequently continued to negotiate with the various unions while simultaneously beginning to issue ambiguous notifications that did not meet the requirements of the WARN Act. The notices threatened to close plants or implement employee layoffs and even liquidation in what Plaintiffs believe was an effort solely to gain concessions from the unions.

26. Beginning in May 2012, Plaintiffs began receiving these vague notices. Upon information and belief, other Hostess employees also received these purported notices.

27. On or about May 4, 2012, Plaintiff Shourds and his colleagues received a letter that purported to enclose a WARN Notification (the "May 4 Letter"), which is attached as Exhibit A.

28. The May 4 Letter stated that Hostess' "goal remains fixed on emerging from bankruptcy as a stable company with a strong future."

29. The purported notice that accompanied the May 4th letter stated that the company had been engaged in discussions with various lenders and potential purchasers but that the "primary focus is to complete our restructuring of the Company and emerge from chapter 11 as a viable company." The purported notice then went on to list a number of events that "may occur" and that "[i]f one of these events occur, Hostess may begin the process of permanently ceasing operations and significantly scaling down operations" as early as 60 days from the receipt of the notice. Finally, the purported notice failed to contain all the information required by 20 C.F.R. § 639.7(d)(2) such as "[t]he expected date when the plant closing or mass layoff will commence and the expected date when the individual employee will be separated." *Id.*

30. Operations did not cease nor were operations significantly scaled down by the time 60 days had elapsed from the May 4 Letter. During this period, none of the Plaintiffs noticed any change in their jobs or the daily operations of Hostess.

31. On or about July 20, 2012, September 5, 2012, October 5, 2012, and November 13, 2012, some of the Plaintiffs received purported extensions of the vague notice (the May 4 Letter)(collectively "Extension Letters"),[3] all of which referred back to the original purported notice and continued to assert *if* one or more of the laundry list of events occurred, it would lead to their separation from the company. These vague and impermissible rolling notices are attached as Exhibits B-E. Upon information and belief, identical notices were sent to other Hostess employees.

32. In particular, the July 20, 2012 letter (the "July 20 Letter") stated that "one or more of the events described in the May 4, 2012 [Letter] may occur within the next forty-five

[3] Pursuant to 29 U.S.C. § 2102(a)(1), WARN notices can be served on the representative of an affected employee in lieu of the employee.

days, which would lead to a separation of your employment with the Company within fourteen days after the occurrence of any such event." *See* Exhibit B. However, operations did not cease nor were operations significantly scaled down within the forty-five day time period following the July 20 Letter. The July 20 Letter failed to contain all the information required by 20 C.F.R. § 639.7(d)(2), such as "[t]he expected date when the plant closing or mass layoff will commence and the expected date when the individual employee will be separated."

33. In the September 5, 2012 letter (the "September 5 Letter"), Hostess informed its employees that it expected to know on or about October 5, 2012, whether the International Brotherhood of Teamsters ("IBT") and the Bakery, Confectionary, Tobacco Workers and Grain Millers ("BCTGM") were able to secure ratification of the modified collective bargaining agreements proposed by Hostess. *See* Exhibit C.

34. In the October 5, 2012 letter (the "October 5 Letter"), Hostess informed its employees that several of the unions had obtained member ratification of the modified collective bargaining agreements Hostess had negotiated with the unions that was "necessary to allow the Company to emerge from bankruptcy successfully." *See* Exhibit D.

35. In every single one of the letters (purported notices), including the letter sent on November 13, 2012 (the "November 13 Letter"), Hostess continued to assure its employees that its "primary focus continues to be on contemplating a restructuring of the Company and emerging from chapter 11 as a viable company." *See* Exhibits A-E.

36. According to the November 13 Letter, the BCTGM members began picketing at certain facilities and initiating strikes at Hostess bakeries on or about November 9, 2012. This, however, was not an unforeseeable business circumstance.

37. On November 16, 2012, Hostess informed each Plaintiff, as well as, upon information and belief, thousands of other Hostess employees, that they should no longer report to work at their respective Hostess facility.

38. Plaintiffs had no warning or reasonable expectation that this would occur. Between January 11, 2012 and November 16, 2012, none of Plaintiffs' job duties had changed in any material way, none of the Plaintiffs noticed any material changes in the daily work he performed or he observed others perform for Hostess, and the daily job duties of the majority of Hostess' front line employees remained the same or substantially the same during that time.

39. In a letter dated November 27, 2012 (the "November 27 Letter"), Hostess informed its employees that they had been terminated as of November 21, 2012. *See* Exhibit F attached hereto.

40. Plaintiff Popovich was not terminated for cause and did not voluntarily depart or retire from his employment with Hostess.

41. Plaintiff Dean was not terminated for cause and did not voluntarily depart or retire from his employment with Hostess.

42. Plaintiff Gregory was not terminated for cause and did not voluntarily depart or retire from his employment with Hostess.

43. Plaintiff Dini was not terminated for cause and did not voluntarily depart or retire from his employment with Hostess.

44. Plaintiff Shourds was not terminated for cause and did not voluntarily depart or retire from his employment with Hostess.

45. Plaintiff Jablonowski was not terminated for cause and did not voluntarily depart or retire from his employment with Hostess.

46. Similarly, upon information and belief, most, if not all, of the Class Members terminated on or about November 21, 2012, were not terminated for cause and did not voluntarily depart or retire from their employment with Hostess.

47. In early May 2012, Hostess filed a notice with various state dislocated worker units as required by 29 U.S.C.§ 2102(a)(2). Upon information and belief, however, Hostess never filed any additional notices as required by 20 C.F.R. § 639.10 with many of the state dislocated worker units. For example, in Texas, where Hostess was headquartered, it filed a single purported WARN notice on May 8, 2012, with an anticipated layoff date of July 4, 2012. Hostess thereafter filed no further WARN notices with the Texas agency. Similarly, Hostess filed only an initial WARN notice in May 2012 and did not file any additional notices once the anticipated layoff dates in the May 2012 Letter had elapsed with the dislocated worker units of states including, but not limited to: California, Florida, Indiana, and New Jersey.

48. Rolling or routine periodic notice is not acceptable notice under the WARN Act. *See* 20 C.F.R. § 639.10.

49. The Extension Letters Hostess sent after the May 2012 Letter constitute rolling notices or routine periodic notices given whether or not a plant closing or mass layoff was pending with the intent to evade the purpose of the WARN Act. This intent is evidenced by Hostess' failure to file the required extension notices with numerous state dislocated worker units.

50. In addition, Hostess repeatedly represented in these rolling or routine periodic notices *not* that Hostess was planning to shut down, but that Hostess was primarily focused on restructuring the company. These notices did not serve the purposes of the WARN Act but, instead, intentionally left Hostess' employees guessing about whether a layoff or shut down in

fact really was planned or likely. Thus, the employees were deprived of much needed transition time to adjust to the prospective loss of employment or to seek and obtain alternative jobs as contemplated by the WARN Act. Hostess created this untenable situation for its employees solely in an attempt to put pressure on the unions to concede to Hostess' demands and mislead its employees into thinking it was business as usual so they would not leave before Hostess had an opportunity to preserve as much of its estate as possible.

51. On November 21, 2012, Hostess announced that it was winding down the company, which would result in the closure of 33 bakeries, 565 distribution centers, approximately 5500 delivery routes, and 570 bakery outlet stores as well as the loss of approximately 18,500 jobs. http://hostessbrands.info/. Hostess placed all of the blame for this alleged unanticipated shutdown on a nationwide strike instituted by the BCTGM.

52. While Hostess attempted to characterize its decision to wind down as unexpected and caused solely by the BCTGM strike, it is apparent that neither was true. Specifically, over one month prior to the strike, Hostess had stated in bankruptcy filings that it already was planning on closing down at least five bakeries and numerous depots as part of its Revised Turnaround Plan. *See* Disclosure Statement With Respect To Joint Plan Of Reorganization Of Debtors And Debtors In Possession, ECF No. 1597 at pp. 50-51. Also, in its negotiations with the BCTGM, Hostess told the union that "the company was planning to close at least nine bakeries, although the company refused to disclose which bakeries." http://www.peoplesworld.org/bakery-workers-say-hostess-lies-ceo-threatens-closure/. Moreover, according to St. Louis Mayor Francis Slay, Hostess had told him months before the shut down that the company was "planning on closing the site in St. Louis." http://stlouis.cbslocal.com/2012/11/13/slay-i-was-told-months-ago-about-hostess-closure/.

Therefore, based on Hostess' own admissions, the plant closings and mass layoffs were not caused by the BCTGM strike. Hostess had been planning on closures of a number of sites for at least a few months prior to the strikes.

53. As a result of Hostess' decision to wind down and sell its operations and assets, more than 15,000 employees (including Plaintiffs) were immediately terminated on or about November 21, 2012.

54. Hostess effected these terminations without either having provided valid notice 60 days in advance of the shutdown or mass layoffs as required under the WARN Act or providing notice as soon as was practicable despite the foreseeability of the circumstances that ultimately led to Hostess' decision to close down its facilities and terminate the majority of its employees.

V. CLASS ALLEGATIONS

55. **Class Definition.** This class action is brought under Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(1) and/or 23(b)(2) and/or (b)(3). Plaintiffs bring this action on behalf of the following nationwide class ("Class"):

> All persons who were employed by any Defendant and who were terminated without cause on or within 30 days of November 21, 2012, or were terminated without cause as the reasonably foreseeable consequence of the plant closings or mass layoffs ordered by Defendants on or about November 21, 2012, and who are "affected employees" under § 2101(a)(5) and 20 C.F.R. § 639.3(e).

56. Plaintiffs reserve the right to modify the class definition before moving for class certification, including a reservation of a right to seek to certify subclasses of Hostess' employees, if information gained during this litigation, through discovery or otherwise, reveals that modifying the class definition or seeking subclasses would be appropriate.

57. **Numerosity.** Plaintiffs do not know the exact number of Class Members because such information is within the exclusive control of Defendants. On information and belief, Plaintiffs believe there are thousands of members of the class. In addition, the members of the class are so numerous and geographically dispersed that joinder of all members is impracticable.

58. **Commonality**. Common class claims and issues arise for Plaintiffs and the members of the Class. Common class claims and issues include, but are not limited to:

A. whether Defendants were "employers" under the WARN Act;

B. whether Defendants were required to provide advance notice of a plant closing or mass layoff to the Class Members;

C. whether Defendants' purported "notices" complied with the WARN Act; and

D. whether Class Members are entitled to 60 days wages and benefits pursuant to the WARN Act.

59. **Typicality**. Plaintiffs Popovich, Dean, Gregory, Dini, Shourds, and Jablonowski's claims are typical of the claims of the other members of the Class because all members of the Class were terminated without cause on or about November 21, 2012 (and none of them voluntarily departed or retired) and have been harmed in substantially the same way by Defendants' conduct.

60. **Adequacy**. Plaintiffs Popovich, Dean, Gregory, Dini, Shourds, and Jablonowski are adequate representatives of the class. Each of the Plaintiffs is committed to prosecuting this action. Plaintiffs seek no relief that is antagonistic, adverse, or otherwise contradictory to other members of the Class. Further, Plaintiffs have retained counsel competent and experienced in complex class actions, including employment and bankruptcy litigation.

61. **Rule 23(b)(1) Requirements.** Class certification of these claims is appropriate under Fed. R. Civ. P. 23(b)(1) because adjudications with respect to individual class members

will, as a practical matter, be dispositive of the interests of the other members not parties to the individual adjudications and will substantially impair or impede their ability to protect their interests.

62. **Rule 23(b)(2) Requirements**. Class certification of these claims is appropriate under Fed. R. Civ. P. 23(b)(2) because Defendants have acted on grounds generally applicable to Plaintiffs and the Class as alleged herein, thereby making final injunctive or corresponding declaratory relief appropriate and damages incidental because they flow directly from liability to the class as a whole and are awarded automatically after liability is established based on objective standards rather than complex individual determinations.

63. **Rule 23(b)(3) Requirements.** In the alternative, class certification of these claims is appropriate under Fed. R. Civ. P. 23(b)(3) because there are common questions of law and fact that affect all Class Members and predominate over any questions affecting only individual members of the Class including, but not limited to the following:

A. whether Defendants were "employers" under the WARN Act;

B. whether Defendants were required to provide advance notice of a plant closing or mass layoff to the Class Members;

C. whether Defendants' purported "notices" complied with the WARN Act; and

D. whether Class Members are entitled to 60 days wages and benefits pursuant to the WARN Act.

64. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. The prosecution of separate actions by individual members of the class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class. In addition, litigation on an individual basis could be dispositive of the

interests of absent Class Members, and substantially impair or impede their ability to protect their interests. Finally, in the context of WARN Act litigation, the damages suffered by individual Class Members are small compared to the expense and burden of individually prosecuting each claim and individual plaintiffs likely will not have the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant.

65. Plaintiffs do not anticipate any difficulty in managing this action as a class action. The identities of the Class Members are either known by Defendants or will be revealed through discovery, and the measure of monetary damages can be calculated from Defendants' records. This action poses no unusual difficulties that would impede its management by the Court as a class action.

VI. FIRST CLAIM FOR RELIEF

Violation of the WARN Act, 29 U.S.C. § 2101 *et seq.*

66. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.

67. At all relevant times, Defendants were an "employer," as that term is defined in 29 U.S.C. § 2101 (a)(1) and 20 C.F.R. § 639(a).

68. At all relevant times, 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.

69. At all relevant times herein, Hostess constituted a "single employer" of the Plaintiffs and the Class Members under the WARN Act as there is: (a) a high interdependency of operations; (b) a commonality between management, directors and officers; (c) a consolidation

of financial, and human resources operations; and (d) at all relevant times, Hostess acted as essentially one entity. *See e.g.*, Schedule 9 attached to Driscoll Affidavit (ECF No. 3).

70. On or about November 16, 2012, Defendants ordered mass layoffs and/or plant closings, as those terms are defined by 29 U.S.C. § 2101(a)(2), and terminated those employees on or about November 21, 2012.

71. For example, the shutdown of the Columbus, Georgia plant alone on or about November 16, 2012 resulted in a plant closing, as 50 or more employees at a single site, excluding any part-time workers, suffered an employment loss for a 30 day period. In the alternative, the shutdown of the Columbus, Georgia plant alone resulted in a mass layoff as there was a reduction in force which caused an employment loss at a single site of employment during a 30 day period for at least 50 of Defendants' employees as well as thirty-three percent (33%) of Defendants' workforce at that single site of employment, excluding "part-time employees," as that term is defined by 29 U.S.C. § 2101(a)(8).

72. Similarly, the shutdown of the Northwood, Ohio plant alone on or about November 16, 2012 resulted in a plant closing, as 50 or more employees at a single site, excluding any part-time workers, suffered an employment loss for a 30 day period. In the alternative, the shutdown of the Northwood, Ohio plant alone resulted in a mass layoff as there was a reduction in force which caused an employment loss at a single site of employment during a 30 day period for at least 50 of Defendants' employees as well as thirty-three percent (33%) of Defendants' workforce at that single site of employment, excluding "part-time employees," as that term is defined by 29 U.S.C. § 2101(a)(8).

73. The plant closings and/or mass layoffs by Hostess resulted in "employment losses," as that term is defined by the WARN Act, 29 U.S.C. §2101(a)(6).

74. Plaintiffs and the Class Members were terminated by Defendants on or about November 21, 2012 without cause and as part of or as the reasonably foreseeable consequence of the plant closings or mass layoffs ordered by Defendants at Hostess Facilities. Further, neither Plaintiffs nor any of the Class Members voluntarily departed or retired from their employment with Defendants.

75. For the reasons stated in ¶¶ 51 and 70-74, Plaintiffs and the Class Members are "affected employees" of Defendants, within the meaning of 29 U.S.C. § 2101(a)(5).

76. As Defendants terminated the vast majority of employees on or about November 21, 2012, including those employees in its production facilities, it could be reasonably expected that the remainder of Hostess' employees would likely lose their jobs as result of those terminations.

77. Defendants were required by the WARN Act to give the Plaintiffs and the Class Members at least 60 days advance written notice of their terminations because each Plaintiff and Class Member individually is an "affected employee" under the Act.

78. Defendants failed to give the Plaintiffs and the Class Members valid notices that complied with the requirements of the WARN Act because, for example: the notices did not contain the expected date when the plant closing or mass layoff would commence or the expected date when the individual employee would be separated as required by 20 C.F.R. § 639.7(d)(2); the notices provided to Plaintiffs and Class Members were improper rolling notices pursuant to 20 C.F.R. § 639.10; and Defendants failed to file the appropriate corresponding notice with many state dislocated worker units as required by 29 U.S.C. § 2102(a)(2).

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

80. Defendants have indicated they will not pay Plaintiffs and each of the WARN Class Members their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for 60 days following their respective terminations, and failed to make the pension and 401(k) contributions and provide employee benefits under COBRA for 60 days from and after the dates of their respective terminations.

81. Plaintiffs' and the Class Members' claims against Defendants are entitled to first priority administrative expense status pursuant to 11 U.S.C. § 503 (b)(1)(A) because Plaintiffs and each of the Class Members seek back-pay attributable to a period of time after the filing of the Debtors' bankruptcy petitions and which arose as the result of the Debtors' violation of a federal law.

VII. SECOND CLAIM FOR RELIEF

(Claim for Allowance and Payment of Administrative Expense Claims on Behalf of Other Similarly Situated Employees Terminated After the Petition Date)

82. Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

83. Section 503 of the Bankruptcy Code provides that the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case, shall be allowed as an administrative expense in a case. 11 U.S.C. § 503(b)(1)(a).

84. Because Plaintiffs and Class Members seek damages from Hostess for wages and benefits that they should have received during the post-petition period, each of them is entitled to an administrative expense claim including, but not limited to, sixty (60) days of pay and benefits as provided by the WARN Act, pursuant to § 503(b)(1)(a) of the Bankruptcy Code.

VIII. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, individually and on behalf of all other similarly situated persons, pray for the following relief as against Defendants, jointly and severally:

A. Certification of this action as a Class Action;

B. Designation of the Plaintiffs as the Class Representatives;

C. Appointment of the undersigned attorneys as Class Counsel;

D. A first priority administrative expense claim against the Debtor Defendants pursuant to 11 U.S.C. § 503(b)(1)(A) in favor of the Plaintiffs and the other similarly situated former employees equal to the sum of: their unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay, pension and 401(k) contributions and other COBRA benefits, for 60 days, that would have been covered and paid under the then-applicable employee benefit plans had that coverage continued for that period, all determined in accordance with the WARN Act, 29 U.S.C. § 2104 (a)(1)(A), including any civil penalties;-and

E. An allowed administrative-expense priority claim under 11 U.S.C. § 503 for the reasonable attorneys' fees and the costs and disbursements that the Plaintiffs incur in prosecuting this action, as authorized by the WARN Act, 29 U.S.C. § 2104(a)(6), the WARN Act and/or other applicable laws.

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

DATED: January 22, 2013

KELLER ROHRBACK L.L.P.

By: */s/David S. Preminger*
David S. Preminger (DP 1057)
770 Broadway, Second Floor
New York, NY 10003
Tel: (646) 495-6198
dpreminger@kellerrohrback.com

KLEHR HARRISON HARVEY BRANZBURG LLP

By: */s/ Charles A. Ercole*
Charles A. Ercole, *Pro Hac Vice*
Jeffrey Kurtzman (Bar No.7689)
Lee D, Moylan, *Pro Hac Vice*
1835 Market St. Suite 1400
Philadelphia, Pa 19103
Tel: 215-569-2700
cercole@klehr.com
jkurtzma@klehr.com
lmoylan@klehr.com

KELLER ROHRBACK L.L.P.
Lynn L. Sarko, *Pro Hac Vice*
Mark Griffin, *Pro Hac Vice*
Tana Lin, *Pro Hac Vice*
Deirdre Glynn Levin, *Pro Hac Vice*
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Tel: (206) 623-1900
lsarko@kellerrohrback.com
mgriffin@kellerrohrback.com
tlin@kellerrohrback.com
dglynnlevin@kellerrohrback.com

SIMON, RAY & WINIKKA, LLP
Matt Ray
Dan Winikka
2525 McKinnon Street, Suite 540
Dallas, TX 75201
Tel: 214-871-2292
mray@srwlawfirm.com
dwinikka@srwlawfirm.com

KELLER ROHRBACK P.L.C.
Gary A. Gotto, *Pro Hac Vice*
3101 N Central Avenue, Suite 1400
Phoenix, AZ 85012-2643
Tel: (602) 248-0088
ggotto@kellerrohrback.com

Counsel for Plaintiffs

EXHIBIT A

May 04, 2012

VIA USPS
Oliver Bettencourt
601 E Birch St Apt i
Brea, CA 92821

Re: Conditional Notice Pursuant to the Worker Adjustment and Retraining Notification Act

Dear Oliver:

As you know, Hostess Brands, Inc. (including its affiliate Interstate Brands Corporation, "Hostess" or the "Company") filed for chapter 11 relief on January 11, 2012 (the "Filing"). The Company has been actively engaged in discussions with various lenders and potential purchasers regarding Hostess' restructuring both before and after the Filing. Our primary focus is to complete our restructuring of the Company and emerge from chapter 11 as a viable company. However, it is possible that, despite our best efforts, certain events may occur that would require Hostess to sell all or portions of its business and/or wind down its operations and liquidate.

Despite the uncertainty of what may happen, the federal Worker Adjustment and Retraining Notification Act and certain related State statutes (collectively, "WARN") generally require employers to provide advance notice in the event of certain covered employment actions. To comply with any WARN obligations Hostess may have, this letter is intended to give you conditional notice that, based upon the best information reasonably available to Hostess at this time, it is possible that one of the following events may occur:

- The board of directors authorizes, or seeks court authorization for, the pursuit of a sale of all or a substantial portion of all of Hostess' assets;
- The board of directors authorizes, or seeks court authorization for, Hostess to stop pursuing the restructuring of its business;
- More than 20% of Hostess' aggregate workforce is laid off after January 11, 2012;
- Hostess receives an unsatisfactory resolution of its pending motion before the bankruptcy court regarding certain modifications to its collective bargaining agreements with the Bakers and/or the Teamsters;
- There is a strike, walkout, lockout, slowdown or other work stoppage that is likely to have a material adverse effect on Hostess; or
- Hostess seeks bankruptcy court approval to commence a sale of property while in bankruptcy which accounts for more than 20% of Hostess' consolidated net sales as reported on Hostess' financial statements for the twelve-month period preceding January 11, 2012.

If one of these events occurs, Hostess may begin the process of permanently ceasing operations, and significantly scaling down operations at its Anaheim CA - 901E Orangethorpe location, located at 901 E Orangethorpe, Anaheim, CA 92801-1126, as early as 60 days from your receipt of this notice. In such an event, Hostess currently expects substantially all employee separations, including your separation, to

occur within 60 days of this notice or within a 14-day period thereafter. At the end of this process, the entire Anaheim CA - 901E Orangethorpe location would be permanently closed. There will be no bumping rights available to you in this circumstance.

Again, our primary focus is to complete our restructuring and emerge from chapter 11 as a viable Company. If you have any questions, or would like further information, please contact our AskHR call center at 1-800-Hostess (1-800-467-8377).

Very truly yours,

Christopher J. Knipp
SVP, Human Resources
Hostess Brands, Inc.

EXHIBIT B

Hostess Brands | Hostess Wonder

July 20, 2012

VIA USPS
Fred Shourds
15060 La Capelle R
La Mirada, CA 90638

Re: Extension Of Conditional Notice Pursuant to the Worker Adjustment and Retraining Notification Act

Dear Fred:

By letter dated May 4, 2012 Hostess Brands, Inc. notified you that certain events may occur that could lead to your separation of employment with the Company on or about July 20, 2012. As a result of the Company's ongoing chapter 11 bankruptcy proceedings, based upon the best information reasonably available to the Company at this time, it is now anticipated that one or more of the events described in the May 4, 2012 may occur within the next forty-five days, which would lead to a separation of your employment with the Company within fourteen days after the occurrence of any such event.

The Company continues to be actively engaged in discussions with various lenders and potential purchasers regarding Hostess' restructuring. But, as was the case on May 4, it is possible that, despite our best efforts, certain events may occur that would require Hostess to sell all or portions of its business and/or wind down its operations and liquidate. However, our primary focus continues to be on completing our restructuring of the Company and emerge from chapter 11 as a viable company.

If you have any questions, or would like further information, please contact our ASKHR call center at 1-800-Hostess (1-800-467-8377).

Very truly yours,

Christopher J. Knipp
SVP, Human Resources
Hostess Brands, Inc.

EXHIBIT C

Hostess Brands | Wonder

September 5, 2012

VIA USPS
Fred Shourds
15060 La Capelle R
La Mirada, CA 90638

Re: Extension of Conditional Notice Pursuant to the Worker Adjustment and Retraining Notification Act

Dear Fred:

By letter dated May 4, 2012, Hostess Brands, Inc. and its affiliate Interstate Brands Corporation (collectively, the "Company") notified you that certain events may happen that could lead to your separation from the Company on or about July 20, 2012. By letter dated July 20, 2012, based on the best information available to the Company at that time, we let you know that one or more of the events described in the May 4, 2012 letter may happen on or about September 3, 2012, which would lead to your separation from the Company within fourteen days of that event taking place.

The Company's bankruptcy proceedings are ongoing and since May 4 the Company has proposed modifications to its collective bargaining agreements with the International Brotherhood of Teamsters ("IBT"), the Bakery, Confectionary, Tobacco Workers and Grain Millers International Union ("BCTGM") and the other unions representing Company employees. Based on the best information available to the company at this time, we believe that the Company should know on or about October 5, 2012 whether the IBT and the BCTGM were able to secure member ratification of the modified collective bargaining agreements currently proposed by the Company. As we have told both the IBT and the BCTGM, in the event of a failure to ratify the modified collective bargaining agreements, the Company will likely not be able to emerge successfully from bankruptcy and will have to begin to sell all or portions of its business and/or wind down its operations and liquidate, which would lead to a separation of your employment within 14 days thereafter.

Our primary focus continues to be on completing a restructuring of the Company and emerging from chapter 11 as a viable company. But, as was the case on May 4 and July 20, it is possible that, despite our best efforts, the Company may be required to sell all or portions of its business and/or wind down its operations and liquidate.

If you have any questions, or would like further information, please contact our ASKHR call center at 1-800-Hostess (1-800-467-8377).

Very truly yours,

Jeff Parlato
Vice President, Human Resources and Labor Relations
Hostess Brands, Inc.

EXHIBIT D

October 5, 2012

VIA USPS
Fred Shourds
15060 La Capelle R
La Mirada, CA 90638

Re: Extension Of Conditional Notice Pursuant to the Worker Adjustment and Retraining Notification Act

Dear Fred:

We are writing to update you on the conditional WARN notices that you received from the Company in May, July and September of this year regarding the potential occurrence of certain events that could lead to your separation from the Company.

The Company's bankruptcy proceedings remain ongoing. The International Brotherhood of Teamsters ("IBT"), the United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW"), and the United Steelworks Union ("USW") obtained member ratification of the modified collective bargaining agreements the Company negotiated with those unions necessary to allow the Company to emerge from bankruptcy successfully. The Bakery, Confectionary, Tobacco Workers and Grain Millers International Union ("BCTGM") members and members of some of the other unions representing Company employees did not ratify the modified collective bargaining agreements applicable to them and the BCTGM is threatening to strike. As we stated in previous notices, the Company has told all employees and the unions that in the event of a failure to ratify the modified collective bargaining agreements or a strike, the Company will likely not be able to emerge successfully from bankruptcy and will have to begin to sell all or portions of its business and/or wind down its operations and liquidate, which would lead to a separation of your employment shortly thereafter.

We are currently engaged in bankruptcy court proceedings with the BCTGM and some of the other unions representing Company employees regarding potential implementation of the modified collective bargaining agreements. Our primary focus continues to be on completing a restructuring of the Company and emerging from chapter 11 as a viable company. But, it remains possible that, despite our best efforts, the Company may be required to sell all or portions of its business and/or wind down its operations and liquidate because of the occurrence of any of the events identified in the notices sent to you, including but not limited to, a strike or an unfavorable bankruptcy court ruling with respect to modifications to the Company's collective bargaining agreements with unions other than the IBT.

Based on the best information available to the Company at this time, we believe that the Company should know on or about November 15, 2012 whether the Company will have to begin selling portions of its business and/or wind down its operations and liquidate, which would lead to a separation of your employment within 14 days thereafter. If you have any questions, or would like further information, please contact our ASKHR call center at 1-800-Hostess (1-800-467-8377).

Very truly yours,

Jeff Parlato
Vice President, Human Resources and Labor Relations
Hostess Brands, Inc.

EXHIBIT E

Hostess Brands | Hostess Wonder

November 13, 2012

Extension Of Conditional Notice Pursuant to the Worker Adjustment and Retraining Notification Act

Dear Employee:

We are writing to update you on the conditional WARN notices that you received from the Company earlier this year regarding the potential occurrence of certain events that could lead to your separation from the Company.

The Company's bankruptcy proceedings remain ongoing. Several of the unions representing Company employees obtained member ratification of the modified collective bargaining agreements the Company negotiated with those unions necessary to allow the Company to emerge from bankruptcy successfully. The Bakery, Confectionary, Tobacco Workers and Grain Millers International Union ("BCTGM") members and members of some of the other unions representing Company employees did not ratify the modified collective bargaining agreements applicable to them. The BCTGM began picketing at certain facilities on November 9, 2012 and has initiated strikes at many of our bakeries.

As we stated in previous notices, in the event of a failure to ratify the modified collective bargaining agreements or a strike, the Company will likely not be able to emerge successfully from bankruptcy and will have to begin to sell all or portions of its business and/or wind down its operations and liquidate, which would lead to a separation of your employment shortly thereafter. **As of the date of this letter, the Cincinnati, Ohio, Seattle, Washington, and St. Louis, Missouri plants have been closed because ongoing strikes have crippled production at these locations.** Other facilities may be shutdown in the future as a result of the impact the strike has had on production at those facilities.

While our primary focus continues to be on completing a restructuring of the Company and emerging from chapter 11 as a viable company, it remains possible that, despite our best efforts, the Company may be required to sell all or portions of its business and/or wind down its operations and liquidate because of the occurrence of any of the events identified in the notices sent to you, including but not limited to the ongoing strike.

Based on the best information available to the Company at this time, we believe that the Company should know by on or about December 1, 2012 whether the Company will have to begin selling portions of its business and/or wind down its operations and liquidate, which would lead to a separation of your employment within 14 days thereafter. **If you are employed by one of the closed facilities identified above you will be notified prior to December 1 of your termination date.** If you have any questions, or would like further information, please contact our ASKHR call center at 1-800-Hostess (1-800-467-8377).

Very truly yours,

Jeff Parlato
Vice President, Human Resources and Labor Relations
Hostess Brands, Inc.

EXHIBIT F

Hostess Brands

6031 Connection Drive, Suite 600, Irving, TX 75039
Office: 972-532-4500 Fax: 972-892-7694

November 27, 2012

To Hostess Brands Employees:

As you know, on Friday, November 16th Hostess Brands began the process of winding down all operations and conducting an orderly sale of all company assets. On November 21, the U.S. Bankruptcy Court, Southern District of New York, approved Hostess Brands' motions to wind down the business.

That means that, as of November 21, 2012 -- your employment with Hostess Brands is terminated.

On Monday, November 19th, the Court asked Hostess Brands and the Bakers Union to give the Company and its 18,500 jobs one more chance to survive through confidential mediation, and both sides agreed. Unfortunately, those efforts were unsuccessful and we are now forced to continue with an orderly wind down and sale of our operations and assets. We deeply regret taking this action. But we simply could not continue to operate without the ability to produce or deliver our products.

A Question and Answer document and certain contact information related to employee issues, which provide all the information that we currently have available to help guide you through this difficult time is available on the internet at www.hostessbrands.info. It includes information on how to contact state unemployment agencies and contact information for other resources.

I wish each of you the best.

Gregory F. Rayburn
CEO
Hostess Brands, Inc.