UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DEANNA ALI,

Plaintiff,

v. CASE NO. 8:19-cv-535-T-23JSS

LASER SPINE INSTITUTE, LLC, et al.,

Defendants.
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HEATHER EMBRY,

Plaintiff,

v. CASE NO. 8:19-cv-539-T-23AAS

LASER SPINE INSTITUTE, LLC, et al.,

Defendants.
_____/

DUANE HIGDON,

Plaintiff,

v. CASE NO. 8:19-cv-547-T-23TGW

LASER SPINE INSTITUTE, LLC, et al.,

Defendants.
_____/

OMNIBUS ORDER

In three cases — *Ali v. Laser Spine Institute, LLC, et al.*, 8:19-cv-535-T-23JSS; *Embry v. Laser Spine Institute, LLC, et al.*, 8:19-cv-539-T-23AAS; and *Higdon v. Laser*

Spine Institute, LLC, et al., 8:19-cv-547-T-23TGW — a former employee of Laser Spine Institute sues the company for violating the WARN Act, 29 U.S.C. §§ 2101–09. Each plaintiff sues on behalf of a proposed class, and orders on June 13, 2019, consolidated the cases "[s]olely for the purposes of determining whether to certify a class, whether to appoint a class representative, and whether to appoint class counsel." However, Duane Higdon withdraws his motion for class certification and announces that he will either "pursue his claims individually . . . or as a member of the proposed class if it is certified." (Doc. 20 in 8:19-cv-547-T-23TGW) Accordingly, the only remaining class certification motion is Heather Embry's motion (Doc. 14 in 8:19-cv-539-T-23AAS), which Deanna Ali adopts (Docs. 12–13 in 8:19-cv-535-T-23JSS). That is, Ali and Embry move to certify the same class, to represent the class together, and to appoint their attorneys as class counsel.

A party moving for class certification must demonstrate that the proposed class satisfies each requirement of Rule 23(a), Federal Rules of Civil Procedure, and at least one requirement of Rule 23(b). *Rutstein v. Avis Rent-A-Car Sys.*, 211 F.3d 1228, 1233 (11th Cir. 2000). Rule 23(a) permits class certification:

> only if (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Forty class members can establish numerosity. *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1980). Ali declares that 500 people worked at LSI's Tampa, Florida office when LSI stopped operating in March 2019. (Doc. 14-1 in 8:19-cv-539-T-23AAS) Embry declares that "hundreds of people . . . worked for LSI." (Doc. 14-2 in 8:19-cv-539-T-23AAS) And one of Embry's attorneys declares that he reviewed LSI records, which "appear[]" to establish a class of "approximately 500 people nationwide . . . ." (Doc. 14-3 in 8:19-cv-539-T-23AAS) The proposed class is sufficiently numerous.

Class members in the proposed class will share questions of whether the WARN Act obligated LSI to announce an impending closure and whether LSI failed to satisfy the WARN Act's requirements. Particularly, the class members will need to establish that LSI caused "a mass layoff" or "plant closing," as the WARN Act defines those terms, and that the "layoff" or "closing" resulted in employees' termination without due notice. *Sides v. Macon Cty. Greyhound Park, Inc.*, 725 F.3d 1276, 1281 (11th Cir. 2013). These issues are "susceptible to class-wide proof." *Cooper v. Southern Co.*, 390 F.3d 695, 714 (11th Cir. 2004).

Ali and Embry's claims are typical of the class's claims because Ali and Embry's claims concern the same alleged "mass layoff" or "plant closing" and because each class member was due the same notice. *Prado-Steiman v. Prado v. Bush*, 221 F.3d 1266, 1279 (11th Cir. 2000) ("typicality measures whether a sufficient nexus exists between the claims of the named representatives and those of the class").

Differences in class members' damages do not extinguish typicality. *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984).

Ali and Embry can "fairly and adequately protect the interests of the class" because neither appears to have a "substantial conflict of interest" with the rest of the class and because both appear willing and able to "adequately prosecute the action." *Valley Drug Co. v. Geneva Pharm., Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003).

The proposed class satisfies Rule 23(b)(3) because common legal and factual issues — such as whether the WARN Act's obligations applied to LSI and, if so, whether LSI failed to provide the notice required by the WARN Act — predominate over class members' individualized issues, such as damage determinations. Resolving those common issues in a single action is superior to a mass of individual claims addressing the same issues. *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 949, 1006 (11th Cir. 1997).

To appoint a lawyer[*] as class counsel, Rule 23(g)(1)(A) requires a district court to consider:

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[*] The motions request appointment of "the law firms Wenzel Fenton Cabassa P.A. and Kwall Barack Nadeau PLLC as class counsel." But only a lawyer, not a law firm, appears in court for a client. *Sandyland Produce, LLC v. Tar Heel Farms, Inc.*, 2007 WL 1080005, at *1 n.1 (M.D. Fla. Apr. 9, 2007) (Glazebrook, M.J.) ("The Local Rules contemplate that attorneys, not law firms[,] appear as counsel for parties."); *Infohand Company, Ltd. v. Sprint Spectrum, L.P.*, 2005 WL 1862408, at *1 (D. Kan. Aug. 3, 2005) (Waxse, M.J.) ("[L]aw firms do not . . . appear[] on behalf of parties. Only individual attorneys may enter . . . their appearance.").

However, the advisory committee's notes to the 2003 amendments to Rule 23 explain that Rule 23 contemplates several lawyers collaborating to represent a class.

> (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class.

Ali and Embry's attorneys — Ryan D. Barack, Luis A. Cabassa, Brandon J. Hill, and Michelle Erin Nadeau — are experienced employment law litigators. Barack has held two leadership positions within The Florida Bar's Labor and Employment Law Section, and Cabassa and Hill have served as class counsel in two WARN Act class actions in the Middle District of Florida. The attorneys declare that they are willing and able to commit attention and resources to representing the class. Further, the attorneys have demonstrated diligence by briefing thoroughly the class certification motion, by proposing a class certification notice, by creating an informative website that presents useful information about the class action, by hosting a conference call with more than forty former LSI employees to discuss the class action, by reviewing LSI employment records, and by monitoring LSI's assignment action in the state court.

Embry's class certification motion (Doc. 14 in 8:19-cv-539-T-23AAS) is **GRANTED**. Embry's proposed class is **CERTIFIED**. The class includes:

> All Laser Spine Institute employees throughout the United States who were not given a minimum of 60 days' written notice of termination and whose employment was terminated on or about March 1, 2019, as a result of a "mass layoff" or "plant closing" as defined by the Workers Adjustment and Retraining Notification Act of 1988, excluding the directors and officers of Laser Spine Institute.

Deanna E. Ali and Heather Embry are **APPOINTED** as class representatives. Ryan D. Barack, Luis A. Cabassa, Brandon J. Hill, and Michelle Erin Nadeau are **APPOINTED** as class counsel.

In accord with Rule 42(a), Federal Rules of Civil Procedure, and Local Rule 1.04(c), the clerk is directed to **CONSOLIDATE** for all purposes *Ali v. Laser Spine Institute, LLC, et al.*, 8:19-cv-535-T-23JSS, and *Embry v. Laser Spine Institute, LLC, et al.*, 8:19-cv-539-T-23AAS. *Ali v. Laser Spine Institute, LLC, et al.*, 8:19-cv-535-T-23JSS (Consolidated) is the lead case, and Ali and Embry must file documents in only 8:19-cv-535-T-23JSS (Consolidated). The clerk must **CLOSE** 8:19-cv-539-T-23AAS. And in accord with Higdon's notice, the clerk must **TERMINATE** Higdon's class certification motion (Doc. 14 in 8:19-cv-547-T-23TGW).

No later than **JULY 15, 2019**, Ali and Embry must review the appendix attached to this order, revise the proposed class certification notice, and move for approval of the certification notice.

ORDERED in Tampa, Florida, on July 8, 2019.

STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE