UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:	C/A No. 21-02909-HB
The Muffin Mam, Inc.,	Chapter 7
Debtor(s).	**ORDER SUSTAINING OBJECTIONS TO CLAIM**

THIS MATTER came before the Court to consider objections to the allowance of numerous claims in this case of The Muffin Mam, Inc. ("Debtor"). The objections were filed by Chapter 7 Trustee John K. Fort (the "Trustee"). Appearances were made by Robert H. Cooper ("Cooper") for responding claimants (see below), the Trustee, counsel for the Trustee, Joshua J. Hudson ("Hudson"), and M. Kevin McCarrell ("McCarrell") for The Azalea Fund IV, L.P. ("Azalea").[1]

FINDINGS OF FACT

I. BACKGROUND AND PROCEDURAL HISTORY

On November 9, 2021, Debtor filed a petition for relief under Chapter 7 of the Bankruptcy Code to initiate the above-captioned case with the assistance of W. Harrison Penn ("Penn") as counsel, and some schedules were included.[2] On November 10, 2021, the Trustee filed a Notice of Assets & Request for Notice to Creditors, and a Notice to Creditors to File Claims was issued. On November 23, 2021, Debtor filed additional schedules and statements.[3] Among the documents filed was a Statement of Financial Affairs which indicated that Penn's firm was paid pre-petition for "non-bankruptcy workout" and for "bankruptcy filing".

[1] McCarrell appeared by telephone, the reason for which is explained in further detail below.
[2] ECF No. 1.
[3] ECF No. 16.

Claimants are former employees of the Debtor. Their claims filed in this case are based on Debtor's alleged violation of the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 *et seq.* (the "WARN Act") in connection with the closure of its plant and termination of employment of the claimants. The Trustee asserts that the circumstances of Debtor's closure fit within an exception to the WARN Act and therefore the claims are invalid and should be disallowed. The only issue before the Court is whether Debtor violated the WARN Act and thus whether the claims should be allowed for any distribution in this bankruptcy case. The claims at issue and related pleadings are in the chart on the attached **Exhibit A**.

As a representative example of Trustee's Objections filed in October of 2024, see the Objection regarding the claim of James C. Irick (ECF No. 125): "The Claim is based upon the Worker Adjustment and Retraining Notification Act (WARN Act). Because of the faltering company and the unforeseen circumstances exception, there is no WARN Act claim."

Claimants Martin B. Pierce, Randall G. Dalton, and James C. Irick initially filed responses *pro se*.[4] The *pro se* responses filed by Martin B. Pierce (ECF No. 206) and Randall G. Dalton (ECF No. 210) mention Azalea. Specifically, the *pro se* response filed by Martin B. Pierce says "it was decided by the bank and primary owner of the Company, Azalea Capital, on Friday, November 5th, 2021, to abandon the business plan in favor of bankruptcy" and "there is absolutely no doubt that the Company and ownership group knew about the growing financial pressures on the business for many months. The bank and investors decided to cease operations and knew a mass layoff was coming prior to filing for bankruptcy." The *pro se* response filed by Randall G. Dalton says "the azalea group former owners of the muffin Mam knew exactly what they were doing to get out of having to pay employee's under the warn act" and that employees were told the

[4] Claimant Tequitha M. Tribble also filed a response *pro se* after Cooper filed a response on her behalf.

day after the November 8, 2021, WARN Act notice was issued that the plant would be closing because "[the Azalea group] found out they would have to pay employee's warn act."

In November of 2024, Cooper filed Notices of Appearance and responses on behalf of some of the claimants, including those who filed *pro se* responses. A representative response is the one filed regarding the claim of James C. Irick (ECF No. 227), which alleges the management and ownership of Debtor violated the WARN Act by lying to employees when issuing the WARN Act notice because they knew the Debtor intended to file bankruptcy. These responses do not mention Azalea.

On December 4, 2024, the Court entered an Order authorizing the Trustee to employ Frederick L. Warren ("Warren") as a consultant and expert witness.[5] The claim objection hearing was rescheduled several times, including to allow time for discovery, and finally set for April 23, 2025.

II. SCOPE OF THE HEARING

On April 18, 2025, to comply with his responsibilities under SC LBR 9013-2(c), Hudson filed a notice advising that the hearing remained contested, the presentation would take longer than 30 minutes, and live testimony was necessary. It also stated that he was unable to comply with SC LBR 9013-2(b) due to "Limited Communication with Opposing Counsel." This rule and text entry are designed to notify the Court of certain contested matters so it may plan accordingly.[6] On April 22, 2025, in response to an inquiry from chambers to the parties regarding witnesses and exhibits, Hudson advised that the Trustee had one witness, Warren. Cooper did not respond.

[5] ECF No. 269.

[6] This is a contested matter pursuant to Fed. R. Bankr. P. 9014. It was scheduled on a general docket day which included these 24 hearings and 19 hearings in other cases.

After the close of business on the evening prior to the 10:00 a.m. hearing, Cooper filed a document with legal authorities and arguments (the "Brief") at 5:51 p.m. which asserts that Debtor and "Azalea Capital" (apparently a reference to The Azalea Fund IV, L.P. or a related entity) violated the WARN Act, and appears to assert a claim against Azalea.[7] Cooper also filed a unilateral Statement of Dispute (the "Statement") at 6:42 p.m.[8] The Statement listed sixteen witnesses, identified 46 exhibits, and estimated that the hearing would take five hours. The Statement indicated the issues to be decided by the Court were the following:

> a. Whether or not the multiple former employees of the debtor, The Muffin Mam Company, Inc. have valid proof of claims;
> b. Whether or not the chapter 7 trustee has a valid and enforceable objection to each of the claims of the former employees filed with the court;
> c. Whether or not the debtors' responses defeated the trustee's objection to claims.
> d. If so, what damages the former employees are entitled.
> e. Did the Muffin Mam ***or Azalea Capital violate the provisions of the WARN ACT in any manner whatsoever.***
> f. ***Did Azalea Capital so control The Muffin Mam Co., Inc to the extent Azalea would be liable to The Muffin Mam Co., Inc.'s former employees under the WARN ACT.***
> ***g. Did Azalea Capital provide false information to the former employees of The Muffin Mam Co., Inc.***
> h. The former employees reserve the right to add to this list as evidence and testimony unfolds at the trial in this matter.

(Emphasis added.)

Until this eleventh-hour filing, no pleading has been filed with the Court giving notice that claimants intended the hearing to include a finding that Azalea should be held liable for any

[7] ECF No. 293. The document, titled "Legal Memorandum Reflecting Position of Former Employees of Debtor" does not read as if written by an attorney addressing the matter at hand, and has an odd structure with headings such as "Subsidiary Pros and Cons" and irrelevant statements such as "Anytime you plan to fire multiple individuals, or close facilities leading to job loss, it is advisable to contact an employment attorney." It also includes links to other sources like www.investopedia.com for explanations of irrelevant concepts, making it appear that much of the document was created by cutting and pasting content.
[8] ECF No. 294.

violations of the WARN Act, no authority was cited, and no appropriate notice of any such claim was given.

Azalea is represented by counsel in this bankruptcy case, McCarrell, and his receipt of these pleadings prompted him to file a request with the Court that he be allowed to appear at the hearing remotely. That request was granted, and McCarrell was allowed to participate in the hearing to the extent necessary to protect his client's interests.

At the hearing, McCarrell asked the Court to strike the Brief and Statement, as they do not comply with applicable rules and make requests for relief against his client, who has not been served with any pleading filed in this Court requesting relief against it prior to these filings. Cooper responded with arguments that Azalea should have known it was the target of these allegations and should have known an appearance and defense at the hearing was necessary. McCarrell reserved his right to request sanctions pursuant to Fed. R. Bankr. P. 9011.

SC LBR 9013-2 requires briefs be filed and served 7 days before a hearing, and provides that more than 2 business days prior to the hearing, the parties "shall confer or make a good faith attempt to confer to limit the issues and evidence and to resolve all or part of the matters in controversy. Failure to do so may result in denial of the relief requested by the non-compliant party." Clearly, that rule was not followed regarding the timing of the Brief and Statement and many issues raised therein. When the hearing was held, the Court had not yet had an opportunity to fully review the late filings due to their tardiness, but—in the interest of progressing with the hearing where many parties were present—decided not to strike the filings but rather would review and give appropriate weight. The Court ruled on the record at the hearing that the scope of the hearing would be limited solely to whether the Trustee's Objections to the claims for distribution from this bankruptcy estate should be sustained or overruled, as a claim against a third party for

liability is outside the scope of a hearing on an objection to claim governed by Fed. R. Bankr. P. 3007. *See In re Broadrick*, 532 B.R. 60, 73 (Bankr. M.D. Tenn. 2015) (emphasis added) (quoting *In re McMillen*, 440 B.R. 907, 912 (Bankr. N.D. Ga. 2010)) (a claim is "a request to participate in the distribution of the *bankruptcy estate*"). No determination regarding any responsibility or liability of Azalea would be made, as that matter was clearly not properly before the Court and there was no attempt to give adequate notice.

III. EVIDENCE PRESENTED AT THE HEARING

Warren testified as an expert on the WARN Act. The record includes his Report of Findings dated January 17, 2025 (the "Expert's Report"),[9] and letters issued to Debtor's employees pre-petition that are discussed in the Expert's Report.[10] The following pre-petition history is taken from the Expert's Report, which his testimony confirmed:

> [Debtor] had been struggling financially since the COVID-19 pandemic. It was a portfolio company of Azalea Capital ("Azalea"), a private equity group. [Debtor] received significant financing from Pinnacle Bank ("Pinnacle").
>
> [Debtor] sought additional financing from other sources during 2021 but was unsuccessful. In October 2021, representatives of Azalea met with representatives of Pinnacle, which holds the main bank debt and a line of credit, to discuss a path forward for [Debtor]. Azalea stated that it would consider an infusion of more capital if Pinnacle was willing to restructure [Debtor's] debt. The following week Pinnacle advised Azalea that it could not restructure [Debtor's] debt. Azalea told Pinnacle that under those circumstances Azalea was unwilling to provide any more funding for [Debtor].
>
> Azalea told Pinnacle that the best path forward was to proceed to close [Debtor] down over time in an orderly process and to provide required notices of the closing. Azalea asked Pinnacle to work with it in this path forward. Pinnacle responded that plan sounded like the best idea.
>
> Based on that understanding, WARN Act notices were prepared and provided on November 8, 2021 advising employees that the plant would close on January 7,

[9] The Expert's Report was admitted into evidence without objection as Ex. D, and Cooper listed the Expert's Report as one of claimants' exhibits.
[10] Ex. B and C.

> 2022.[11] Pinnacle then advised Azalea that it had changed its mind and froze [Debtor's] assets and account. Azalea issued another letter to employees on November 9, 2021 which began: "We regret to inform you that the bank has frozen our assets and account, and the plant will be closed today."[12] Work was stopped in the middle of the shift on November 9, 2021.

He stated he had reviewed the facts related to the closing of Debtor (the facts relied upon are set forth in the Expert's Report) and that he spoke with Todd Littleton, an operating partner of Azalea and the Chief Executive Officer of Debtor when it closed, and Pat Duncan, a managing partner of Azalea. He concluded that the "faltering company" exception to the WARN Act found in 29 U.S.C. § 2102(b)(1) was not met. However, he testified that, and his Expert Report explains how, the "unforeseeable business circumstances" exception found in 29 U.S.C. § 2102(b)(2)(A) was met. Specifically, Warren testified that the unforeseeable business circumstance in this case was Pinnacle's unexpected decision to freeze Debtor's assets and accounts on November 9, 2021, making continued operations impossible from that date forward. He also testified, and the Expert's Report explained, that if adopted in the Fourth Circuit, the judicially created exception for a "liquidating fiduciary" would, on these facts, relieve the Trustee of any notice obligations under the WARN Act. There was no objection to this testimony nor to the submission of his Expert's Report into evidence. No cross-examination, other testimony, or evidence presented by Cooper materially contradicted this evidence and conclusion.

Individuals who are former employees of Debtor and claimants testified. They described Debtor's business and the events leading up to the closing on November 9, 2021. Their testimony did not materially differ from the facts relied upon in the Expert's Report nor from Warren's testimony. Several testified that they were dismayed by the Debtor's issuance of a WARN Act notice being followed by Debtor's closing the next day, when the notice stated the plant would not

[11] Ex. B.
[12] Ex. C. The letter states, "the plant will be *closing* today" and the sender appears to be "Muffin Mam Management".

close for another 60 days. They focused on the timing of the Debtor's Chapter 7 filing the day after the notice, Debtor's precarious financial situation, and the fact that Debtor had engaged bankruptcy counsel prior to the notice. However, the testimony and these events are not inconsistent with the facts in the Expert's Report.

After observing the credibility of the witnesses and considering the testimony, evidence, and the Expert's Report, the Court finds that the summary of facts relied on by Warren is sound and includes the material facts to be considered when determining application of the WARN Act.

APPLICABLE LAW AND DISCUSSION

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157, this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B), and the Court may enter a final order.

"[T]he Bankruptcy Code imposes a 'burden shifting framework for proving the amount and validity of a claim.'" *Summit Cmty. Bank v. David*, 629 B.R. 804, 809 (E.D. Va. 2021) (quoting *In re Harford Sands Inc.*, 372 F.3d 637, 640 (4th Cir. 2004)). A proof of claim signed and filed in accordance with the Federal Rules of Bankruptcy Procedure "is *prima facie* evidence of the claim's validity and amount." Fed. R. Bankr. P. 3001(f). "'The burden then shifts to the debtor to object to the claim,' and to 'introduce evidence to rebut the claim's presumptive validity.'" *Meral, Inc. v. Xinergy, Ltd.*, No. 7:16CV00059, 2016 WL 7235846, at *3 (W.D. Va. Dec. 13, 2016) (quoting *Harford Sands*, 372 F.3d at 640). "Such evidence 'must be sufficient to demonstrate the existence of a *true dispute* and must have probative force equal to the contents of the claim.'" *Id.* (emphasis in original) (quoting *In re Falwell*, 434 B.R. 779, 784 (Bankr. W.D. Va. 2009)). "[S]hould the debtor carry his burden. . .the burden then shifts back to the creditor, who must prove by a preponderance of the evidence the amount and validity of the claim." *David*,

629 B.R. at 810 (citing *Harford Sands*, 372 F.3d at 640). As the Trustee does not assert that the claims at issue are deficient in form or amount but rather are invalid because an exception to the WARN Act applies, and (as explained below) the burden of establishing an exception to the WARN Act is on the employer, the Trustee bears the initial burden of proving that an exception to the WARN Act applies to render the claims invalid. If the Trustee satisfies that burden, the claimants will then bear the burden of proving the validity of the claim by a preponderance of the evidence.

There is no dispute between the parties that, absent an exception, Debtor was subject to the WARN Act during the relevant time period. The WARN Act provides a covered "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 3174(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).[13]

There are exceptions to the WARN Act notice requirements:

> (1) An employer may order the shutdown of a single site of employment before the conclusion of the 60-day period if as of the time that notice would have been required the employer was actively seeking capital or business which, if obtained, would have enabled the employer to avoid or postpone the shutdown and the employer reasonably and in good faith believed that giving the notice required would have precluded the employer from obtaining the needed capital or business.

[13] Regarding an employer's notice obligations to local government, *see* 29 U.S.C. § 2104(a)(3) ("Any employer who violates the provisions of section 2102 of this title with respect to a unit of local government shall be subject to a civil penalty of not more than $500 for each day of such violation. . ."); *Gautier v. Tams Mgmt., Inc.*, No. 5:20-cv-00165, 2024 WL 1399004, at *2 (S.D. W.Va. Mar. 31, 2024) (citing 29 U.S.C. § 2104(a)(3)) ("the WARN Act imposes a civil penalty on employers to be paid to the unit of local government entitled to notification under the Act."); *Teamsters Nat'l Auto. Transporters Indus. Negotiating Comm. v. Hook Up, Inc.*, No. Civ.A. 7:02CV00035, 2002 WL 1066954, at *2 (W.D. Va. May 23, 2002) ("the language of § 2104(a)(3) simply does not provide private parties with a right of action.").

> (2)(A) An employer may order a plant closing or mass layoff before the conclusion of the 60-day period if the closing or mass layoff is caused by business circumstances that were not reasonably foreseeable as of the time that notice would have been required.
> (B) No notice under this chapter shall be required if the plant closing or mass layoff is due to any form of natural disaster, such as a flood, earthquake, or the drought currently ravaging the farmlands of the United States.
> (3) An employer relying on this subsection shall give as much notice as is practicable and at that time shall give a brief statement of the basis for reducing the notification period.

29 U.S.C. § 2102(b). There is also a judicially created "liquidating fiduciary" exception under which the WARN Act does not apply to trustees of estates of businesses being liquidated in bankruptcy. *See In re World Mktg. Chicago, LLC*, 564 B.R. 587, 598 (Bankr. N.D. Ill. 2017) (quoting 54 Fed. Reg. 16042-01, 16045 (Apr. 20, 1989)) ("[A] fiduciary whose sole function in the bankruptcy process is to liquidate a failed business for the benefit of creditors does not succeed to the notice obligations of the former employer because the fiduciary is not operating a 'business enterprise' in the normal commercial sense. In other situations, where the fiduciary may continue to operate the business for the benefit of creditors, the fiduciary would succeed to the WARN obligations of the employer precisely because the fiduciary continues the business in operation."). "The employer bears the burden of proof that conditions for the exceptions have been met" and "[i]f one of the exceptions is applicable, the employer must give as much notice as is practicable to the union, non-represented employees, the State dislocated worker unit, and the unit of local government. . . ." 20 C.F.R. § 639.9.

Warren indicates that the unforeseeable business circumstances exception applies, as well as the liquidating fiduciary exception, if applicable in the Fourth Circuit. However, the Expert Report indicates, and the Court's own research confirms, no courts within the Fourth Circuit have adopted the liquidating fiduciary exception. Because the Court concludes that the unforeseeable business circumstances exception applies, it need not address the liquidating fiduciary exception.

Federal regulations clarify the applicability of the unforeseeable business circumstances exception. It "applies to plant closings and mass layoffs caused by business circumstances that were not reasonably foreseeable at the time that 60-day notice would have been required." 20 C.F.R. § 639.9(b). The regulations provide further guidance:

> (1) An important indicator of a business circumstance that is not reasonably foreseeable is that the circumstance is caused by some sudden, dramatic, and unexpected action or condition outside the employer's control. A principal client's sudden and unexpected termination of a major contract with the employer, a strike at a major supplier of the employer, and an unanticipated and dramatic major economic downturn might each be considered a business circumstance that is not reasonably foreseeable. A government ordered closing of an employment site that occurs without prior notice also may be an unforeseeable business circumstance.
> (2) The test for determining when business circumstances are not reasonably foreseeable focuses on an employer's business judgment. The employer must exercise such commercially reasonable business judgment as would a similarly situated employer in predicting the demands of its particular market. The employer is not required, however, to accurately predict general economic conditions that also may affect demand for its products or services.

Id. To meet the unforeseeable business circumstances exception, a party "must establish that (1) the circumstance was unforeseeable, and (2) the layoffs were caused by that circumstance." *Butler v. Fluor Corp.*, 511 F. Supp. 3d 688, 713 (D.S.C. 2021) (citations omitted), *aff'd sub nom. Pennington v. Fluor Corp.*, 19 F.4th 589 (4th Cir. 2021). "When confronted with an assertion that the exception applies, a reviewing court must be careful to avoid analysis by hindsight; the trail of harbingers of an unforeseen event always looks brighter in retrospect." *Id.* (citations omitted).

The Trustee has met his burden to show that the unforeseeable business circumstances exception to the WARN Act applies and has provided sufficient evidence to demonstrate the existence of a true dispute with probative force equal to the contents of the claims at issue. As Warren states in his Expert Report, the unforeseeable business circumstances exception applies, and Debtor provided as much notice as was practicable, because Debtor gave the WARN Act

notice "in good faith relying on its understanding that Pinnacle was onboard with the previously discussed orderly shutdown" and "a similarly situated employer using its commercially reasonable business judgment would not have foreseen Pinnacle's…freezing of [Debtor's] assets and account", which was sudden, dramatic, unexpected, and outside of Debtor's control. The evidence supports this assertion, and the fact that Debtor issued WARN Act notices at all lends credibility to the assertion that it was not aware of what Pinnacle was going to do the next day. Further, the record does not show how engaging counsel to assist with an orderly shutdown through bankruptcy or other means at the appropriate time is inconsistent with obligations under the WARN Act. No evidence was presented to support a finding that Debtor's decision makers knew or reasonably should have expected Pinnacle was going to freeze assets and accounts on November 9, 2021. The burden therefore shifted to claimants, and they have failed to meet their burden to prove the validity of their claims by a preponderance of the evidence. The unforeseeable business circumstances exception applies, and Debtor has no liability to claimants under the WARN Act.

IT IS, THEREFORE, ORDERED that the Objections to Claim filed by the Trustee are **sustained. The claims in the attached Exhibit A are disallowed.**

FILED BY THE COURT
05/07/2025

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

Chief US Bankruptcy Judge
District of South Carolina

Entered: 05/07/2025

EXHIBIT A

Claimant – Claim Number	**Amount of Claim**	**ECF Number of Objection to Claim**	**ECF Number of Response(s) to Objection to Claim**
James C. Irick – 20-2	$14,712.00	125	212 and 227
Tequitha M. Tribble – 21-1	$7,888.00	129	244 and 228
Martin B. Pierce – 30-1	$34,615.44	131	206 and 229
Joseph Wilkinson – 31-1	$9,126.00	132	230
T'yada M. Vega – 40-1	$18,173.16	136	231
Gregory L. Marshall – 42-2	$36,263.74	138	232
Sunny R. Marshall – 43-1	$8,000.00	139	233
Randall G. Dalton – 45-1	$12,461.58	141	210 and 234
Cynthia D. Templeton – 58-1	$14,313.78	149	235
Stephen McKinney – 73-1	$17,307.69	158	236
Lizett G. Ramirez Ramirez – 78-1	$10,500.00	160	238
Dale Strickler – 80-1	$36,257.78	162	239
Brad A. Albert – 83-1	$15,749.66	164	242
Ken A. Landrith – 129-1	$10,080.00	174	240
Kimberly Wade – 146-2	$12,403.85	184	237