

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

ELVA BENSON,

Plaintiff,

v.

Case No. 6:20-cv-891-RBD-LRH

ENTERPRISE LEASING COMPANY OF  
ORLANDO, LLC; and ENTERPRISE  
HOLDINGS, INC.,

Defendants.

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**ORDER**

Defendants move to amend the Court's January 4, 2021 order denying their motion to dismiss (Doc. 61 ("**MTD Order**")) to include a certification for interlocutory review under 28 U.S.C. § 1292(b). (Doc. 69 ("**Motion**").) Plaintiff opposes. (Doc. 74.) On review, the Court grants the Motion and vacates its MTD Order.

In this Worker Adjustment and Retraining Notification Act ("**WARN Act**") case, Plaintiff sued Defendants—her former employers—for failing to give her, and other putative class members, adequate notice of her termination.<sup>1</sup> (See Doc. 35.) Plaintiff was allegedly terminated as part of a mass layoff after Defendants' business suffered from the COVID-19 pandemic. (See *id.* ¶¶ 4, 74; see also Doc. 61, p. 2.) Defendants then moved to

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<sup>1</sup> Former plaintiffs, Ms. Elizabeth Daggs and Ms. Patrina Moore, voluntarily dismissed their claims against former defendant Enterprise Leasing Company of Florida, LLC. (See Docs. 53–54, 62–63.)

dismiss for failure to state a claim, arguing they were not required to provide advance notice under the WARN Act because, even as pled, the layoffs were “due to” COVID-19. (*See* Doc. 42 (“**MTD Motion**”).) Under the WARN Act, “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.” 29 U.S.C. § 2102(b)(2)(B) (“**Natural Disaster Exception**”). So, Defendants argued, the Natural Disaster Exception appeared on the face of the Complaint and Plaintiff failed to state a claim for a WARN Act violation. (Doc. 42, pp. 19-21.)

Relying in part on regulations promulgated by the Department of Labor (“**DOL**”), the Court denied the MTD Motion, finding for the Natural Disaster Exception to apply, the layoffs must be a “direct” result of the natural disaster. (*See* Doc. 61, pp. 10-11 (citing 20 C.F.R. § 639.9(c)(2).) And, the Undersigned concluded, as pled the layoffs were only an indirect result of the COVID-19 pandemic. (*See id.*)

Defendants, now raising new arguments on the correct interpretation of the Natural Disaster Exception and DOL’s accompanying regulations, move to amend the MTD Order to include a certification for interlocutory review, arguing it raises a pure legal question as to the causal standard required for the Natural Disaster Exception and its application to COVID-19. (*See* Doc. 69, p. 4.)

Title 28 section 1292(b) allows a district court in a civil action to certify an order for interlocutory appeal if the order “involves a controlling question of law as to which there is substantial ground for difference of opinion” and “an immediate appeal from the

order may materially advance the ultimate termination of the litigation.” 28 U.S.C. § 1292(b). The appeals court then has discretion to exercise interlocutory review of the order. 28 U.S.C. § 1292(b); *see also* *McFarlin v. Conseco Servs., LLC*, 381 F.3d 1251, 1253 (11th Cir. 2004).

On review of the Motion, Defendants have shown interlocutory appeal of the MTD Order is appropriate under § 1292(b).<sup>2</sup> So the Court vacates its MTD Order, to be followed with an amended order including the proper certification. *See* Fed. R. App. P. 5(a)(3); *Aparicio v. Swan Lake*, 643 F.2d 1109, 1111 (11th Cir. 1981); *Bastian v. United Servs. Auto. Assoc.*, No. 3:13-cv-1454-J-32MCR, 2015 WL 8479265 (M.D. Fla. Dec. 10, 2015).

Accordingly, it is **ORDERED AND AJDUDGED**:

1. Defendants’ Motion to Certify for Interlocutory Review (Doc. 69) is **GRANTED**.
2. The Court **VACATES** the Court’s January 4, 2021 Order addressing Defendants’ motion to dismiss. (Doc. 61.)
3. Concurrent with this Order, the Court will enter an amended order on Defendants’ motion to dismiss. (Doc. 42.)

**DONE AND ORDERED** in Chambers in Orlando, Florida, on February 4, 2021.

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<sup>2</sup> The Court will include a detailed analysis of this finding when it enters its amended order.



  
ROY B. DALTON JR.  
United States District Judge

Copies to:  
Counsel of Record