

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
CASE NO.: 1:15-CV-00519-LCB-LPA

THOMAS E. PEREZ, )  
Secretary of Labor, )  
United States Department of Labor, )

Plaintiff, )

v. )

VESUVIO'S PIZZA & SUBS 2, INC, )  
d/b/a VESUVIO'S II PIZZA & )  
GRILL, INC.;GIOVANNI SCOTT )  
D'ABBUSCO, an individual and in his )  
official capacity, and ALFREDO )  
CAPUANO, an individual and in his )  
official capacity. )

Defendants. )

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**ANSWER TO COMPLAINT BY  
VESUVIO' II PIZZA & GRILL INC. AND  
GIOVANNI SCOTTI D'ABBUSCO**

Defendants, Vesuvio's Pizza & Subs 2, Inc, d/b/a Vesuvio's II Pizza & Grill, Inc.,  
("Vesuvio's") Giovanni Scotti D'Abbusco, an individual and in his official capacity,  
through their undersigned counsel, answer the Complaint as follows:

**FIRST DEFENSE**

With respect to the specific allegations contained in the Complaint, Defendants  
respond as follows:

**JURISDICTION AND VENUE**

1. Paragraph 1 contains legal conclusions to which no response is required.

The remaining allegations are admitted.

2. Paragraph 2 contains legal conclusions to which no response is required.

The remaining allegations are admitted.

### **PARTIES**

3. It is admitted that Vesuvio's is a North Carolina corporation licensed to do business in the State of North Carolina and located at 35 Abbitt Street, Roxboro, North Carolina, 27673 in Person County, North Carolina. The remaining allegations in Paragraph 3 contains legal conclusions to which no response is required.

4. It is admitted that Defendant Scotti D'Abbusco is the president of Vesuvio's, that he hires and fires employees, establishes their rates of pay and is responsible for maintaining employment records. The remaining allegations in Paragraph 4 contains legal conclusions to which no response is required.

5. It is denied that Alfredo Capuano is the manager of Vesuvio's, supervises employees and establishes work schedules and hours for employees of Vesuvio's. It is denied that Capuano manages, supervises or directs the business affairs of operations of Vesuvio's. Paragraph 5 contains legal conclusions to which no response is required. The remaining allegations are denied.

6. It is admitted that for a time, Miriam Martinez Solais was an employee of Vesuvio's. Paragraph 6 contains legal conclusions to which no response is required. The remaining allegations are denied.

### **COVERAGE**

7. The allegations in Paragraph 7 contain legal conclusions to which no response is required.

8. The allegations in Paragraph 8 contain legal conclusions to which no

response is required.

9. The allegations in Paragraph 9 contain legal conclusions to which no response is required.

**FACTUAL ALLEGATIONS**

10. Denied.

11. Denied.

12. Admitted.

13. It is admitted that Complainant filed a complaint with the North Carolina Department of Labor on or about July 24, 2015, the terms of which speak itself. Except as admitted, the allegations in Paragraph 13 are denied.

14. Admitted.

15. Denied.

16. Defendants are without sufficient information to admit or deny the allegations in Paragraph 16 and they are therefore denied.

17. Defendants are without sufficient information to admit or deny the allegations in Paragraph 17 and they are therefore denied.

18. Defendants are without sufficient information to admit or deny the allegations in Paragraph 18 and they are therefore denied.

19. Defendants are without sufficient information to admit or deny the allegations in Paragraph 19 and they are therefore denied.

20. Defendants are without sufficient information to admit or deny the allegations in Paragraph 20 and they are therefore denied.

21. It is admitted that representative from the NCDOL conducted an onsite inspection of Vesuvio's and held a conference with Defendant Scotti D'Abbusco. It is also admitted that the NCDOL found no violations pertaining to Complainant. Except as admitted the allegations of Paragraph 21 are denied.

22. Admitted.

23. It is admitted the Gilda Hernandez corresponded with Defendant Scotti D'Abbusco and Vesuvio's in a letter dated December 12, 2014, the terms of which speak for itself. Except as admitted the allegations of Paragraph 23 are denied.

24. It is denied that Defendant Scotti D'Abbusco sent a message to anyone that Complainant needed to drop her demand for back wages because he did not want anything to happen to her or her daughter. It is further denied that Scotti D'Abbusco stated that the police were looking for Complainant in order to deport her. It is admitted that Complainant used false documents to obtain employment and that Scotti D'Abbusco told others that he could not understand why Complainant was suing him because he and his family had been kind to her. Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 24 and they are therefore denied.

25. It is admitted that Complainant's attorney send communications to Defendants on or about January 5, 2015, the terms of which speak for itself. Except as admitted the allegations in Paragraph 25 are denied.

26. Denied.

27. It is admitted that a report filed with the Roxboro Police Department states that a private investigator discovered that Complainant was using the Social Security

number belonging to a man in California, and that the report speaks for itself. Except as admitted the allegations in Paragraph 27 are denied.

28. The allegations contained in Paragraph 28 and each subparagraph are denied.

29. The police report speaks for itself. Except as admitted the allegations contained in Paragraph 29 are denied.

30. Defendants are without sufficient information to admit or deny the allegations in Paragraph 30 and they are therefore denied.

31. Defendants are without sufficient information to admit or deny the allegations in Paragraph 31 and they are therefore denied.

32. Defendants are without sufficient information to admit or deny the allegations in Paragraph 32 and they are therefore denied.

33. Defendants are without sufficient information to admit or deny the allegations in Paragraph 33 and they are therefore denied.

34. It is denied that Complainant was not able to be employed as a result of her arrest. Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 34 and they are therefore denied.

35. Denied.

36. Denied.

## **AFFIRMATIVE DEFENSES**

### **FIRST DEFENSE**

Each and every allegation of the complaint not specifically responded to in the aforementioned paragraphs are denied.

### **SECOND DEFENSE**

Neither the actions nor inactions of the Defendants were a proximate cause of any damage sustained by the Complainant.

### **THIRD DEFENSE**

Several of Complainant's claims are barred as wholly duplicative of other claims.

### **FOURTH DEFENSE**

No act or omission of the Defendants was in bad faith, malicious, willful, wanton, fraudulent, despicable, oppressive or with actual malice, nor did Defendants act knowingly and/or with reckless or conscious disregard for the Complainant. Defendants assert any statutory or judicial protection from damages, that is available under applicable law, and contend that any award of damages is barred.

### **FIFTH DEFENSE**

Defendants have not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of Complainant's allegations. Defendants thus expressly reserve the right to move to amend their Answer to add additional affirmative defenses as fact and expert discovery progresses and additional information regarding this action becomes available.

### **SIXTH DEFENSE**

Defendants plead the doctrine of unclean hands as a complete bar to, or in mitigation of Complainant's claims.

**SEVENTH DEFENSE**

Plaintiff knew or should have known that the institution of this action was frivolous and malicious, and Plaintiff should thus be required to pay the reasonable attorneys' fees and costs incurred by Defendants in defending against this action.

**EIGHTH DEFENSE**

Complainant has not been damaged as a result of Defendants' actions.

**NINTH DEFENSE**

Complainant's claims are barred in part or whole by applicable statutes of limitation.

**TENTH DEFENSE**

Complainant's claims are barred in part or in whole by the doctrines of waiver and estoppel.

**ELEVENTH DEFENSE**

Complainant's claims are barred by the doctrine of laches and other equitable defenses.

**TWELFTH DEFENSE**

Defendants did not report Complainant to the Roxboro police and did not authorize or encourage such report.

**THIRTEENTH DEFENSE**

The Individual Defendant Capuano never employed Complainant and has no individual liability.

## **FOURTEENTH DEFENSE**

Defendants reserve the right to amend their Answer to assert additional defenses that may come to light through discovery in this case.

**WHEREFORE**, having answered the Complaint, Defendants pray:

1. That Plaintiffs have and recover nothing of them;
2. That the Complaint be dismissed with prejudice;
3. That the costs of this action be taxed against Plaintiff;
4. For a trial by jury; and
5. For such other and further relief as the Court may deem just and proper.

This the 8th day of September, 2015.

### **LAW OFFICES OF DENISE SMITH CLINE, PLLC**

/s/ Denise Smith Cline  
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**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that on this day that the foregoing document was filed with the Court via the CM/ECF system which will send notification of such filing as follows:

Melanie L. Paul  
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This the 8<sup>th</sup> day of September 2015.

/s/ Denise Smith Cline  
Denise Smith Cline