

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

THOMAS E. PEREZ,)	FILE NO. _____
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 SCOTTI D’ABBUSCO, an)	
individual and in his official capacity, and)	
ALFREDO CAPUANO, an individual and)	
in his official capacity,)	
)	
Defendants.)	<u>COMPLAINT</u> (Injunctive Relief Sought)

Plaintiff Thomas E. Perez, Secretary of Labor, United States Department of Labor (hereinafter “the Secretary”), brings this action for injunctive and other appropriate relief against Defendants Vesuvio’s Pizza & Subs 2, Inc. d/b/a Vesuvio’s II Pizza & Grill, Inc. (hereinafter “Vesuvio’s” or “the Company”), Giovanni Scotti D’Abbusco, and Alfredo Capuano (hereinafter collectively referred to as “Defendants”) pursuant to the anti-retaliation provisions of Section 15(a)(3) of Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 215(a)(3) (hereinafter “the Act” or “FLSA”).

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Sections 16(c) and 17 of the Act, 29 U.S.C. §§ 216 and 217, and 28 U.S.C. §§ 1331 (federal question) and 1345 (United States as plaintiff).

2. Venue lies in the United States District Court, Middle District of North Carolina, pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the instant claims occurred in this district.

II. PARTIES

3. Defendant Vesuvio's is now, and at all times material hereto has been, a North Carolina corporation licensed to do business in the State of North Carolina, located at 35 Abbitt Street, Roxboro, North Carolina 27573 in Person County, North Carolina (hereinafter "the Workplace"), within the jurisdiction of this Court, where it is and has been engaged in the restaurant business. Defendant Vesuvio's is a person as defined by Section 3(a) of the Act, 29 U.S.C. § 203(a).

4. Defendant Giovanni Scotti D'Abbusco is and has been the owner and/or President of Defendant Vesuvio's. Defendant D'Abbusco runs the Company, hires and fires employees, establishes their rates of pay, and is responsible for maintaining employment records. Defendant D'Abbusco is doing business at Defendant Vesuvio's Workplace, which is in the jurisdiction of this Court. He actively manages, supervises, and directs the business affairs and operations of Defendant Vesuvio's. Defendant D'Abbusco is and has been at all relevant times an employer within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d), in that he is and has been involved in the day-to-day operations of the company, acts directly or indirectly in the interest of Defendant Vesuvio's in relation to its employees, and has economic and operational control over Defendant Vesuvio's.

5. Defendant Alfredo Capuano is and has been the manager of Defendant Vesuvio's Workplace. Defendant Capuano actively manages the day-to-day affairs at the Workplace including, but not limited to, supervising employees and setting employees' work schedules and hours. Defendant Capuano is doing business at the Workplace, which is in the jurisdiction of this Court. He actively manages, supervises, and directs the business affairs and operations of Defendant Vesuvio's. Defendant Capuano is and has been at all relevant times an employer within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d), in that he is and has been involved in the day-to-day operations of the Company, acts directly or indirectly in the interest of Defendant Vesuvio's in relation to its employees, and has economic and operational control over Defendant Vesuvio's.

6. At all times relevant to this Complaint, Defendants' employees including, but not limited to, Miriam Martinez Solais (hereinafter "Complainant"), were employed by Defendants and were employees employed by an employer as defined by Section 3(e) of the Act, 29 U.S.C. § 203(e).

III. COVERAGE

7. At all times relevant to this Complaint, Defendants have employed in and about the Workplace employees who handled, sold, or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

8. At all times relevant to this Complaint, Defendants have been an enterprise within the meaning of Section 3(r) of the Act, 29 U.S.C. § 203(r), in that Defendants have

been, through unified operation or common control, engaged in the performance of related activities for a common business purpose.

9. At all times relevant to this Complaint, Defendants have been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1)(A) of the Act, 29 U.S.C. § 203(s)(1)(A), in that Defendants have employees engaged in commerce or in the production of goods for commerce, or employees handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and have an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).

IV. FACTUAL ALLEGATIONS

10. During the time period from approximately July 2008 until June 18, 2014, Complainant was employed by Defendants at the Workplace.

11. While employed at the Workplace, Complainant worked as a cook for approximately 12 hours a day, six to seven days per week, earning an approximate weekly salary of \$400.00.

12. On June 18, 2014, Complainant terminated her employment at the Workplace.

13. On July 24, 2014, Complainant filed a complaint with the North Carolina Department of Labor (hereinafter "NCDOL") alleging that Defendants did not pay her for all hours she worked at the Workplace.

14. Defendants received notification from NCDOL in a letter dated July 25, 2014 that Complainant had filed a complaint alleging wage violations and requested Defendants to provide two years of payroll and time records, copies of paychecks, and copies of paystubs.

15. After receiving the letter from NCDOL, Defendants asked individuals whether they knew where Complainant was or if they could locate her.

16. In late July or early August 2014, a former co-worker saw Complainant at her place of employment in Morrisville, North Carolina. The former co-worker asked her why Defendants were talking about suing her and having her arrested.

17. Two weeks later, someone called Complainant's new place of employment and asked if she worked there. The manager, who had answered the call, confirmed that Complainant worked there. The caller then stated that Complainant owes money and he was going to sue her. The manager informed the caller he was busy and hung up the phone.

18. Complainant believed Defendants had made the call to her place of employment and were saying and doing these things to harass and bother her.

19. In a letter dated October 24, 2014, NCDOL notified Complainant that the United States Department of Labor had jurisdiction over her allegations of overtime wage violations because Defendant Vesuvio's annual dollar volume exceeded \$500,000. She was advised to contact the United States Department of Labor with her allegations of wage violations by Defendants.

20. In response to receiving NCDOL's letter, Complainant obtained the services of Gilda Hernandez, an attorney who specializes in representing employees with wage and hour claims.

21. On November 13, 2014, NCDOL conducted an onsite inspection of Defendants' Workplace to determine compliance with other statutes it enforces. On the same day, NCDOL held a final conference with Defendant D'Abbusco discussing the violations of North Carolina record keeping statutes found during its investigation. On information and belief, Defendant D'Abbusco believed that the discussion encompassed or arose from Complainant's minimum wage and overtime claims.

22. On November 20, 2014, NCDOL sent Defendants a citation report and civil money penalty in the amount of \$123.00 for failing to maintain required records.

23. On December 12, 2014, Complainant's attorney, Gilda Hernandez, sent a demand letter to Defendants notifying them that Complainant had retained her to pursue her unpaid hours worked and unpaid overtime under North Carolina law and the FLSA.

24. Approximately ten days later, Complainant received a message from Defendant D'Abbusco, through a mutual acquaintance, that she needed to drop her demand for back wages because he did not want anything to happen to her or her daughter. He also stated Complainant had used false documents and that the police were looking for Complainant in order to deport her.

25. On January 5, 2015, Complainant's attorney informed Defendants that she would be filing a complaint on January 19, 2015, in the United States District Court for

the Middle District of North Carolina alleging violations of the FLSA based on Defendants' failure to pay wages unless Complainant's attorney received a response from Defendants by January 16, 2015.

26. Eight days later, on January 13, 2015, Defendant D'Abbusco filed with the Roxboro Police Department an Incident/Investigation Report ("the Report") alleging that Complainant was utilizing a false social security number.

27. The Report states that D'Abbusco discovered via a private investigator that Complainant used a social security number belonging to another individual in order to gain employment benefits with Vesuvio's.

28. Before – and even after – Complainant filed the Report, Defendants were aware of and knowingly condoned the routine practice of hiring employees who were not eligible to be employed at the Workplace, for example:

- a. When Defendants were told by prospective kitchen staff that they did not have employment eligibility documents, Defendants told these employees it was okay because Defendants just needed good workers in the kitchen;
- b. Defendants asked these employees to provide employment eligibility documents for Defendants to keep on file, even if the documents were false;
- c. Defendants told employees that they hire kitchen staff who were not authorized to work, because they can pay these employees less than American workers. Defendant D'Abbusco stated that American workers do not like to work and have to be paid more;

d. When Complainant began working for Defendants in July 2008, Defendant D'Abbusco requested Complainant to provide him with employment eligibility documentation; however, he did not require her to provide it as a condition of her employment with Defendants. Complainant did not provide Defendant D'Abbusco with employment eligibility documentation and nevertheless received cash payments from Defendants;

e. About a year later in 2009, Defendant D'Abbusco again requested Complainant to provide him with employment eligibility documentation, just to keep on file in case he was asked for the documents. Complainant provided him with documentation. Defendants continued to pay Complainant in cash;

f. In January 2012, Defendant D'Abbusco discussed with Complainant the issues she and her husband—a U.S. citizen and part-time employee of Defendants—were encountering in obtaining her a permanent resident card and legal status to work; and

g. In November 2013, Defendant D'Abbusco began partially paying Complainant her wages in a bi-weekly check utilizing the documentation she provided to him in 2009.

29. The Report related solely to Complainant, the only employee of Defendants who had formally pursued her claims for minimum and overtime wages. Defendant D'Abbusco filed no other police report that day.

30. On January 28, 2014, Roxboro Police Detective Christopher Cates (“Detective Cates”) contacted Complainant. Detective Cates asked Complainant to come to the police station to discuss the case she had against Defendants for wage violations, because he needed to understand her side of the dispute.

31. After Complainant received Detective Cates’ call, Complainant’s attorney called and spoke to Detective Cates. Cates told Complainant’s attorney that she could obtain a copy of the Report at trial as he was going to seek an arrest warrant for two counts of identity theft.

32. The same day, on January 28, 2015, Complainant was arrested at her place of employment in Halifax County, Virginia, by local police officers for two counts of Financial Identity Theft under North Carolina state law, relating to the allegations contained in the Incident/Investigation Report filed by Defendant D’Abbusco.

33. Complainant spent six days in jail. She has since been charged with multiple felony counts related to the allegations contained in the Report filed by Defendant D’Abbusco.

34. As a result of her arrest, Complainant is now unemployed. The arrest has also caused her other harm, both emotional and financial, including, but not limited to, emotional distress and increased attorney’s fees.

V. VIOLATIONS

35. By the acts described in Paragraphs 10 through 34 above, Defendants did intentionally discriminate and are discriminating against Complainant because of her

exercise of rights secured by the Act, including, but not limited to filing an FLSA complaint, or instituting or causing to be instituted any proceeding under or related to the Act, for testifying or being ready to testify in such proceeding, and thereby did engage in, and are engaging in conduct which violates Section 15(a)(3) of the Act, 29 U.S.C. § 215(a)(3).

36. As a result of this unlawful discrimination by Defendants, Complainant was arrested, causing her to lose her subsequent employment, to be under threat of imprisonment and a criminal record that may make her ineligible for future immigration relief, and to suffer other financial and emotional harm.

VI. PRAYER FOR RELIEF

WHEREFORE, cause having been shown, the Secretary prays for a Judgment against Defendants as follows:

A. Issue a finding that Defendants unlawfully discriminated against Complainant in violation of Section 15(a)(3) of the Act, 29 U.S.C. § 215(a)(3);

B. Issue an Order pursuant to Section 17 of the Act, 29 U.S.C. § 217, permanently enjoining and restraining Defendants, their officers, agents, servants, employees, and all persons acting in active concert or participation with Defendants from prospectively violating the provisions of Section 15(a)(3) of the Act, 29 U.S.C. § 215(a)(3);

C. Issue an Order requiring Defendants to pay Complainant for any costs, expenses, and any other damages she incurred as a result of Defendants' discriminatory actions;

D. Issue an Order finding Defendants liable, pursuant to section 16(b) of the Act, 29 U.S.C. § 16(b), for appropriate legal and equitable relief, including punitive damages, based on their retaliation and/or discrimination and requiring Defendants to pay Complainant for any costs, expenses, and any other damages she incurred as a result of Defendants' discriminatory actions, including her legal fees;

E. Issue an Order enjoining and restraining Defendants, their agents, servants, employees, and those persons in active concert or participation with them, or acting in their interest or behalf, from violating the provisions of Section 15(a)(3) of the Act, including, but not limited to: terminating or threatening to terminate; suspending; harassing; suing; threatening; intimidating; causing any employee to be questioned, investigated, detained or deported by immigration officials; or taking any other discriminatory or retaliatory action against any current or former employees or the family members of current or former employees of Defendants based on Defendants' belief that an employee spoke with or intends to speak with an employee or representative of the Secretary, filed a complaint, or cooperated in any way with an investigation conducted under the Act, or otherwise asserted or intends to assert his/her rights under the FLSA;

F. Issue an Order enjoining Defendants from telling any current or former employee not to speak to or cooperate with representatives of the Secretary of Labor;

G. Issue an Order awarding the Secretary his fees and the court costs of this action; and

H. Issue an Order granting the Secretary all further legal or equitable relief as may be necessary or appropriate to effectuate the purposes of Section 15(a)(3) of the Act.

Respectfully submitted this 1st day of July, 2015.

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