

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MARTIN J. WALSH, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

PADAMINAS NY BAKERY II, LLC and
PEDRO COELHO,

Defendants.

Civil Action No. 3:21-cv-1051

August 2, 2021

Injunctive relief sought

COMPLAINT

This case is fundamentally about employers that unlawfully threatened to report employees to immigration authorities or terminate their employment if the employees spoke with the United States Department of Labor as part of the agency’s investigation of the employers under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (the “Act” or “FLSA”). The employers have also unlawfully blacklisted one of their former employees based on the employers’ perception that the former employee had complained to the United States Department of Labor. In addition, the employers have obstructed the Secretary of Labor’s investigation of Defendants under the FLSA. These egregious actions by Defendants Padaminas NY Bakery II, LLC (“Padaminas Bakery”) and its owner Pedro Coelho violated the FLSA. *See* 29 U.S.C. §§ 211(a) and 215(a)(3).

The Secretary therefore seeks from this Court an order enjoining Defendants and those acting on their behalf from violating Sections 11(a) and 15(a)(3) of the FLSA, 29 U.S.C. §§ 211(a) and 215(a)(3), through: (1) any further intimidation, threats, termination, or other adverse action against employees or former employees as a result of their protected activity; and

(2) any further obstruction of the Secretary's investigation. The Secretary also seeks punitive damages for Defendants' egregious retaliation against their employees.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Section 17 of the FLSA, 29 U.S.C. § 217, and 28 U.S.C. §§ 1331 and 1345.

2. Venue is proper in the United States District Court for the District of Connecticut because a substantial part of the events giving rise to the claims occurred in this judicial district.

3. Section 11(a) of the FLSA empowers the Wage and Hour Division to investigate the wages, hours, and practices of employment, to enter and inspect such places of employment, to question such employees, and investigate such facts, conditions, practices, or matters as the agency may deem necessary or appropriate to determine whether any person or employer has violated any provision of the FLSA. 29 U.S.C. § 211(a).

4. Section 15(a)(3) of the FLSA provides, in relevant part, that it shall be unlawful for any person to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding. 29 U.S.C. § 215(a)(3).

FACTUAL ALLEGATIONS

Parties

The Secretary

5. Plaintiff Martin J. Walsh, Secretary of Labor, United States Department of Labor, is vested with the authority to file suit to restrain violations of the FLSA and recover back wages and liquidated damages, and is the proper plaintiff for this action.

Defendant Padaminas NY Bakery II, LLC

6. Defendant Padaminas Bakery is a Connecticut limited liability company with a principal address of 58 Main Street, Danbury, Connecticut 06810.

7. At all relevant times, Padaminas Bakery employed employees, including those who worked as cooks, bakers, servers, sandwich makers, and cashiers.

8. At all relevant times, Padaminas Bakery set its employees' method and amount of pay and created policies or practices regarding employee compensation.

9. At all relevant times, Padaminas Bakery set the hours worked by its employees, supervised employees' work, and had the power to hire and fire them.

Defendant Pedro Coelho

10. Defendant Pedro Coelho is, and at all relevant times was, the owner of Padaminas Bakery.

11. Coelho had the power to, and did, determine how employees of Padaminas Bakery would be compensated.

12. Coelho had the power to set the work schedules for employees at Padaminas Bakery.

13. Coelho did not pay employees at Padaminas Bakery the required overtime premium under the FLSA.

14. Coelho told employees that if they complained about Defendants' pay practices then Coelho would report the employees to the immigration authorities.

15. Coelho's actions affected the compensation that the Padaminas Bakery's employees received.

16. At all relevant times, Coelho has acted directly and indirectly in the interest of the Padaminas Bakery in relation to its employees, and therefore has been an employer of the Padaminas Bakery's employees within the meaning of the FLSA. *See* 29 U.S.C. § 203(d).

17. The claims against Coelho in this case arise out of and are directly related to Coelho's business activities in Connecticut.

Defendants' Unlawful Retaliation

18. On or about March 4, 2021, the Wage and Hour Division of the United States Department of Labor began investigating Defendants under the FLSA.

19. The Wage and Hour Division's investigation of Defendants is ongoing.

20. Section 11(a) of the FLSA, 29 U.S.C. § 211(a), provides the statutory authority for the Wage and Hour Division's investigation of Defendants.

21. The Wage and Hour Division's investigation has revealed that Defendants have failed properly to pay their employees the overtime premium for all hours worked over 40 in a workweek, as required by Section 7 of the FLSA, 29 U.S.C. § 207.

22. In or around March 2021, soon after the Wage and Hour Division began its investigation of Defendants, Defendants held a meeting with their employees to dissuade them from participating in the investigation.

23. At that meeting, Defendants told the employees not to speak with the Wage and Hour Division.

24. At that meeting, Coelho stated that Coelho believed someone had complained to the Wage and Hour Division.

25. At that meeting, Defendants told employees that if anyone spoke with the Wage and Hour Division then Defendants would terminate their employment.

26. At that meeting, Defendants also told employees that if they talked to the Wage and Hour Division then Defendants would report them to the immigration authorities.

27. Between July 12, 2021 and July 23, 2021, Defendants held another meeting with employees to dissuade employees from speaking with the Wage and Hour Division.

28. At that meeting, Defendants again told employees that if they spoke with the Wage and Hour Division then Defendants would fire them.

29. At that meeting, Defendants told employees that if they spoke with the Wage and Hour Division then Defendants would report them to the immigration authorities.

30. Zózimo Jorge Santos Alves was employed by Defendants from approximately October 2014 to on or about February 16, 2021.

31. Santos Alves worked as a cook, at the cash register, and in the bakery.

32. Santos Alves worked an average of 63 hours per week.

33. Defendants never paid Santos Alves the overtime premium required by the FLSA for hours worked over 40 in a workweek.

34. After Santos Alves stopped working for Defendants he sought work with other employers.

35. Defendants told one of Santos Alves's prospective employer not to hire Santos Alves because Santos Alves had filed a complaint with the Wage and Hour Division against Padaminas Bakery.

36. Another prospective employer told Santos Alves that the prospective employer could not hire Santos Alves because the employer did not want to have any issues with the Department of Labor or Coelho.

37. Defendants believe that Santos Alves complained to the Wage and Hour Division.

38. Defendants' actions, as described above, would dissuade a reasonable worker from engaging in protected activity under the FLSA, including speaking with the Wage and Hour Division.

COUNT ONE

(Violations of the Anti-Retaliation Provision of the FLSA, 29 U.S.C. § 215(a)(3))

39. The Secretary incorporates by reference and re-alleges all foregoing allegations in the Complaint.

40. Section 15(a)(3) prohibits retaliation against employees and former employees because they assert their rights under the FLSA. The provision prohibits, among other things, "any person" from "discharg[ing] or in any other manner discriminat[ing] against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter [8 of the FLSA], or has testified or is about to testify in any such proceeding." 29 U.S.C. § 215(a)(3).

41. Defendants have violated Section 15(a)(3) by threatening employees with termination or immigration consequences if they speak with the Wage and Hour Division.

42. Defendants have further violated Section 15(a)(3) by interfering with Santos Alves's future employment because of their perception that he complained to the Wage and Hour Division.

43. As a result of Defendants' retaliatory conduct, a reasonable employee would be dissuaded from engaging in activities protected under the Act, such as asserting their rights to receive proper compensation or cooperate with an investigation by the Secretary into violations of the FLSA.

COUNT TWO

(Violations of Section 11(a) of the FLSA—Obstruction of the Secretary’s Investigation)

44. The Secretary incorporates by reference and re-alleges all of the foregoing allegations in this Complaint.

45. Defendants have violated and are violating the provisions of Section 11(a) of the FLSA, 29 U.S.C. § 211(a), by obstructing the Secretary’s investigation into Defendants’ compliance with the FLSA, by, among other things, threatening employees with termination or immigration consequences if they speak with the Wage and Hour Division and blacklisting a former employee who Defendants believe complained to the Wage and Hour Division.

PRAYER FOR RELIEF

WHEREFORE, cause having been shown, the Secretary respectfully prays that this Court enter judgment against Defendants and provide the following relief:

a. An order issued pursuant to Section 17 of the Act, 29 U.S.C. § 217, permanently enjoining and restraining Defendants, their officers, agents, servants, and employees, and those persons in active concert or participation with Defendants, from violating the provisions of Sections 11(a) and 15(a)(3) of the Act, 29 U.S.C. §§ 211(a) and 215(a)(3);

b. An order issued pursuant to Section 17 of the Act, 29 U.S.C. § 217, permanently enjoining and restraining Defendants, their officers, agents, servants, and employees, and those persons in active concert or participation with Defendants, from taking any of the following actions because an employee or former employee has engaged in, or is about to engage in, protected activity under the FLSA:

- i. Terminating or threatening to terminate any employee;
- ii. Reporting or threatening to report any employee or former employee to immigration authorities;

- iii. Threatening to have any employee or former employee deported;
 - iv. Referring to any employee or former employee's immigration status, citizenship, work authorization status, or lack of government documents (including a driver's license);
 - v. Disparaging or threatening to disparage any employee or former employee to other employers;
 - vi. Blacklisting any employee or former employee;
 - vii. Making any employee's working conditions less favorable, including by reducing any employee's hours of work or pay; and
 - viii. Retaliating or discriminating against employees or former employees in any other way;
- c. An order issued pursuant to Section 17 of the Act, 29 U.S.C. § 217, permanently enjoining and restraining Defendants, their officers, agents, servants, and employees, and those persons in active concert or participation with Defendants, from interfering with employees or former employees' ability to speak with the Wage and Hour Division or otherwise participate in the Wage and Hour Division's investigations;
- d. An order issued pursuant to Section 17 of the Act, 29 U.S.C. § 217, requiring Defendants to permit a representative of the Secretary to notify all Defendants' employees on paid working time of their rights under the FLSA, including their right to speak freely and honestly with the Wage and Hour Division without fear of retaliation;
- e. An order issued pursuant to Section 17 of the Act, 29 U.S.C. § 217, requiring Defendants to provide a written notice of rights under the FLSA to all of their employees in a

language the employees understand, which notice shall be provided to Defendants by the Secretary;

f. An order awarding punitive damages for Defendants' retaliation against certain current and former employees in violation of Section 15(a)(3) of the Act, 29 U.S.C. § 215(a)(3);

g. An order awarding the Secretary all costs of this action; and

h. An order awarding the Secretary with any other relief that the Court deems necessary and appropriate.

Date: August 2, 2021

Seema Nanda
Solicitor of Labor

Maia S. Fisher
Regional Solicitor

Christine T. Eskilson
Deputy Regional Solicitor

/s/ Mark A. Pedulla
Mark A. Pedulla
Wage and Hour Counsel
MA BBO No. 685925
pedulla.mark.a@dol.gov

U.S. Department of Labor
Attorneys for Plaintiff

Post Office Address:
U.S. Department of Labor
Office of the Solicitor
John F. Kennedy Federal Building
Room E-375
Boston, MA 02203
TEL: (617) 565-2500
FAX: (617) 565-2142