

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JULIE A. SU, Acting Secretary of Labor,
United States Department of Labor,

Case No. 23-cv-21616

Plaintiff,

V.

NOVA PRODUCE INSPECTION SERVICES LLC;
CHRISTIAN ROJAS, individually; and KARINA
ROJAS, individually,

COMPLAINT

Defendants.

Plaintiff JULIE A. SU, Acting Secretary of Labor, United States Department of Labor (the “Acting Secretary” or “Department”), brings this action under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (the “Act” or “FLSA”), to restrain Defendants NOVA PRODUCE INSPECTION SERVICES LLC, CHRISTIAN ROJAS, and KARINA ROJAS (“Defendants”) from retaliating against Karen Barra Figueroa and other current and former employees, in violation of section 15(a)(3) of the FLSA, 29 U.S.C. § 215(a)(3), and to redress Defendants’ violations. Earlier this month, Defendants fired Ms. Barra on suspicion that she had engaged in FLSA-protected activity by contacting the Department to raise concerns that she was not being paid properly. Since the summer, the Department has been investigating whether Defendants were complying with federal wage laws, and Defendants incorrectly inferred that one of the Department’s inquiries to Defendants was prompted by Ms. Barra. After receiving an instruction to produce records to the Department, Defendant Karina Rojas confronted Ms. Barra about whether she had called the Department. When Ms. Barra confirmed that she had called the Department, Karina Rojas and Christian Rojas, owners of Nova Produce Inspection Services

LLC, told her that she had “betrayed” them and was “ungrateful” and a “bad person.” Defendants then fired Ms. Barra three days later. Defendants’ retaliatory conduct is not only patently illegal, but also has a chilling effect on the Department’s ability to fully investigate and enforce Defendants’ compliance with the FLSA’s worker-protection provisions.

The Acting Secretary is authorized to seek injunctive relief to restrain violations of the FLSA, such as when employers commit unlawful retaliation. *See* 29 U.S.C. § 217. Because Defendants retaliated against Ms. Barra after she admitted that she had complained to the Department’s Wage and Hour Division about her pay, the Acting Secretary seeks from this Court an order enjoining Defendants and those acting on their behalf from violating section 15(a)(3) of the FLSA through any further retaliation, intimidation, threats, harassment, or other adverse action against Ms. Barra and other current and former employees as a result of their protected activity under the Act. The Acting Secretary also seeks compensatory and punitive damages for Defendants’ flagrant violations to date.

JURISDICTION AND VENUE

1. This Court has subject matter 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 New Jersey because Defendants’ principal place of business is in New Jersey, and a substantial part of the events giving rise to the claims occurred in this district. 28 U.S.C. § 1391(b)(1), (2).

FACTUAL ALLEGATIONS

Parties

3. Plaintiff, Julie A. Su, Acting Secretary of Labor, United States Department of Labor, is vested with authority to file suit to stop violations of the FLSA and recover compensatory and punitive damages, and is the proper plaintiff for this action.

4. Defendant Nova Produce Inspection Services LLC (“Nova Produce”) is a limited liability company organized under the laws of the State of New Jersey and has its principal office and place of business at 51 Linda Lane, Ocean View, New Jersey 08230, within the jurisdiction of this Court. Defendant Nova Produce is engaged in the business of providing agriculture quality-control inspection services.

5. Defendant Christian Rojas is a 50% owner and President of Defendant Nova Produce.

6. On information and belief, Defendant Christian Rojas resides in the state of New Jersey, within the jurisdiction of this Court.

7. Defendant Karina Rojas is a 50% owner and Managing General Partner of Defendant Nova Produce.

8. On information and belief, Defendant Karina Rojas resides in the state of New Jersey, within the jurisdiction of this Court.

Ms. Barra’s Work for Defendants

9. Ms. Barra began working for Defendants under an H-1B1 nonimmigrant visa on or about May 10, 2021.

10. Defendants Christian Rojas and Karina Rojas hired Ms. Barra as a Quality Control Inspector.

11. Ms. Barra performed work for Defendants inspecting produce that had been imported into the United States, at facilities in New Jersey run by companies such as Americold Logistics LLC and Fru-Veg Marketing, Inc.

12. While employed by Defendants, Ms. Barra routinely worked well in excess of 40 hours per week — usually 60 hours or more per week.

U.S. Department of Labor’s Investigation of Nova Produce

13. In July 2023, the Department’s Wage and Hour Division (“WHD”) initiated an investigation of Defendants’ compliance with the H-1B and H-1B1 provisions of the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, and implementing regulations including 20 C.F.R. Part 655, Subparts H and I.

14. In October 2023, the assigned WHD investigator determined that the written documentation Nova Produce had provided WHD until that point was missing certain information regarding Ms. Barra, who was listed in Defendants’ documentation as one of their current H-1B1 employees. Accordingly, on October 3, 2023, the investigator e-mailed Defendants Christian Rojas and Karina Rojas to direct that they provide all “legal documents and pay records” for Ms. Barra.

Defendants’ Retaliation Against Ms. Barra

15. On information and belief, upon receiving WHD’s October 3 request for records, Defendants sought to determine who (if anyone) had contacted the Department of Labor in connection with WHD’s investigation of Nova Produce.

16. On October 7, 2023, Defendant Karina Rojas confronted Ms. Barra during a video call and asked her if she had called the Department of Labor.

17. After Ms. Barra admitted that she had called WHD (on October 4), Defendant Karina Rojas stated that she had “betrayed her” and was “ungrateful.”

18. Also on October 7, 2023, Defendant Christian Rojas separately called Ms. Barra on the phone and said she was “a bad person.”

19. Nova Produce fired Ms. Barra on October 10, 2023, in an email sent by Defendant Karina Rojas’s sister Carola Carrasco, Nova Produce’s Chief Human Resources Officer. Nova Produce also notified Ms. Barra that her last day of employment would be October 13, 2023.

20. Prior to Ms. Barra’s termination, and as recently as late September 2023, Nova Produce had had taken steps to extend Ms. Barra’s H-1B1 visa for her to remain employed at Nova Produce in New Jersey through at least October 30, 2024.

21. On October 10, 2023, Nova Produce notified Ms. Barra that it would no longer be extending her H-1B1 visa.

FIRST CAUSE OF ACTION

(Violation of Section 15(a)(3) of the Act, Retaliation Against Employees) Against All Defendants

22. The Acting Secretary incorporates by reference and realleges the allegations in paragraphs 1 to 21 of the Complaint.

23. FLSA 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 . . . under or related to this chapter [8 of the FLSA].” 29 U.S.C. § 215(a)(3).

24. Defendants have violated section 15(a)(3) by terminating Ms. Barra’s employment based on their understanding that she engaged in the protected activity of complaining to the Wage and Hour Division that Defendants underpaid her.

25. By engaging in the conduct set forth above, Defendants have violated section 15(a)(3) of the Act, by retaliating and discriminating against an employee for engaging, or preparing to engage, in activity that is protected by the Act, specifically complaining to the Wage and Hour Division about not being paid properly.

26. As a result of Defendants' actions, a reasonable employee would be dissuaded from engaging in activities protected under the Act, such as complaining about pay and/or cooperating with an investigation by the Secretary into violations of the FLSA.

WHEREFORE, cause having been shown, Plaintiff respectfully prays for judgment against Defendants providing the following relief:

1. An injunction issued pursuant to section 17 of the Act permanently restraining Defendants, their officers, agents, employees, successors, and those persons in active concert or participation with Defendants, from violating the provisions of section 15(a)(3) of the Act, including by terminating or threatening to terminate and/or lay off, intimidating, coercing, threatening, or retaliating or discriminating in any other way against any current or former employee, because the employee engaged in protected activity under the FLSA;

2. An injunction pursuant to section 17 of the Act requiring that at least seven days prior to any termination of any employee for any reason, Defendants shall provide a written notice to the Wage and Hour Division of the U.S. Department of Labor;

3. For an Order awarding compensatory and punitive damages to Karen Barra Figueroa for unlawful retaliation in violation of section 15(a)(3) of the Act;

4. For an Order awarding Plaintiff the costs of this action; and

5. For an Order granting such other and further relief as may be necessary and appropriate.

DATED: October 30, 2023
New York, New York

SEEMA NANDA
Solicitor of Labor

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