

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

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

Plaintiff,

v.

BEVINS & SON, INC.; TIFFANY  
CREAMER; and BRYAN A. BEVINS,

Defendants.

Civil Action No.

Injunctive Relief Requested

**COMPLAINT**

This case concerns employers who were investigated by Plaintiff Julie A. Su, Acting Secretary of Labor, United States Department of Labor (the “Acting Secretary”) and reached a settlement with the Acting Secretary concerning alleged violations of the Fair Labor Standards Act (“FLSA”). In the wake of that settlement, the employers immediately retaliated against employees who received back wages under the settlement, including the employee they believed was responsible for initiating the Acting Secretary’s investigation. Based on the employers’ unlawful activity, the Secretary brings this case to restrain Defendants Bevins & Son, Inc. (“Bevins & Son”), Tiffany Creamer, and Bryan A. Bevins from retaliating against employees in violation of Section 15(a)(3) of the FLSA, 29 U.S.C. § 215(a)(3).

**BACKGROUND**

1. In late September 2022, the Acting Secretary began an investigation to determine whether Bevins & Son was in compliance with the FLSA.
2. At the conclusion of that investigation, Bevins & Son agreed to pay 17 of its employees \$17,356.20 in unpaid overtime wages and liquidated damages.

3. Bevins & Son also agreed to pay an additional \$25,000 in punitive damages and \$3,310 in back pay and liquidated damages to one employee, Riley Bockus, who Bevins & Son fired after Bockus promised to complain to the “labor board” if Bevins & Son did not pay Bockus for job-related travel time.

4. The settlement agreement was executed on April 10, 2023, and Bevins & Son disbursed all back wages, liquidated damages, back pay, and punitive damages it was required to pay under the settlement agreement by late May 2023.

5. On May 31, 2023, WCAX-TV published an online article and did a television news segment concerning the Acting Secretary’s investigation of Bevins & Son and the resulting settlement agreement.

6. That same day, Bevins & Son’s secretary and treasurer, Defendant Creamer, wrote a public and shareable Facebook post blaming WCAX’s coverage on Bockus.

7. Defendant Creamer’s Facebook post characterized Bockus as a “disgruntled employee whom (*sic*) was fired,” and encouraged people to Google Bockus’s background.

8. Defendant Creamer, along with Bevins & Son’s president, Defendant Bevins, also “liked” on Facebook replies to Creamer’s original post. Certain of those replies included screenshots of news articles concerning Bockus’s alleged criminal history.

9. Defendant Bevins then made public comments on Facebook that suggested that Bevins & Son had solicited or accepted repayment of at least some of the back wages and liquidated damages Bevins & Son paid to employees pursuant to its settlement with the Acting Secretary.

10. Specifically, in reference to the back wages and liquidated damages Bevins & Son agreed to pay 17 employees concerning work-related travel, Defendant Bevins wrote: “Let’s just

say my employees are great and most of that money came back to me!”

11. As a result of Defendants’ conduct, Bockus, along with other employees of the Defendants who could have seen the information Defendants published on Facebook, are at risk of being deterred from exercising their rights under the FLSA.

12. In addition, the Acting Secretary’s ability to investigate and address violations of the FLSA is at risk of being undermined.

13. The Acting Secretary, therefore, seeks from this Court an order permanently enjoining Defendants and those acting on their behalf from violating the anti-retaliation provision of the FLSA by engaging in any further adverse action against current or former employees as a result of their protected activity under the FLSA. The Acting Secretary also seeks punitive damages for Defendants’ retaliation.

#### **JURISDICTION AND VENUE**

14. 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.

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

#### **FACTUAL ALLEGATIONS**

##### **Parties**

16. Plaintiff Julie A. Su, Acting Secretary of Labor, Department of Labor, is authorized to bring actions to restrain violations of the anti-retaliation provision and other

provisions of the FLSA. *See* 29 U.S.C. §§ 211(a), 215(a)(3), 216(b), 216(c), and 217. The Secretary is the proper plaintiff in this action.

17. Defendant Bevins & Son is a Vermont corporation with a principal business address of 141 River Street, Milton, VT 05468.

18. Bevins & Son's business activities include construction and excavation services for residential and commercial customers.

19. Defendant Creamer is the secretary and treasurer of Bevins & Son.

20. Defendant Bevins is the president of Bevins & Son.

#### **Bockus's Employment With Bevins & Son**

21. Riley Bockus started working for Bevins & Son in or around March 2021.

22. Neither Bevins & Son nor any of its officers—including Defendants Bevins and Creamer—performed a criminal background check of Bockus at the time Bockus was hired.

23. Bockus was discharged from employment at Bevins & Son on September 26, 2022.

24. During the period from around March 2021 through September 26, 2022, Bockus was an employee of Bevins & Son, as defined by Section 3(e) of the FLSA, 29 U.S.C. § 203(e).

25. During the time period Bevins & Son employed Bockus, Defendant Bevins was one of Bockus's supervisors.

26. While employed by Bevins & Son, Bockus performed general labor on Bevins & Son's worksites, including the operation of heavy equipment.

27. While employed by Bevins & Son, Bockus generally worked Monday through Friday.

28. Bockus would generally arrive at worksites by 7:00 A.M. and work until 3:30 P.M., with a 30-minute break for lunch.
29. Bockus's workdays would sometimes begin before 7:00 A.M.
30. Bockus's workdays would sometimes end after 3:30 P.M.
31. Bockus sometimes worked in excess of 40 hours during a workweek while employed at Bevins & Son.
32. Bockus's duties as an employee of Bevins & Sons sometimes included:
  - a. Visiting Bevins & Son's workshop prior to going to a worksite to pick up equipment and supplies for the worksite;
  - b. Loading equipment and supplies into vehicles owned or controlled by one or more Defendants;
  - c. Using those vehicles to transport equipment and supplies to a worksite; and
  - d. Using those vehicles to transport equipment and supplies from a worksite back to the workshop at the end of the workday.
33. When Bockus was required to transport supplies from Bevins & Son's workshop to a worksite, as described above, Bockus's workday would typically begin prior to 7:00 A.M.
34. When Bockus was required to return supplies from a worksite back to Bevins & Son's workshop, as described above, Bockus's workday would typically end after 3:30 P.M.
35. While employed by Bevins & Son, Bockus tracked working time on a written time card.
36. The working time Bockus would track on the written time card included any overtime hours that Bockus worked in a particular week.

37. Bockus would turn in the written time card to Defendant Creamer at the end of each weekly pay period.

**Bockus Engaged in FLSA Protected Activity and Was Discharged**

38. On or about September 19, 2022, Defendant Bevins initiated a text message exchange with Bockus concerning Bockus's most recent time card.

39. In the exchange, Bevins asked Bockus why Bockus had listed the start time for each working day on Bockus's most recent time card as 6:30 A.M.

40. Bockus responded by explaining that 6:30 A.M. was the time Bockus had been leaving the shop each day.

41. Bockus further stated that it had been necessary to report to the shop each day the prior week to add fuel to the company vehicle that was used at the worksite or to pick up supplies necessary to complete the job.

42. Defendant Bevins replied as follows: "I could see charging me once or maybe twice from 6:30. But to take 2 minutes to grab a pipe and then take my truck and use my fuel doesn't really sound fair to charge for every day. That adds up to 2.5 hours over time (*sic*) for using my gas instead of yours. I know the guys that drive my trucks everyday (*sic*) charge me when they get on site. I can see it if you get to the shop and there is a ton of s\*\*\* to load and do before you leave[.] I am a pretty fair guy[.]"

43. Bockus then offered to begin the workday at 7:00 A.M. moving forward if that was what Defendant Bevins wanted.

44. Bockus also replied: "I was asked to start to get stuff from the shop and drive the truck."

45. Defendant Bevins stated that Bockus should report to the worksite directly and that another Bevins & Son employee would take care of picking up the supplies.

46. When Defendant Bevins then expressed confusion about why “taking a minute” to collect supplies and drive to the worksite was compensable time, Bockus suggested that Defendant Bevins “call the labor board.”

47. Bockus also stated to Defendant Bevins that other Bevins employees likewise included prep time and travel time on their time card.

48. Bockus further explained that with prior employers Bockus had always considered time traveling in company vehicles to be compensable working time.

49. One week later, on or about September 26, 2022, Bockus noticed that Bockus’s most recent paycheck did not include all hours that Bockus had worked the prior week.

50. Specifically, Bockus noticed that one and one-half overtime hours that Bockus had recorded on the time card and submitted for the prior week were omitted from Bockus’s paycheck.

51. Bockus initially texted Defendant Creamer to ask about the missing hours on or about September 26, 2022.

52. Defendant Creamer did not respond to this text.

53. Bockus then texted Defendant Bevins to ask about the missing hours.

54. Specifically, on September 26, 2022 at 6:56 A.M., Bockus messaged Defendant Bevins to ask if Defendant Bevins could look into why Bockus had not been paid for the one and one-half overtime hours Bockus believed were omitted from Bockus’s most recent paycheck.

55. Defendant Bevins responded to this message by stating that Bevins & Son had only paid Bockus starting at 6:30 A.M for two of the five days Bockus had worked the prior week.

56. Defendant Bevins's response to this message also stated: "I told you I don't pay for driving a truck to site every day . . . if you sit at shop and have to get a hole [*sic*] bunch of s\*\*\* together and loaded, that's a different story."

57. Shortly afterward, Bockus sent a reply to Defendant Bevins that included the following statements:

When I go to the shop and I start loading stuff [in] the [t]ruck it's working. I start my time. We needed something every day I have [d]riven the vehicle. The vehicle doesn't drive itself. Maybe you should make a handbook. As far as I'm aware you don't have one. This has been the way I have done my time since I started and I am very fair to you with my time. So I'm confused on how this is all of a sudden and (*sic*) issue and it seems that it only effects (*sic*) me[,] [s]ince I have mentioned this to other coworkers[.] If you don't want to be fair and pay my hours working I will call the labor board[.]

58. Shortly after sending this message, Bockus started work on a Bevins & Son worksite.

59. Later in the morning of September 26, 2022, Defendant Bevins arrived at the Bevins & Son worksite where Bockus was working.

60. Shortly after arriving at the worksite, Defendant Bevins approached Bockus to have a conversation.

61. During this conversation, Defendant Bevins expressed displeasure with Bockus's prior statements that Bockus would call the "labor board" or the Department of Labor.

62. At the end of this conversation, Defendant Bevins fired Bockus.

63. Prior to being fired, Bockus had never been formally disciplined by Bevins & Son.



### **The Acting Secretary's Investigation of Bevins & Son**

64. Shortly after being discharged, Bockus filed a complaint with the Wage and Hour Division ("WHD") of the United States Department of Labor concerning Bevins & Son's pay and employment practices.

65. On September 27, 2022, the WHD initiated an investigation into Bevins & Son's compliance with the FLSA.

66. As part of the investigation, the WHD interviewed Bevins & Son's employees.

67. Bockus was one of the employees the WHD interviewed as part of its investigation.

68. Bockus provided information to the WHD concerning Bevins & Son's compensation practices with respect to employees' time spent loading and unloading materials at the workshop.

69. Bockus provided information to the WHD concerning Bevins & Son's compensation practices with respect to employees' travel time between the workshop and worksites.

70. Bockus provided information to the WHD concerning the circumstances of Bockus's discharge from Bevins & Son.

71. Bockus provided the WHD with copies of the text message communications between Bockus and Defendant Bevins on September 19 and 26, 2022 which are described above.

72. As part of the investigation, the WHD also interviewed Defendant Bevins on or about October 6, 2022.

73. On that date, Defendant Bevins gave a statement to the WHD concerning Bevins & Son's pay practices as well as the circumstances surrounding Bockus's discharge.

74. That statement was reduced to writing.

75. Bryan Bevins signed the statement and confirmed that it was true and accurate.

76. In the October 6, 2022 statement Defendant Bevins provided to the WHD, Defendant Bevins admitted being aware prior to discharging Bockus that Bockus had mentioned the possibility of calling the Department of Labor concerning Bevins & Son's pay practices.

77. In the October 6, 2022 statement Defendant Bevins provided to the WHD, Defendant Bevins stated that at the time Defendant Bevins discharged Bockus Defendant Bevins felt "sick of [Bockus] threatening to call the Department of Labor."

78. In April 2023, the WHD, Bevins & Son, and Defendant Bevins entered into a Settlement Agreement concerning the WHD's investigation.

79. Under the Settlement Agreement, Bevins & Son and Defendant Bevins agreed to pay 17 employees, including Bockus, a total of \$17,356.20 in back wages and liquidated damages.

80. This amount was intended to resolve the WHD's finding that Bevins & Son and Defendant Bevins had violated Section 7 of the FLSA, 29 U.S.C. § 207, by failing to pay employees for travel time or working time spent at the workshop at the beginning and end of the workday during overtime workweeks.

81. Bevins & Son and Defendant Bevins also agreed to pay Bockus an additional \$3,310 in back pay and liquidated damages, as well as \$25,000 in punitive damages.

82. This amount was intended to resolve WHD's finding that the employers had violated Section 15(a)(3) of the FLSA, 29 U.S.C. § 215(a)(3), by discharging Bockus as a result of Bockus engaging in activities protected by the FLSA.

83. The Settlement Agreement included the following provision:

The Employer will not, contrary to Section 15(a)(3) of the Fair Labor Standards Act[,] discriminate against or discharge any employee for participating in any proceeding or asserting any rights guaranteed to such employee under the FLSA, including such employee's right to proper payment under the Act. The employer and any of its agents or anyone acting on its behalf will not, directly or indirectly, solicit or accept the return or refusal of any sums paid or due under this Agreement.

84. Defendant Bevins signed the Settlement Agreement on behalf of Bevins & Son.

85. Defendant Bevins also signed the Settlement Agreement in an individual capacity.

86. Defendants made all payments required by the Settlement Agreement in late April and May 2023.

#### **Defendants Again Retaliated Against Bockus and Other Employees**

87. On May 31, 2023, the United States Department of Labor issued a news release concerning the Settlement Agreement as well as the WHD's underlying investigation of Bevins & Son.

88. A true and accurate copy of the news release is attached hereto as Exhibit A.

89. The first sentence of the news release stated as follows:

When a Vermont employer fired an employee who said they would contact the "labor board" if they did not get paid for job-related travel time, the company violated federal protections against retaliation and found themselves facing costly consequences after a U.S. Department of Labor investigation.

90. The news release proceeded to describe how the WHD concluded in its investigation that Bevins & Son had terminated a worker for asking to be paid in compliance with the FLSA, without using Bockus's name.

91. The news release also generally described the terms of the Settlement Agreement, including the amounts paid to employees, without specifically naming Bockus or any other Bevins & Son employee.

92. That same day, May 31, 2023, WCAX-TV aired a television news segment concerning the WHD's investigation of Bevins & Son and the resulting settlement.

93. The television news segment summarized the WHD's news release.

94. The television news segment did not use Bockus's name.

95. WCAX also published the television segment online.

96. The online version of the television segment was accompanied by a short news article.

97. A copy of the article WCAX published online is attached hereto as Exhibit B.

98. WCAX's article summarized the WHD's news release.

99. WCAX's article did not use Bockus's name.

100. Later on May 31, 2023, Defendant Creamer wrote on Creamer's personal Facebook page about WCAX's coverage of the WHD's investigation of Bevins & Son and the resulting settlement.

101. Defendant Creamer's name on Creamer's Facebook page is Tiffany Lynn.

102. Defendant Creamer's Facebook post was public and accessible to any individual who visited Creamer's Facebook page, even individuals who were not Facebook friends with Creamer.

103. A true and accurate copy of Defendant Creamer's May 31, 2023 Facebook post is attached hereto as Exhibit C.

104. Defendant Creamer's post included the following statement: "All we are going to say is please google the disgruntled employee whom (*sic*) was fired and contributed to the story[,] Riley Bockus (his word and character will be seen)."

105. The post also stated: "ALWAYS do your do (*sic*) diligence when hiring someone...."

106. Multiple individuals posted comments replying to Defendant Creamer's Facebook post.

107. These comments were accessible to any individual who visited Creamer's page, even individuals who were not Facebook friends with Creamer.

108. Multiple comments replying to Defendant Creamer's Facebook post included allegations that Bockus had previously engaged in criminal activity.

109. Defendant Creamer "liked" on Facebook at least one comment replying to Creamer's post.

110. One comment that Defendant Creamer "liked" on Facebook included allegations that Bockus had previously engaged in criminal activity.

111. Defendant Bevins also "liked" on Facebook at least one comment replying to Creamer's post that included allegations that Bockus had previously engaged in criminal activity.

112. In one instance, a commenter replied to Defendant Creamer's post with a screenshot of a Google search result that appeared to include links to news articles alleging that Bockus had previously engaged in criminal activity.

113. The comment was captioned "Looks like a good guy" accompanied by an emoji of a person appearing to cover their face.

114. Defendant Creamer responded to this comment by stating “point made” accompanied by a smiling face emoji.

115. A copy of this Facebook exchange is attached hereto at Exhibit D.

116. Defendant Creamer’s initial Facebook post makes clear that at the time Defendant Creamer engaged in the activities described above, Creamer believed that Bockus had communicated with WCAX concerning the WHD’s investigation of Bevins & Son and/or the ensuing Settlement Agreement.

117. Defendant Creamer’s actions reveal that Creamer had reason to believe that Bockus complained or provided information to the WHD concerning Bevins & Son’s pay or employment practices.

118. Multiple individuals shared Defendant Creamer’s public post on their own Facebook accounts.

119. Defendant Creamer’s post, when shared by others on Facebook, was accessible to any individual who could access the Facebook page of the individual who shared the post.

120. On one such shared post, an individual wrote a comment inquiring about whether the employees who received \$17,000 to resolve claims that Bevins & Son failed to pay those employees proper overtime were “wrong.”

121. On May 31, 2023, Defendant Bevins replied to this comment, stating the following:

[T]rue story, I did have to pay that \$17,000. And all those employees were already paid for all those hours driving a truck. I just didn’t have record of them driving.

Let’s just say that my employees are great and most of that money came back to me!

122. Defendant Bevins's intent in including the line "[I]et's just say that my employees are great and most of that money came back to me" was to create an impression that Bevins & Son's employees who received back wages and liquidated damages under the Settlement Agreement reached with the WHD had returned that money to Bevins & Son.

123. Defendant Bevins wanted to create an impression that Bevins & Son's employees who received back wages and liquidated damages under the Settlement Agreement reached with the WHD had returned that money to Bevins & Son because Defendant Bevins wanted to upset Bockus.

124. Defendant Bevins was aware at the time of writing the comment described above at Paragraph 121 that it was public and accessible to any individual who could access that Facebook page.

125. At the time Defendant Bevins wrote the comment described above at Paragraph 121, Bevins was Facebook friends with multiple Bevins & Son employees who had received back wages and liquidated damages under the Settlement Agreement reached with the WHD.

126. Defendant Bevins believed that Bockus had spoken to WCAX concerning the WHD's investigation of Bevins & Son and/or the ensuing Settlement Agreement.

127. Defendant Bevins's actions reveal that Bevins had reason to believe that Bockus had complained or provided information to the WHD concerning Bevins & Son's pay or employment practices.

#### **COUNT ONE**

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

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

129. 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 has testified or is about to testify in any . . . proceeding under or related to” the FLSA. 29 U.S.C. § 215(a)(3).

130. In violation of Section 15(a)(3) of the FLSA, Defendants have retaliated against Bockus and other employees who engaged in protected activities by writing public Facebook posts that: (1) disparaged Bockus; and (2) strongly suggested that Bevins & Son had solicited or accepted repayment of back wages and liquidated damages paid to employees as a result of the Settlement Agreement with the WHD.

131. Defendants engaged in this adverse action against Bockus and other employees because these employees engaged in activities protected by the FLSA, including, without limitation, making complaints concerning Bevins & Son’s pay practices and cooperating with the WHD’s investigation of Bevins & Son.

132. As a result of Defendants’ actions, a reasonable employee would be dissuaded from engaging in activities protected under the FLSA, such as cooperating with an investigation by the Acting Secretary into violations of the FLSA or accepting the back wages that are owed to them.

#### **PRAYER FOR RELIEF**

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

a. An order issued pursuant to Section 17 of the FLSA, 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 Section 15(a)(3) of the FLSA, 29 U.S.C. § 215(a)(3), including by threatening, harassing, or intimidating any current or former employee because the employee engaged in protected activity under the FLSA;

b. An order awarding punitive damages for Defendants' retaliation in violation of Section 15(a)(3) of the FLSA, 29 U.S.C. § 215(a)(3);

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

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

#### **DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Acting Secretary requests a jury trial in this matter on all issues triable by jury.

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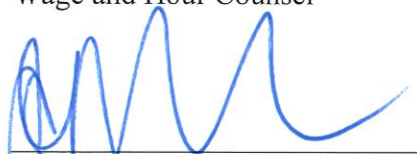
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