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Attorneys for Plaintiff

**MICHAEL RIVERA,**

*Plaintiff,*

v.

**AMERICA'S BAKERY, KUMAR JITESH,  
VITO K. VIDHYUT and JOHN DOES I - X  
(being a number yet undetermined and  
being persons or corporations, whose  
identities are unknown),**

*Defendants.*

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: UNION COUNTY  
DOCKET NO.

CIVIL ACTION

**COMPLAINT  
AND  
JURY DEMAND**

Plaintiff, Michael Rivera, residing in Elizabeth, New Jersey, County of Union, State of New Jersey, by way of complaint against the defendants, says:

**FACTS COMMON TO ALL COUNTS**

1. Defendant America's Bakery Inc., ("America's Bakery"), is a New Jersey company that maintains its headquarters at 32 Buffington Ave, Irvington, New Jersey 07111. The company is engaged in the baking business in New Jersey.

2. America's Bakery conducts business throughout New Jersey, including in Essex where its bakery is located. Thus, venue is properly laid in Essex County.

3. Kumar Jitesh, at all times relevant to this action, is an owner of America's Bakery, and does business in Irvington, New Jersey.

4. Vito K. Vidhyut at all times relevant to this action, is an owner of America's Bakery, and does business in Irvington, New Jersey.

5. Leonardo Flores, at all times relevant to the action, was a member of America's Bakery's upper management with power to hire and fire as well as the power to supervise plaintiff and implement the company's workplace policies.

6. Victor, last name unknown, at all times relevant to this action, was a member of America's Bakery's upper management with power to hire and fire as well as the power to supervise plaintiff and implement the company's workplace policies.

7. On or about January of 2018, Mr. Michael Rivera ("Rivera") was hired by America's Bakery and supervised by manager Leonardo Flores ("Flores") in the position of route truck driver at America's Bakery located in Irvington, New Jersey.

8. Plaintiff Rivera's job duties included inspecting his truck and delivering company product on his truck route.

9. Mr. Rivera was compensated for his position with a salary of approximately \$27,000.00/year.

10. Upon information and belief, most of the Hispanic workers at America's Bakery's are illegal immigrants and were hired by the company with America's Bakery's upper management's full knowledge of this fact.

11. Mr. Rivera was aware and complained about the fact that there are numerous undocumented workers who are employed by America's Bakery, Inc. The company would pick these workers from designated spots because they do not have legal driver's licenses.

12. Mr. Rivera has observed how America's Bakery has exploited these workers by shorting their pay and requiring them to work many hours of overtime without being paid time and a half.

13. Throughout his employment, plaintiff Rivera was only paid "straight time" for the range of 48 to 54 hours that he worked every week. His employer, America's Bakery, did not pay him or any of the other Hispanic workers that they employ any overtime pay because the company asserted that they did not have to because of the questionable immigration statuses.

14. Throughout plaintiff's employment, defendants paid him in cash and failed to deduct money from his paycheck to cover social security, unemployment and workers compensation. Likewise, defendants failed to deduct for these things from all of the Hispanic

workers that are/were employed by America's Bakery. Defendants failure to pay overtime or standard payroll deductions was an intentional act on the part of defendants.

15. Defendants also did not provide sick pay, PTO or vacation pay in violation of the NJ Earned Sick Leave Law. Plaintiff asserts that most recently he complained in February of 2020 about the lack of sick days or PTO in violation of State law.

16. Plaintiff Michael Rivera also complained about health and safety concerns on multiple occasions.

17. He has personally observed undocumented workers throughout the Irvington facility working without gloves or hair nets.

18. He also asserts that on many occasions, bread has been left outside of the facility in racks, exposed to the elements and without any safety precautions set in place.

19. He has also noted and complained about fire extinguishers which have expired certifications. Some of these have expired longer than a year ago

20. Plaintiff Rivera also made numerous complaints about the DOT violations with regard to the unsafe conditions of the trucks that he and others used for their route. The trucks are not being maintained properly and have many ongoing issues. For example, check engine light is on with the trucks that he was expected to use, oil changes are not done, truck driver logs not being required to be kept, and no information is provided to truck drivers about DOT maintenance regulations.

21. As noted above, plaintiff complained about the above-mentioned issues to owners and members of management. Despite the numerous complaints, no action was ever taken to bring the company within compliance with DOL, DOT or department of health laws and regulations.

22. Shortly after getting hired in January 2018, Mr. Rivera complained to overnight manager, Leonardo Flores about overnight staff not using proper equipment to be handling the baked goods such as wearing gloves and using hairnets.

23. Manager Flores replied: “thank you for bringing this issue to my attention. But as you know you are not a baker, so these issues shouldn’t concern you.”

24. On or about April 2018, plaintiff complained to overnight manager, Leonardo Flores about trucks being left with garbage in them and rats and mice being inside the truck due to the garbage being left by other drivers.

25. Mr. Flores replied: “I will tell (owner) Mr. Kumar about this issue as I do not meet with all the drivers on a daily basis. Drivers work long hours so they don’t have time to clean the trucks.”

26. In May of 2018, Mr. Rivera complained to company owners Kumar Jitesh and Vito Vidhyut about his check being in cash and not written out in a payroll check with deductions taken out.

27. Kumar Jitesh replied: “You need to talk to Mr. Vidhyut about your check issues as I don’t deal with payroll. Don’t come to me about any of your pay issues direct that toward Mr. Vidhyut.”

28. Plaintiff then went to speak with Mr. Vidhyut and was advised that it was a process and that they would eventually get plaintiff paid with a payroll check.

29. On or about September of 2018, plaintiff complained to his overnight manager Victor about ongoing truck safety and performance issues.

30. In March of 2019, plaintiff complained to overnight manager Leonardo Flores about bread being left outside, exposed to the elements and vermin.

31. Mr. Flores told him to mind his own business and that the bread was fine to be left outside.

32. In July of 2019, plaintiff complained to Leonardo Flores about fire and building code safety violations. In addition to fire extinguishers being out of date, several exists had debris blocking some exits.

33. On or about August 2019, plaintiff complained to both Leonardo and Victor about a child working near the bakery ovens without adult supervision. Manager Leonardo Flores told plaintiff: “it’s not your job to worry about who works here and who doesn’t. Continue working.”

34. In January of 2020, plaintiff complained to owner Kumar Jitesh about safety concerns that had about before he left on his designated route. Specifically, plaintiff complained about oil change issues and oil fumes coming through the vents if he used the AC.

35. On February of 2020, plaintiff complained to overnight supervisor Leonardo Flores that proper cleanup of the product was not being done. Mr. Rivera asserted that bread crumbs were being left uncovered. Mr. Flores responded: “it’s fine, as long as we keep some space between the trash and the bread crumbs the top of the bags doesn’t need to be covered “

36. Throughout plaintiff’s employment, Mr. Rivera always met the reasonable expectations of his employer. He had never been disciplined and was considered a good worker and a leader among the Hispanic workers.

37. On February 16, 2020, within a few days of his latest complaint, management finally had enough with him complaining, so they laid him off. Plaintiff was notified after he arrived for work. Overnight supervisor, Victor is the person who told plaintiff of his termination. Plaintiff replied that he was being terminated because he raised complaints dealing with wage and hour violation, DOT violations, child labor laws, presence of undocumented workers, and safety and health code violations.

38. Since leaving the employ of defendants, Mr. Rivera has remained unemployed.

39. In addition to having to endure the stress and anxiety of losing his job during a pandemic, Mr. Rivera is suffering from anxiety, humiliation, stress and depression because of the way that he was mistreated and wrongfully terminated.

40. Mr. Rivera is treating with a mental health provider for his emotional distress and depression. He will likely require treatment for the foreseeable future.

**COUNT ONE**

**“New Jersey Conscientious Employee Protection Act”**

41. Plaintiff repeats and realleges each statement as set forth in Paragraphs 1 through 40 above, as if fully set forth herein and further states.
42. Plaintiff Rivera reasonably believed that America’s Bakery’s conduct, as described in the paragraphs above, constituted a violation of a law, or a rule or regulation promulgated pursuant to law, including applicable wage and hour law, Department of Transit regulations, tax laws, INS regulations, OSHA regulations, among others.
43. Rivera objected to, refused to participate in and complained regarding America’s Bakery’s actions, as aforesaid, including at a series of complaints raised throughout his employment.
44. America’s Bakery terminated Rivera’s employment in retaliation for said whistleblowing activity.
45. There exists a causal connection between the whistleblowing activity and the retaliation.
46. America’s Bakery’s actions violated the New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-1, et seq. (“CEPA”).
47. America’s Bakery’s actions were perpetrated by members of America’s Bakery’s upper management and were especially egregious and were motivated by actual malice or were the result of a willful and wanton disregard for the harm to Rivera.
48. America’s Bakery caused Rivera to suffer economic, physical, and emotional harm.

**WHEREFORE**, Rivera demands judgment against all America’s Bakery Defendants and seeks damages for back pay, reinstatement or front pay, lost benefits, other compensatory damages, emotional distress damages, punitive damages, interest, compensation for the negative tax consequences of receiving a damage award in the form of a one-time lump sum, attorneys’ fees, costs of suit, and such other relief that the Court may deem just and proper.

**COUNT TWO**  
**“Individual Liability CEPA”**  
**-- As to Kumar Jitesh and Vito K. Vidhyut)**

49. Rivera repeats the allegations set forth above as if set forth at length herein.
50. Vidhyut and Jitesh were Rivera’s employers under N.J.S.A. 34:19-2a.
51. Vidhyut and Jitesh, in their individual capacities, participated in, directed and controlled GEM’s retaliation against Rivera such that they are each personally liable under CEPA.
52. Vidhyut’s and Jitesh’s actions were motivated by actual malice or were the result of a willful and wanton disregard for the harm their actions were causing Rivera.
53. Vidhyut and Jitesh caused Rivera to suffer economic, physical and emotional harm.
54. Plaintiff repeats and realleges each statement as set forth in Paragraphs 1 through 49 above, as if fully set forth herein and further states
55. During the period covered by his employment, plaintiff Michael Rivera has performed work.
56. For pay below minimum wage and without being paid overtime for 14 hours a week going back for the past six years for which no compensation was paid in violation of the New Jersey State Wage and Hour Law, N.J.S.A. 34:11-56a to 34:11-56a38 as modified by the New Jersey Wage Theft Act.
57. Under the provisions of said Act, there is due and owing from the defendants to the plaintiff, compensation for unpaid wages, unpaid overtime, and liquidated damages, together with interest, costs and attorney's fees.

**WHEREFORE**, Rivera demands judgment against all Defendants and seeks damages for back pay, reinstatement or front pay, lost benefits, other compensatory damages, emotional distress damages, punitive damages, interest, compensation for the negative tax consequences of receiving a damage award in the form

of a one-time lump sum, attorneys' fees, costs of suit, and such other relief that the Court may deem just and proper.

**COUNT THREE**  
**“New Jersey Wage Theft Act”**

- 58. Plaintiff hereby repeats each allegation contained in paragraphs 1 through 60 above.
- 59. Vidhyut and Jitesh were Rivera's employers under N.J.S.A. 34:19-2a.
- 60. During the period covered by his employment, plaintiff Michael Rivera performed to the reasonable expectations of his employer.
- 61. Defendants failed to pay overtime to plaintiff and other Hispanic employees in violation of the New Jersey Wage Theft Act and Wage and Hour Law, N.J.S.A. 34:11-56a to 34:11-56a38 as modified by the New Jersey Wage Theft Act.
- 62. Under the provisions of said Act, there is due and owing from the defendants to the plaintiff, compensation for unpaid wages, unpaid overtime, and liquidated damages, together with interest, costs and attorney's fees.

**WHEREFORE**, Rivera demands judgment against all America's Bakery Defendants and seeks damages for back pay, reinstatement or front pay, lost benefits, other compensatory damages, emotional distress damages, punitive damages, interest, compensation for the negative tax consequences of receiving a damage award in the form of a one-time lump sum, attorneys' fees, costs of suit, and such other relief that the Court may deem just and proper.

**COUNT FOUR**  
**“New Jersey Paid Sick Leave Law”**

- 63. Plaintiff hereby repeats each allegation contained in paragraphs 1 through 62 above.
- 64. America's Bakery, Vidhyut and Jitesh were Rivera's employers under N.J.S.A. 34:11D-1 et seq.
- 65. During the period covered by his employment, plaintiff Michael Rivera has performed work to the reasonable expectations of his employers.

66. On several occasions plaintiff requested to have paid sick leave and informed defendants that New Jersey law required that the defendants provide all employees with paid sick leave.
67. Plaintiff asserts that defendants also violated this act by failing to maintain required records for employees. Plaintiff, for example, was only paid cash from January 2018 to March 2019 and thereafter was paid with a check. For the first fourteen months of his employment with defendants, no written time records were kept on him.
68. The New Jersey Paid Sick Leave Law provides that since employer failed to provide earned sick leave as required by law and the employer failed to maintain required records, it will be assumed that said employer failed to provide the required paid sick leave, absent clear and convincing evidence otherwise.
69. Plaintiff asserts that defendants took retaliatory personnel action and/or discriminated against an him for requesting paid sick leave or communicating to defendants that its actions constituted a violation of law. This adverse employment action constituted a violation of the New Jersey Earned Sick Leave Act, 34:11D-1 et seq.
70. Under the provisions of said Act, there is due and owing from the defendants to the plaintiff, compensation for unpaid wages, unpaid overtime, and liquidated damages, together with interest, costs and attorney's fees.

**WHEREFORE**, Rivera demands judgment against all America's Bakery Defendants and seeks damages for back pay, reinstatement or front pay, lost benefits, other compensatory damages, emotional distress damages, punitive damages, interest, compensation for the negative tax consequences of receiving a damage award in the form of a one-time lump sum, attorneys' fees, costs of suit, and such other relief that the Court may deem just and proper.

## **DEMAND FOR DISCOVERY OF INSURANCE COVERAGE**

Demand is hereby made that you disclose to the undersigned whether there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy all or part of all a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

If so, please attach a copy of each policy and declaration page or state, under oath and certification: (a) policy number; (b) name and address of insurer; (c) inception and expiration date; (d) names and addresses of all persons insured thereunder; (e) whether the coverage is “claims made” or “accrual”; and (f) property damage limit.

## **NOTICE REGARDING NON-DESTRUCTION OF EVIDENCE**

Please be advised and noticed that the defendants should refrain from destroying, disposing or altering any potential evidence in its possession which would relate in any way to this matter.

Please also be advised and noticed that this includes any and all electronic records, including but not limited to the hard drives on any and all computers and/or servers. To that end: The defendants should not initiate any procedures which would alter any active, deleted, or fragmented files. Such procedures may include, but are not limited to: storing (saving) newly created files to existing drives and diskettes; loading new software, such as application programs; running data compression and disk defragmentation (optimization) routines; or the use of utility programs to permanently wipe files, disks or drives.

A. The defendants should stop any rotation, alteration, and/or destruction of electronic media that may result in the alteration or loss of any electronic data. Backup tapes and disks should be pulled from their rotation queues and be replaced with new tapes.

B. The defendants should not alter and/or erase active files, deleted files, or file fragments on any electronic media that may have any relation to this matter. The defendants should not dispose of any electronic media storage devices replaced due to failure, upgrade, and/or lease expiration that may contain electronic data having any relation to this matter.

**DESIGNATION OF TRIAL COUNSEL**

Fred Shahrooz Scampato, Esquire is hereby designated as trial counsel in the above captioned matter.

**CERTIFICATION**

I hereby certify that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding. I further certify that I am aware of no other party who should be joined in this matter.

I recognize the continuing obligation of each party to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

Fred Shahrooz Scampato, Esquire  
Attorneys for Plaintiff

DATED: April 2, 2020

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Fred Shahrooz Scampato, Esquire

**JURY DEMAND**

Plaintiff hereby demands a trial by jury as to all issues of liability and damages in this action.

Fred Shahrooz-Scampato, Esquire  
Attorneys for Plaintiff

DATED: April 2, 2020

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Fred Shahrooz-Scampato, Esquire