

dispose of the flour. The owner of BNY directed Mr. Fischer to use the tainted flour for multi-grain bread (presumably because the infestation would pass unnoticed if concealed in crunchy bread). Plaintiff refused to implement this unlawful directive. Defendant responded by terminating plaintiff's employment.

3. Defendant's actions were unlawful, and plaintiff brings this action for injunctive and declaratory relief, lost earnings, interest, attorneys' fees, and other appropriate equitable and legal relief.

JURISDICTION AND VENUE

4. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1332(a)(1), which confers original jurisdiction upon this Court over a civil action brought by a citizen of one State against a citizen of another State to recover damages in excess of \$75,000 and 28 U.S.C. § 1367(a), in that the state and federal claims arise from a common nucleus of operative fact such that they are so related that they form part of the same case or controversy under Article III of the United States Constitution.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), inasmuch as the defendant has offices, conducts business and can be found in the Eastern District of New York, and the causes of action arose and occurred in the Eastern District of New York.

PARTIES

6. Fischer is a natural person, currently residing in the Town of Belvidere, County of Warren, State of New Jersey. Mr. Fischer was employed by defendant as a master baker and

operational manager from February 2016 until July 1, 2016 at the commercial bakery maintained by the defendant in Long Island City, Queens, New York. At all relevant times, he was an “employee” with the meaning of Labor Law § 740(1)(a).

7. Upon information and belief, BNY is a limited liability company organized pursuant to the law of the State of New York. Upon information and belief, its members are Marco Avila, Tareq Matrat and Manuel Moreno, each of whom is a natural person and domiciliary of New York. BNY was, at all relevant times, and is an employer within the meaning of Labor Law § 740(1)(b) and a person within the meaning of N.Y. Agriculture and Markets (“A&M”) Law §§ 198(2) and 251-z-2(2).

FACTUAL ALLEGATIONS

8. Mr. Fischer has been a master baker and specialist in food safety and sanitation for many years. He holds a degree in baking, bread and pastry from the Berufs Fachschule in Vishofen, Germany. Following a three-year apprenticeship and two years as a professional baker in Passau, Germany, Mr. Fischer has worked for nearly 30 years in all aspects of commercial baking in this country. In 2014, he was certified in Hazard Analysis Critical Control Point (HACCP) practices. HACCP is a management system in which food safety is addressed through the analysis and control of biological, chemical, and physical hazards from raw material production, procurement and handling, to manufacturing, distribution and consumption of the finished product, which practices are regarded by the United States Food and Drug Administration as the industry standard.

9. BNY, a New York commercial bakery, approached Mr. Fischer (at that time a

resident of Oceanside, California) and recruited him to join the company as its operational manager at a salary of \$75,000 per annum plus bonuses and relocation costs. In reliance on BNY's representations, Mr. Fischer thereafter resigned his secure employment in California and moved to a Brooklyn apartment convenient to BNY's workplace. Although Mr. Fischer began work on the appointed date in February 2016, BNY failed and refused to execute an employment agreement or to reimburse him for the expense of relocating.

10. During the months of his employment at BNY, Mr. Fischer observed a number of unsanitary, unhealthy and possibly unlawful food-handling practices at BONY, including:

- a. overall cleanliness;
- b. unprotected light fixtures (*i.e.*, dust or broken glass could contaminate food);
- c. no three-compartment sink;
- d. open containers of creams, eggs, cream cheese and fillings;
- e. soiled containers;
- f. open fruit cans;
- g. uncovered finished and unfinished baked goods;
- h. solidified flour and dirt on floors;
- i. soiled and unsanitary baking trays;
- j. utensils stored and dried in unsafe environments;
- k. open door to production floor;
- l. no extraction fan;
- m. equipment soiled and full of old dough residue;
- n. garbage container located in production area uncovered;

o. outdoor garbage receptacle in proximity of product, *i.e.*, foodstuffs exposed to contamination;

p. products in freezer stored without proper cover;

q. freezer floors and walls soiled;

r. no proper handwash sinks with hands-free towel dispenser installed;

s. insufficient employee bathroom facilities for employees; and

t. product being packed and shipped under conditions not compliant with respect for food safety protocol.

11. Mr. Fischer's complaints to the owners and senior management of BNY regarding the observations set forth in Paragraph 10 above were ignored.

12. Finally, on or about July 1, 2016, Mr. Fischer discovered that a 3000-lb. flour silo was infested with insects. He accordingly photographed the infestation and provided it to Tareq Matrat, along with a text message indicating that he intended to dispose of the flour and to have the silo professionally cleaned. Marco Avila, one of the owners of BNY, responded, in substance, that Mr. Fischer should use the tainted flour for multi-grain bread (presumably because the infestation would pass unnoticed if concealed in crunchy bread). Plaintiff refused to implement this unlawful directive. BNY responded by terminating his employment.

AS AND FOR PLAINTIFF'S FIRST CAUSE OF ACTION

13. Plaintiff incorporates by reference each and every allegation made in paragraphs 1 through 12 of this Complaint.

14. BNY is a "food processing establishment" within the meaning of A&M Law §

251-z-2(3).

15. The flour found by Mr. Fischer to be infested with insects is “food product” within the meaning of A&M Law § 198(1).

16. The infestation discovered by Mr. Fischer is “contamination with filth” within the meaning of A&M Law § 198(6).

17. The insect-infested flour discovered by Mr. Fischer is “adulterated food” within the meaning of A&M law § 200(3).

18. Under A&M Law § 199-a(1), it is unlawful for any person to manufacture or offer for sale any article of adulterated food.

19. A&M Law § 199-a(1) is a “law, rule or regulation” within the meaning of Labor Law § 740(1)(c).

20. A violation of A&M Law § 199-a(1) constitutes a substantial and specific danger to the public health or safety within the meaning of Labor Law § 740(2)(a).

21. Mr. Fischer’s report to BNY of insect-infested flour and refusal to use the infested flour was an objection to or refusal to participate in an activity, policy or practice of his employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety.

22. BNY, by discharging Mr. Fischer from employment in retaliation for his objection or refusal, violated Labor Law § 740(2)(c).

23. As a result of defendant’s violations of the Labor Law, plaintiff has suffered damages in an amount, in excess of \$75,000, to be determined at trial, and is entitled to relief including reinstatement, lost wages and benefits from the time of termination of his employment,

attorneys' fees, costs, and injunctive relief pursuant to Labor Law § 740(5).

AS AND FOR PLAINTIFF'S SECOND CAUSE OF ACTION

24. Plaintiff incorporates by reference each and every allegation made in paragraphs 1 through 23 of this Complaint.

25. Defendant offered to reimburse plaintiff for the costs of his relocation from California to New York.

26. Plaintiff accepted that offer.

27. Plaintiff moved his household from California to New York in order to be able to work in Defendant's bakery.

28. Defendant failed and refused to reimburse plaintiff for the costs of relocation.

29. Defendant is accordingly liable for breach of contract.

AS AND FOR PLAINTIFF'S THIRD CAUSE OF ACTION

30. Plaintiff incorporates by reference each and every allegation made in paragraphs 1 through 29 of this Complaint.

31. Mr. Fischer spent approximately \$2,500 in reliance on defendant's representation that it reimburse him for the cost of relocation from California to New York.

32. Plaintiff having reasonably relied to his detriment on defendant's promise of reimbursement, defendant is liable to plaintiff for the monies so spent.

WHEREFORE, plaintiff respectfully requests that this Court enter a judgment:

1. Directing defendant to reinstate plaintiff to the position he held in defendant's employ;
2. Directing defendant to pay plaintiff lost wages and benefits from the time of his discharge from employment;
3. Directing defendant to reimburse plaintiff for the costs of relocation from California to New York;
4. Directing defendant to pay pre-judgment interest to plaintiff as authorized by New York law;
5. Granting a permanent injunction enjoining defendant and its owners, members, officers, management personnel, employees, agents, attorneys, successors and assigns and those acting in concert therewith from any conduct violating the rights of the plaintiff as secured by the New York Labor Law and the common law of New York;
6. Awarding plaintiff the costs of this action together with reasonable attorneys' fees; and
7. Granting such other and further relief as this Court deems necessary and proper.

Dated: New York, New York
September 14, 2016

Levy Davis & Maher, LLP

By: _____/s/_____

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