

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

MARICRUZ HERRERA LOPEZ, JOSE)
LUIS ABAD ALFONSO, LILIANA RIVERA)
JACUINDE, AMALIA GIRON CINTO,)
PAULA GALINDO SAN PEDRO,)
MARTA EUSEBIO HERNANDEZ, and)
MARIA MORALES YANEZ,)

Plaintiffs,)

vs.)

TAMMY WALKER d/b/a AMERICAN)
MADE APPAREL,)

Defendant.)

Case No. _____

COMPLAINT

Plaintiffs, Maricruz Herrera Lopez, Jose Luis Abad Alfonso, Liliana Rivera Jacuinde, Amalia Giron Cinto, Paula Galindo San Pedro, Marta Eusebio Hernandez, and Maria Morales Yanez, by and through their counsel, Ben H. Houston II, bring an action against the Defendant, Tammy Walker d/b/a American Made Apparel, pursuant to the Victims of Trafficking Protection Act, 18 U.S.C. § 1595 (hereinafter referred to as VTPA), the Fair Labors Standards Act, 29 U.S.C. § 201 *et. seq.*, as well as various other related state law claims.

In support of their cause of action against the Defendant, the Plaintiffs state as follows:

JURISDICTION, VENUE, AND PARTIES

1. Jurisdiction over the federal law claims is conferred upon this Court by 28 U.S.C. § 1331, this case arising under the laws of the United States. This action arises under the

Victims of Trafficking Protection Act, 18 U.S.C. § 1595 (hereinafter referred to as VTPA), the Fair Labors Standards Act, 29 U.S. C. § 201 *et. seq.*

2. Supplemental jurisdiction over the various state law claims set forth below is conferred upon this Court by 28 U.S.C. § 1367 because the state law claims set forth below are substantially related to the federal law claims in such a way that they form part of the same case or controversy under Article III of the United States Constitution.

3. Injunctive and declaratory relief is sought under 29 U.S.C. §626(b), 28 U.S.C. §§ 2201, 2202 and Fed.R.Civ.P.19.

4. Venue is proper in this judicial district in that all acts relevant to this suit occurred in this judicial district. 29 U.S.C. §1391(b).

5. Venue is also proper in that the Defendant is doing business in this judicial district within the meaning of 29 U.S.C. §1391(c).

6. Defendant, Tammy Walker d/b/a American Made Apparel, is both an individual and a covered employer under the FLSA, 29 U.S.C. § 203(d), and at all times relevant to this lawsuit the Defendant engaged in interstate commerce. Defendant, Tammy Walker, may be served at her place of business, which is 191 E Industrial Park Drive, Jacksboro, TN 37757.

7. Plaintiff, Maricruz Herrera Lopez, is a former employee of Tammy Walker, who served as a manual laborer and line leader in the American Made Apparel plant, which is a sewing factory that has a contract with the U.S. Department of Defense. She worked for Tammy Walker until on or about February 14, 2018.

8. Plaintiff, Jose Luis Abad Alfonso, is a former employee of Tammy Walker, who served as a manual laborer in the American Made Apparel plant, which is a sewing factory. He worked for Tammy Walker until on or about December 7, 2017.

9. Plaintiff, Lilitana Rivera Jacuinde, is a former employee of Tammy Walker, who served as a manual laborer in the American Made Apparel plant, which is a sewing factory that has a contract with the U.S. Department of Defense. She worked for Tammy Walker until on or about February 10, 2018.

10. Plaintiff, Amalia Giron Cinto, is a former employee of Tammy Walker, who served as a manual laborer in the American Made Apparel plant, which is a sewing factory that has a contract with the U.S. Department of Defense. She worked for Tammy Walker until on or about January 27, 2018.

11. Plaintiff, Paula Galindo San Pedro, is a former employee of Tammy Walker, who served as a manual laborer in the American Made Apparel plant, which is a sewing factory that has a contract with the U.S. Department of Defense. She worked for Tammy Walker until on or about February 14, 2018.

12. Plaintiff, Marta Eusebio Hernandez, is a former employee of Tammy Walker, who served as a manual laborer in the American Made Apparel plant, which is a sewing factory that has a contract with the U.S. Department of Defense. She worked for Tammy Walker until on or about January 26, 2018.

13. Plaintiff, Maria Morales Yanez, is a former employee of Tammy Walker, who served as a manual laborer in the American Made Apparel plant, which is a sewing factory that has a contract with the U.S. Department of Defense. She worked for Tammy Walker until on or about February 14, 2018.

14. The Plaintiffs in this case are being joined together pursuant to Fed. R. Civ. P. 20.01 because each of their claims arise out of the same series of transactions and occurrences and common questions of fact and law predominate their claims. The Plaintiffs are not seeking

to bring a collective action pursuant 29 U.S.C. § 216(b), but instead are bringing their claims as individuals in this lawsuit. Nonetheless, out of an abundance of caution, FLSA consent forms for each of the seven (7) Plaintiffs are attached to this lawsuit as collective Exhibit # 1.

FACTS

15. The Defendant, Tammy Walker d/b/a American Made Apparel (hereinafter referred to as Walker), owned and operated a plant known as American Made Apparel in Jacksboro, Campbell County, Tennessee.

16. Each of the aforementioned Plaintiffs are former employees of Tammy Walker, and each of the aforementioned Plaintiffs performed manual labor for Walker at the American Made Apparel plant located in Jacksboro, Campbell County, Tennessee.

17. Each of the Plaintiffs in this case are undocumented residents residing in this judicial district. The Defendant, Tammy Walker was aware of the Plaintiffs immigration status, and as discussed in greater detail below, the Defendant exploited the immigration status of the Plaintiffs and in doing so violated both the Victims of Trafficking Protection Act as well as the Fair Labor Standards Act.

18. The working conditions at Walker's plant are horrendous. In particular, the workers were often without access to running water and basic sanitary items like toilet paper. Despite extreme temperatures in the factory during the summer and winter months, there was no heat or air conditioning at the factory. The garbage often piled up resulting in an extreme cockroach and rodent problem at the factory. Workers were also often not permitted to use the restroom, and were told that they would need to buy diapers if they needed to go to the bathroom during their breaks. The Defendant also told her employees that in addition to their other manual

labor duties; they were required to clean the bathrooms themselves because she didn't want to pay someone else to do it. The Defendant threatened to close down the bathrooms if the employees didn't clean them themselves. Because there was often no running water with which to clean the bathrooms, the Plaintiffs often had to collect rain water, which they used to clean the bathroom. Finally, the Defendant kept all of the doors to the factory including the emergency exits locked on both the inside and the outside except for the front door, which created a significant fire hazard.

19. Although Walker has always withheld at least twelve percent of the employees' pay check for taxes, upon information and belief, Walker was not paying these withheld sums to the IRS but has instead been pocketing the money and keeping it for herself. This belief is formed in part based upon the fact that Walker never had the aforementioned employees fill out either an USCIS I-9 form or an IRS W-2 form.

20. In recent months, Walker has failed to pay her employees for work performed, and she owes unpaid wages to each of the aforementioned Plaintiffs in this case.

21. In order to keep the aforementioned Plaintiffs from leaving their positions despite her failure to pay them for work performed, Walker has threatened each of the Plaintiffs with serious harm or physical restraint and also with abuse or threatened abuse of law or the legal process.

22. In particular, Walker has told each of the Plaintiffs in this case at various times that if they quit their jobs and found a new employer she would call Immigration Customs and Enforcement on the Plaintiffs' new employer. As a result of these threats, the Plaintiffs stayed employed longer with the Defendant than they otherwise would have despite her failure to pay them their overdue wages.

23. Walker has told all of the Plaintiffs except Jose Luis Abad Alfonso at various times that she would pay them all the wages that she owed them on Friday if they would come into work, but that if they elected to quit their position she would not pay them anything despite owing them thousands of dollars in unpaid wages. As a result of these threats, the Plaintiffs stayed employed longer with the Defendant than they otherwise would have despite her failure to pay them their overdue wages.

24. The Defendant, threatened Plaintiffs Paola Galindo San Pedro and Marta Eusebio Hernandez that if they quit their job due to not being paid, she would use the money she owed them to hire new workers to replace them.

25. With regard to the Plaintiff, Jose Luis Abad Alfonso, Walker told him that she would pay him all that he owed him immediately on Friday if he came into work for the week, but that if he didn't come into work, she wouldn't pay him his past due wages until twenty-one (21) days had elapsed even though historically the employees had always been paid on a weekly basis. As a result of this threat by Walker, Mr. Alfonso continued to work for Ms. Walker for a longer period of time than he otherwise would have despite her failure to pay him his overdue wages. Additionally, when Mr. Alfonso went to recover his long overdue pay checks after twenty-one days had elapsed, Walker not only refused to pay him but she also told him to "enjoy your job while you can because I am going to call immigration on you." Upon information and belief, this threat was made not only for the purpose of harassing Mr. Alfonso, but the threat was also intended to strike fear in the minds of her remaining employees.

26. Walker deducted money for insurance through the Colonial Life Accident & Insurance Company from the pay checks of Plaintiffs, Liliana Rivera Jacuinde, Paulo Galindo San Pedro, and Marta Eusebio Hernandez, but she either failed to purchase the insurance on

behalf of the employees or allowed the insurance to lapse. Walker continued deducting the insurance from these three Plaintiffs' pay checks for a lengthy period of time despite the fact that the insurance was not in effect.

27. Walker's pay check to Plaintiff, Amalia Giron Cinto, dated November 17, 2017 in the amount of three hundred and sixty dollars (\$ 360.00) was returned as having insufficient funds, and Walker has to this date failed to make restitution to the Plaintiff for this check with insufficient funds.

28. Walker induced Paula Galindo San Pedro to come back and work for her after she had quit due to nonpayment of wages by falsely promising Ms. San Pedro that she would pay her everything she owed her if she came back to work for her. This false inducement was made just a couple of days prior to a raid conducted by Immigration Customs and Enforcement at the American Made Apparel Factory on February 14, 2018. Plaintiffs, Paula Galindo San Pedro, Maricruz Herrera Lopez, and Maria Morales Yanez were each detained as a result of the ICE raid, but they were released on bond pending further deportation proceedings. Upon information and belief, the Defendant called Immigration, Customs, and Enforcement on the Plaintiffs and other undocumented workers at her factory in order to avoid having to pay these workers the long overdue wages that she owed them.

29. Walker would often require employees to sign a document purporting to show that they were paid their full wages prior to obtaining the envelope containing their wages, but when employees including the Plaintiffs opened the envelope they discovered that they had been paid significantly less than their full wages.

30. The Plaintiffs each regularly worked in excess of forty hours per week during the periods of time that they were working and not being paid by the Defendant.

31. Walker owes Plaintiff, Maricruz Herrera Lopez, unpaid wages of at least seven thousand seven hundred and thirteen dollars (\$ 7,713.00) without even taking into account the 12% of the Plaintiff's paycheck that was deducted purportedly for the payment of federal income taxes.

32. Walker owes Plaintiff, Jose Luis Abad Alfonso, unpaid wages of at least one-thousand six hundred and twenty-six dollars and eighty-eight cents (\$, 1,626.88) without even taking into account the 12% of the Plaintiff's paycheck that was deducted purportedly for the payment of federal income taxes.

33. Walker owes Plaintiff, Liliana Rivera Jacuinde, unpaid wages of at least two thousand nine-hundred and eighty-one dollars and twenty-five cents (\$ 2,981.25) without even taking into account the 12% of the Plaintiff's paycheck that was deducted purportedly for the payment of federal income taxes or the deduction for insurance that was cancelled after only one month of coverage.

34. Walker owes Plaintiff, Amalia Giron Cinto, unpaid wages of at least one-thousand seven hundred and fifty-five dollars (\$ 1,755.00) without even taking into account the 12% of the Plaintiff's paycheck that was deducted purportedly for the payment of federal income taxes.

35. Walker owes Plaintiff, Paula Galindo San Pedro, unpaid wages of at least two thousand five hundred and eighty-three dollars (\$ 2,583.00) without even taking into account the 12% of the Plaintiff's paycheck that was deducted purportedly for the payment of federal income taxes.

36. Walker owes Plaintiff, Marta Eusebio Hernandez, unpaid wages of at least two-thousand and sixty-seven dollars (\$ 2,067.00) without even taking into account the 12% of the Plaintiff's paycheck that was deducted purportedly for the payment of federal income taxes.

37. Walker owes Plaintiff, Maria Morales Yanez, unpaid wages of at least two thousand two hundred and sixty-three (\$ 2,263.00) without even taking into account the 12% of the Plaintiff's paycheck that was deducted purportedly for the payment of federal income taxes.

38. Defendant's unlawful conduct as described above, was willful and/or in reckless disregard of the applicable wage and hour law provisions of the Fair Labor Standards Act. Additionally, as part her regular business practice, the Defendant has intentionally, willfully and repeatedly engaged in a pattern, practice and/or policy of violating the FLSA with respect to the Plaintiffs.

CLAIMS FOR RELIEF

Count 1: Violation of the Victims of Trafficking Protection Act – Forced Labor

39. Plaintiff adopts and re-alleges all relevant allegations contained in paragraphs one through thirty-eight (¶¶ 1-38) above and reiterates the same as if fully set forth herein.

40. Through her actions recounted in ¶¶ 1-38 above, the Defendant obtained the labor or services of the Plaintiffs by threats of serious harm against the Plaintiffs. 18 U.S.C. § 1589.

41. Through her actions recounted in ¶¶ 1-38 above, the Defendant obtained the labor or services of the Plaintiffs by engaging in a scheme, plan, or pattern of conduct intended to cause the Plaintiffs to believe that, if the Plaintiffs did not perform labor or services for Defendant, the Plaintiffs and others would suffer serious harm or physical harm or physical restraint. 18 U.S. § 1589.

42. Through her actions recounted in ¶¶ 1-38 above, the Defendant obtained the labor or services of the Plaintiffs by means of the abuse or threatened abuse of law or the legal process. 18 U.S. § 1589.

43. As a result of the Defendant's violations of the forced labor provisions of the United States Code, Plaintiffs suffered substantial injury and damages.

44. Plaintiffs are entitled to recover damages arising from Defendants' violations of the forced labor provisions of the United States Code and reasonable attorneys' fees. 18 U.S.C. § 1595(a).

Count 2: Violation of the Victims of Trafficking Protection Act – Trafficking with Respect to Forced Labor

45. Plaintiffs adopt and re-allege all relevant allegations contained in paragraphs one through thirty-eight (¶¶ 1-38) above and reiterates the same as if fully set forth herein.

46. Through her actions recounted in ¶¶ 1-38 above, and in addition to the Defendant's violations of 18 U.S.C § 1589 set forth in Count 1, the Defendant violated 18 U.S.C. § 1590 by harboring and/or obtaining the labor or services of the Plaintiffs in furtherance of the Defendants' violations of the following provisions of Title 18, Chapter 77 of the U.S. Code:

- (a) knowingly and willfully holding Plaintiffs in involuntary servitude, as defined by the VTPA, 22 U.S.C. § 7102(5)(a) and (b), violating 18 U.S.C. § 1584; and
- (b) attempting to violate 18 U.S.C. §§ 1584, 1589, and 1590, violating 18 U.S.C. § 1594.

47. As a result of the Defendant's violations of the provisions of the United States Code prohibiting trafficking for forced labor, Plaintiffs suffered substantial injury and damages.

48. Plaintiffs are entitled to recover damages arising from Defendant's violations of the trafficking provisions of 18 U.S.C. § 1590, and reasonable attorneys' fees. 18 U.S.C. § 1595(a).

Count 3: Violation of the Fair Labor Standards Act – Minimum Wage Claim

49. Plaintiffs adopt and re-allege all relevant allegations contained in paragraphs one through thirty-eight (¶¶ 1-38) above and reiterates the same as if fully set forth herein.

50. As discussed above, each of the Plaintiffs in this case worked multiple weeks without getting paid by the Defendant, and as a result, the Defendant violated the FLSA, 29 U.S.C. § 206(a) by failing to pay each of the Plaintiffs the applicable minimum wage for every compensable hour of labor they performed.

51. The Defendant's failure to pay the Plaintiffs their federally mandated minimum wages were willful violations of the FLSA within the meaning of 29 U.S.C. § 255(a).

52. The Defendant acted knowingly, willfully, and/or in reckless disregard for the rights of the Plaintiffs in failing to pay minimum wages.

53. The Plaintiffs are entitled to recover minimum wages under the FLSA, liquidated damages, attorneys' fees and costs. 29 U.S.C. § 216(b).

Count 4: Violation of the Fair Labor Standards Act – Overtime Claims

54. Plaintiffs adopt and re-allege all relevant allegations contained in paragraphs one through thirty-eight (¶¶ 1-38) above and reiterates the same as if fully set forth herein.

55. As discussed above, each of the Plaintiffs in this case worked multiple weeks in excess of forty hours without getting paid by the Defendant, and as a result, the Defendant

violated the FLSA by failing to pay the Plaintiffs the overtime wage rate for all hours worked in excess of forty hours per week. 29 U.S.C. § 207.

56. The Defendant's failure to pay the Plaintiffs their federally mandated overtime wages was a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

57. The Defendant acted knowingly, willfully, and/or with a reckless disregard for the rights of the Plaintiffs in failing to pay the Plaintiffs their federally mandated overtime wages.

58. Plaintiffs are entitled to unpaid overtime wages, liquidated damages, attorneys' fees and costs. 29 U.S.C. § 216(b).

Count 5: Violation of the Fair Labor Standards Act's Anti-Retaliation Provision

59. Plaintiffs adopt and re-allege all relevant allegations contained in paragraphs one through thirty-eight (¶¶ 1-38) above and reiterates the same as if fully set forth herein.

60. The Defendant's threats to not pay the Plaintiffs what was owed to them or to pay the Plaintiffs later than the date that their wages were due if they quit their jobs constitutes a violation of the Fair Labor Standards Act's anti-retaliation provision. 29 U.S.C. § 215(a)(3).

61. The Defendant's threats to report the Plaintiffs' future employers to immigration if they quit their job with Defendant due to her not paying the wages that they were owed constitutes a violation of the Fair Labor Standards Act's anti-retaliation provision. 29 U.S.C. § 215(a)(3).

62. The Plaintiffs each suffered damages as a result of the Defendant's threats, which constitute a clear violation of 29 U.S.C. § 215(a)(3). In particular, but for the unlawful threats of the Defendant, the Plaintiffs would have each ceased working for the Defendant at an earlier date and incurred less damages. With regard to Plaintiffs Maricruz Herrerra Lopez, Maria Morales

Yanez, and Paula Galindo San Pedro, each of these Plaintiffs would likely avoided having been detained by Immigration, Customs, and Enforcement during their raid of the Defendant's facility on March 14, 2018.

Count 6: State Law Claim – Breach of Contract

63. Plaintiffs adopt and re-allege all relevant allegations contained in paragraphs one through thirty-eight (¶¶ 1-38) above and reiterates the same as if fully set forth herein.

64. The Defendant agreed to pay the Plaintiffs their agreed upon hourly wages and overtime wages for work performed over forty (40) hours in any given week in exchange for the Plaintiffs performing labor for the Defendant.

65. The Plaintiffs performed labor for the Defendant, but the Defendant breached the contract by failing to pay the Plaintiffs their unearned wages as specified above with more particularity.

66. As a result of the Defendant's breach of contract, the Plaintiffs have each incurred damages in the form of unpaid wages.

Count 7: State Law Claim – Quantum Meruit/Unjust Enrichment

67. Plaintiffs adopt and re-allege all relevant allegations contained in paragraphs one through thirty-eight (¶¶ 1-38) above and reiterates the same as if fully set forth herein.

68. As an alternative to the Breach of contract claim set forth above, the Plaintiffs assert that they provided valuable services to the Defendant in the form of manual labor; that the Defendant benefitted from these services; that the services provided by each of the Plaintiffs were performed under such circumstances that the parties understood that the Plaintiffs

reasonably expected to be paid for their services; and that it would be unjust for the Defendant to retain the benefit of the Plaintiffs' services without paying them for their services.

69. Accordingly, the Plaintiffs assert under the quantum meruit/unjust enrichment claim that they are entitled to be paid for the wages that they had always been paid at for the weeks that they performed labor for the Defendant without being paid.

Count 8: State Law Claim – Common Law Fraud, Fraudulent Misrepresentation, and Fraudulent Inducement

70. The Plaintiffs adopt and re-allege all relevant allegations contained in paragraphs one through thirty-eight (¶¶ 1-38) above and reiterates the same as if fully set forth herein.

71. By falsely assuring the Plaintiffs that they would be paid if they continued to work for her while knowing the claim to be false, the Defendant committed the tort of common law fraud, fraudulent misrepresentation and fraudulent inducement.

72. As a result of the fraud perpetrated by the Defendant in this case, the Plaintiffs have each incurred significant damages including lost wages.

73. Since the fraudulent acts committed by the Defendant against the Plaintiff were intentional, knowing, and/or reckless, an award of punitive damages is appropriate.

Count 9: State Law Claim – Conversion

74. The Plaintiffs adopt and re-allege all relevant allegations contained in paragraphs one through thirty-eight (¶¶ 1-38) above and reiterate the same as if fully set forth herein.

75. By obtaining the services of the Plaintiffs without compensating them for their time, the Defendant has committed the common law tort of conversion and deprived the Plaintiffs of their valuable services and labor.

76. By deducting twelve percent from the Plaintiffs pay checks for taxes that upon information and belief were never paid, the Defendant committed the common law tort of conversion and deprived the Plaintiffs of their property.

77. By deducting money for insurance through the Colonial Life Accident & Insurance Company from the pay checks of Plaintiffs, Liliana Rivera Jacuinde, Paulo Galindo San Pedro, and Marta Eusebio Hernandez, despite the fact that the insurance had either never been purchased or allowed to lapse the Defendant committed the common law tort of conversion and deprived the Plaintiffs, Liliana Rivera Jacuinde, Paulo Galindo San Pedro, and Marta Eusebio Hernandez, of their property.

78. As a result of the conversion committed by the Defendant against the Plaintiffs, the Plaintiffs have each incurred significant damages including lost wages.

79. Since the Defendant acted intentionally, knowingly, and/or recklessly in committing the above described torts of conversion, an award of punitive damages is appropriate.

WHEREFORE, Plaintiff prays for:

a. judgement under Count 1 for damages arising from the Defendant's violations of the forced labor provisions of the United States Code and reasonable attorney's fees associated with the presentation of Plaintiffs' Count 1 claims;

b. judgment under Count 2 for damages arising from the Defendant's violations of the trafficking provisions of 18 U.S.C. § 1590 and reasonable attorney's fees associated with the presentation of Plaintiffs' Count 2 claims;

c. judgment under Count 3 awarding Plaintiffs unpaid minimum wages, an equal amount in liquidated damages, attorney's fees and costs;

d. judgment under Count 4 awarding Plaintiffs unpaid overtime wages, an equal amount in liquidated damages, attorney's fees and costs;

e. judgment under Count 5 awarding Plaintiffs damages arising from the Defendant's retaliatory actions, and any other legal or equitable relief as may be appropriate;

f. judgment under Count 6 awarding Plaintiffs damages to be proven at trial for breach of contract;

g. judgment under Count 7 awarding Plaintiffs damages to be proven at trial for quantum meruit/unjust enrichment;

h. judgment under Count 8 awarding Plaintiffs damages to be proven at trial incurred as a result of the fraud perpetrated by the Defendant as well as punitive damages;

i. judgment under Count 9 awarding Plaintiffs damages to be proven at trial incurred as a result of the conversion of services perpetrated by the Defendant as well as punitive damages;

j. an order awarding plaintiff prejudgment and post judgment interest in an amount and at a rate to be determined at the time of trial pursuant to 28 U.S.C. § 1961;

k. an order awarding Plaintiffs all attorneys' fees, expert witness fees and costs of this action;

l. a declaration and/or certification (including a U- Visa certification) recognizing that the Plaintiffs are each victims of criminal activity including involuntary servitude within the meaning of the Victims of Trafficking Protection Act and applicable case law; and

m. an order awarding Plaintiffs such other and further relief as this Court deems fit.

Respectfully submitted, this the 3rd day of May, 2018.

/s/ Ben H. Houston II
Ben H. Houston II, BPR # 023695
Attorney for the Plaintiffs
717 N. Central Street
Knoxville, TN 37917
(865) 546-0011
(865) 546-0038 (fax)